

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 25 April 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Document

Prosecution's information on the status of discussion of agreed facts

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 20 February 2008 the Trial Chamber issued its “Decision on agreements between the parties” (“Decision”).¹ In this Decision, the Chamber ordered the Parties to “prepare a draft schedule of agreed facts to be considered by the Chamber eight weeks before the commencement of the trial” (“Order”).² The Chamber also ordered the Defence to notify the Chamber by 15 April 2008 if it was unable to comply with the Order.³

2. In the course of a status conference on 12 March 2008, the Prosecution and the Defence reported to the Trial Chamber on the status of the process of discussion of facts that could potentially be agreed on (“agreed facts”). Both Parties drew the Chamber’s attention to the fact that progress had been rendered difficult by a disagreement between the Parties about the confidential nature of the discussions on agreed facts.⁴ At the hearing, the Trial Chamber encouraged the Parties to strive to find a way to continue the discussions on agreed facts, in order to ensure that witnesses are not brought unnecessarily to the seat of the Court to give evidence that may not be in dispute.⁵ At the hearing, the Prosecution undertook to make efforts to continue the discussions on agreed facts.⁶

3. On 15 April 2008, the Defence filed publicly the “Observations de la Défense concernant les éléments factuels pouvant faire l’objet d’entente entre les Parties”⁷ (“Observations”), informing the Chamber that it could not continue

¹ ICC-01/04-01/06-1179.

² ICC-01/04-01/06-1179, para 11.

³ ICC-01/04-01/06-1179, para 12.

⁴ ICC-01/04-01/06-T-78-CONF-ENG ET, page 92, line 16, to page 98, line 13.

⁵ ICC-01/04-01/06-T-78-CONF-ENG ET, page 96, lines 20-23, and page 98, lines 6-11.

⁶ ICC-01/04-01/06-T-78-CONF-ENG ET, page 98, lines 12-13.

⁷ ICC-01/04-01/06-1278.

to discuss agreed facts with the Prosecution and that the Parties would therefore be unable to file an agreement in the case.⁸ In its Observations, the Defence stated that in the course of the discussions on agreed facts it had become apparent that “the Prosecution did not consider the discussions between the Parties to be confidential, and considered that the Chamber could be seized of any disagreement between the Parties concerning the points touched upon during the discussions”.⁹ The Defence attached to its Observations an email exchange between the Prosecution and the Defence, in which the Prosecution’s position on the confidentiality of the discussions with the Defence on agreed facts had been articulated. This email exchange was filed as a Confidential Annex.¹⁰

Prosecution’s Response to Defence Observations

4. The Prosecution restates its position on the confidentiality of the discussions with the Defence on agreed facts, as it was set out in the email exchange which the Defence filed confidentially, as follows: the Prosecution considers itself bound by a confidentiality agreement concerning the discussions on agreed facts so long as there is no inquiry of the Trial Chamber into the related negotiations, including both the process and the substance. In respect of the latter aspect, the Prosecution considers itself in particular free to address before the Trial Chamber any disputes on agreements.

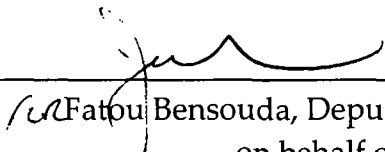
⁸ ICC-01/04-01/06-1278, para 7.

⁹ ICC-01/04-01/06-1278, para 5, Prosecution’s translation.

¹⁰ ICC-01/04-01/06-1278-Conf-Anx1.

Prosecution's Observations on Continued Discussion of Agreed Facts

5. The Prosecution informs the Trial Chamber that, pursuant to the encouragement given to the Parties to strive to find a way to continue the discussions on agreed facts,¹¹ the Prosecution has conveyed to the Defence in writing a proposal on agreed facts on 23 April 2008 ("Prosecution's Proposal"). In the Prosecution's view, the Prosecution's Proposal presents a list of facts that can be approved or rejected without further discussion between the Parties.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 25 April 2008
At The Hague, The Netherlands

¹¹ Reference is made to paragraph 2 above.