

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 20 December 2007

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 annexes

**Prosecution's Submission of videos further to the "Application for Non-Disclosure of
Information on the Basis of Article 54(3)(f)" filed on 13 December 2007**

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 9 November 2007, the Trial Chamber issued the 'Decision Regarding the Timing and Manner of Disclosure and the Date of Trial'¹ in which it held, *inter alia*, that the Prosecution must disclose its incriminatory material, by 14 December 2007.²
2. On 13 December 2007, the Prosecution filed the 'Prosecution's Application for Non-Disclosure of Information on the Basis of Article 54(3)(f)'.³ In its application, the Prosecution requested the authorization of the non-disclosure of portions of four videos on the basis of Article 54(3)(f).⁴
3. On 18 December 2007, the Trial Chamber issued the 'Order on the prosecution's applications for the lifting of redactions, non-disclosure of information and disclosure of summary evidence'.⁵ In the order, the Trial Chamber requested the Prosecution to serve on the Chamber the non-redacted and unaltered videos concerned.
4. Consequently, with the present filing, the Prosecution attaches four 'Confidential – Ex Parte Prosecution Only' annexes containing the four videos concerned in a non-redacted form.⁶

¹ ICC-01/04-01/06-1019.

² *Ibid.*, paragraph 25.

³ ICC-01/04-01/06-1086 and ICC-01/04-01/06-1086-Conf-Exp.

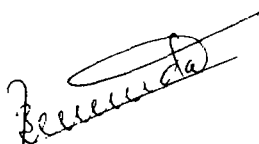
⁴ *Ibid.*, paragraph 21.

⁵ ICC-01/04-01/06-1097.

⁶ Namely Annex 1 containing video DRC-OTP-0155-0004, Annex 2 containing video DRC-OTP-1001-0012, Annex 3 containing video DRC-OTP-1001-0014, and Annex 4 containing video DRC-OTP-1002-0006.

Ex Parte Filing

5. The Prosecution submits that the classification of the annexes to the present filing as *Confidential - Ex Parte - Prosecution Only* is necessary.⁷ The present filing seeks relief on the basis of provisions on protective measures, under Article 54(3)(f).
6. The Prosecution submits that the information contained in the herein annexes must be treated confidentially and cannot be disclosed to the Defence in advance of the implementation of protective measures.⁸
7. 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 filing.



Luis Moreno-Ocampo
Prosecutor

Dated this 20th day of December 2007
At The Hague, The Netherlands

⁷ 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.

⁸ See the Decision of the Appeals Chamber, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006 at paras. 37, 65-67.