

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 10 March 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 annexes
**Prosecution's information to the Trial Chamber about evidence
re-disclosed to the Defence on 6 March 2008**

The Office of the Prosecutor

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

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Information about evidence re-disclosed to the Defence

1. On 5 March 2008 the Trial Chamber issued “The Trial Chamber’s Agenda for the Status Conference on 12 March 2008 and scheduling order” (“Scheduling Order”).¹ The Scheduling Order listed the issues on which the parties and the participants are expected to make submissions at the occasion of the 12 March 2008 status conference. Item C on the Scheduling Order relates to the admissibility of hearsay evidence.
2. For “the ease of reference of the Defence”,² the Scheduling Order required the Prosecution to re-disclose to the Defence seven documents which had been annexed to the 12 December 2007 “Prosecution’s application for lifting of redactions, non-disclosure of information and disclosure of summary evidence” (“Prosecution’s 12 December 2007 Application”).³ The documents for which re-disclosure was ordered constituted annexes 46 to 52 of the Prosecution’s 12 December 2007 Application (“Documents”).⁴

¹ ICC-01/04-01/06-1209, para 1C.

² ICC-01/04-01/06-1209, para 1C.

³ ICC-01/04-01/06-1081.

⁴ The documents are DRC-OTP-0140-0009, DRC-OTP-0140-0146, DRC-OTP-0140-0152, DRC-OTP-0140-0496, DRC-OTP-0160-0002, DRC-OTP-0160-0188, and DRC-OTP-0160-0190. These documents can be identified by the Evidence Registration Number (ERN) that appears on the first page of each of the Documents. The Prosecution draws the attention of the Trial Chamber to the fact that in the Scheduling Order, the Trial Chamber ordered the Prosecution to disclose

3. The Prosecution informs the Trial Chamber that the Documents were re-disclosed⁵ to the Defence on 6 March 2008.⁶ The Documents are listed in the annexed "List of disclosed materials" and "List of provided materials".⁷

4. The Prosecution informs the Trial Chamber that the Documents have been re-disclosed to the Defence in the same form as they were originally provided, that is, in redacted form. In light of the fact that the redacted versions of these documents were already filed with the Registry

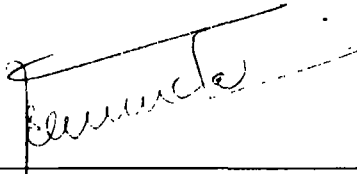
Annexes 46 - 52 to the Defence and described these seven annexes as being related to the issue of admissibility. The Prosecution notes, however, that in its oral decision on 18 January 2008 (ICC-01/04-01/06-T-72-CONF-EXP-ENG at page 1, lines 11-25 and page 2, lines 1-7), the Trial Chamber made reference to five documents for which a lifting request was at issue at that time, namely Annexes 46, 47, 48, 51 and 52. These five annexes contain records dealing with child soldiers for which the Prosecution had sought lifting of redactions. The document at Annex 49 contains redactions of a temporary nature only, pending the implementation of witness protection measures. The document at Annex 50 is a report for which the Prosecution sought lifting of redactions on 22 February 2008, but it does not relate to child soldiers.

⁵ The Prosecution submits that four of the Documents had already been disclosed to the Defence as incriminating evidence on 25 September 2006 (DRC-OTP-0140-0009, DRC-OTP-0160-0002 and DRC-OTP-0160-0190) and on 17 December 2007 (DRC-OTP-0160-0188); two had already been disclosed as potentially exculpatory evidence on 19 October 2006 (DRC-OTP-0140-0146 and DRC-OTP-0140-0152); and one had been provided to the Defence pursuant to Rule 77 on 28 July 2006 (DRC-OTP-0140-0496). The Prosecution submits that in future practice it should suffice to provide the Defence with the ERNs of previously disclosed materials.

⁶ The Prosecution refers to its letter to the Defence of 6 March 2008, which is Confidential, Prosecution and Defence Only – Annex 1.

⁷ The "List of disclosed materials" for the Documents re-disclosed as incriminating evidence is provided as Confidential, Prosecution and Defence Only – Annex 2. The "List of disclosed materials" for the Documents re-disclosed as potentially exculpatory evidence is provided as Confidential, Prosecution and Defence Only – Annex 3. The "List of provided materials", for materials re-provided pursuant to Rule 77, is provided as Confidential, Prosecution and Defence Only – Annex 4.

following their original disclosure,⁸ the Prosecution is not filing them again.



Luis Moreno-Ocampo
Prosecutor

Dated this 10th day of March 2008
At The Hague, The Netherlands

⁸ The Prosecution refers the Trial Chamber to the Prosecution's filings informing the Pre-Trial Chamber and Trial Chamber of the initial disclosure of the Documents.

The Prosecution refers, in particular, to the filings whereby it informed the Pre-Trial Chamber and the Trial Chamber of the disclosure to the Defence of items DRC-OTP-0140-0009, DRC-OTP-0160-0002, DRC-OTP-0160-0188 and DRC-OTP-0160-0190 as incriminating evidence, that is, to ICC-01/04-01/06-485-Conf-Anx1, items 6, 9 and 10; ICC-01/04-01/06-1096-Conf-Anx, item 141; and to ICC-01/04-01/06-1170-Conf-Exp-Anx1, items 664, 813, 840 and 841. The Prosecution also refers the Chamber to the filing whereby it informed the Pre-Trial Chamber of the disclosure to the Defence of items DRC-OTP-0140-0146 and DRC-OTP-0140-0152 as potentially exculpatory evidence, that is to ICC-01/04-01/06-606-Conf-Anx, items 4 and 5. Finally, the Prosecution refers the Trial Chamber to the filing whereby it informed the Pre-Trial Chamber of the provision of item DRC-OTP-0140-0496 to the Defence pursuant to Rule 77, that is, to ICC-01/04-01/06-227-Conf-Anx, item 5.