



Original: English

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

Date: 14 May 2008

TRIAL CHAMBER I

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

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

**Public Document
Public Redacted Version**

**Prosecution's Submission of Information as Ordered in the Trial
Chamber's Decision dated 24 April 2008**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabille

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley

Ms Carine Bapita Buyangandu

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. Background

1. On 24 April 2008, the Trial Chamber rendered its “Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters” (the Decision).¹
2. In the Decision, the Trial Chamber reviewed the evidence provided by [REDACTED] witnesses who provide information of a potentially exculpatory nature but whose information the Prosecution is prepared to concede. One such witness, [REDACTED] (DRC-OTP-WWWW-0023), discusses a document, the content of which may be potentially exculpatory. The Trial Chamber ordered² the Prosecution to disclose this document, unless the Prosecution provides reasons for non-disclosure within 14 days of the date of the Decision.³
3. With respect to another such witness, [REDACTED] (DRC-OTP-WWWW-0059), the Trial Chamber noted that the Prosecution is willing to make an admission that adequately covers the potentially exculpatory material provided by this witness and stated that it is awaiting the Prosecution’s proposed admission for this witness.⁴
4. With respect to witness [REDACTED] (DRC-OTP-WWWW-0051), the Trial Chamber noted that the Prosecution is willing to make an admission that adequately covers the potentially exculpatory material provided by this witness.⁵ The Trial Chamber approved

¹ ICC-01-04-01-06-1295-US-Exp, 24 April 2008, with Confidential *ex parte* Annexes A-D.

² ICC-01-04-01-06-1295-US-Exp, Annex C, pages 34-35.

³ *Ibid.*, page 35.

⁴ ICC-01-04-01-06-1295-US-Exp, Annex C, page 35.

⁵ *Ibid.*, pages 19-20.

the proposed admission as drafted, but questioned whether the admission is sufficiently comprehensive. [REDACTED].⁶

II. Scope of the Present Submission

5. In the present application, the Prosecution provides information to the Trial Chamber with respect to: (i) the disclosure of a document of potentially exculpatory value, as ordered, (ii) the provision of a proposed admission for consideration by the Trial Chamber, and (iii) a further explanation on a proposed admission.

(i) Disclosure of the document referred to by witness
[REDACTED]

6. The Prosecution has searched its evidence collection but it does not have a copy of the letter at issue in its possession or control. [REDACTED]. [REDACTED]:

[REDACTED]

7. In light of the foregoing, the Prosecution is not in a position to disclose this letter to the Defence.

(ii) Proposed admission of the potentially exonerating information of witness [REDACTED]

8. The potentially exonerating information provided by the witness [REDACTED] (DRC-OTP-WWWW-0059) is as follows:

LUBANGA did not participate in any operations. LUBANGA was, according to the subject, a politician [...] LUBANGA had no reason to be involved in military operations at the front.

9. The Prosecution is prepared to make the following proposed admission in relation to the above information from this witness:

⁶ ICC-01-04-01-06-1295-US-Exp, Annex C, pages 19-20.

[REDACTED]

10. Should the Chamber be of the view that this does not sufficiently cover the information provided by the witness, then, in the Prosecution's submission, the witness' information is to be considered by the Trial Chamber as evidence of a potentially exonerating nature that the Prosecution cannot concede.

(iii) Proposed admission of the potentially exonerating information of witness [REDACTED]

11. The potentially exonerating information provided by the witness [REDACTED] (DRC-OTP-WWWW-0051) is as follows:

A mon avis, LUBANGA voulait empêcher les militaires de faire des massacres, parce qu'il faisait toujours des discours publics disant que les Lendus étaient manipulés par les étrangers.

12. In its filing on 20 February 2008, the Prosecution proposed the following admission to cover the above information:

[REDACTED]

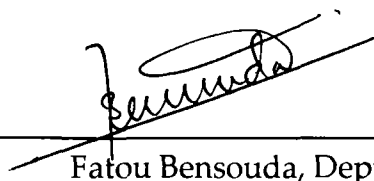
13. The Prosecution now proposes a minor amendment to this admission, in order to accurately capture the meaning of 'discours publics' which is not limited to radio broadcasts:

[REDACTED]

14. The Prosecution submits that it could not broaden the proposed admission [REDACTED]. The witness does not say that [REDACTED]. Rather, the witness states that [REDACTED]. The Prosecution submits that the witness' conclusion [REDACTED].

Ex Parte Filing

15. The Prosecution submits that the classification of the present filing as *Confidential-Ex Parte – Prosecution Only* is necessary.⁷ The filing is made pursuant to an *ex parte* decision of the Trial Chamber which has not yet been made public. As such, the Prosecution submits it would be contravening the decision of the Trial Chamber if it were to alter the current classification level.
16. The Prosecution will file a public redacted version of the present filing once a public version of the Decision becomes available.



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

Dated this 14th day of May 2008
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.