

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 May 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

with confidential Prosecution and Defence only annexes 1 and 2

Prosecution's further information on the Prosecution's compliance with Trial Chamber's 24 April 2008 Decision and application for authorisation to add one item to the evidence to be relied on at trial

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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Other

Further information on the Prosecution's compliance with the 24 April 2008 Decision

1. On 24 April 2008 the Trial Chamber rendered its "Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters"¹ ("Disclosure Decision"), which required the Prosecution to disclose to the Defence certain items² of evidence by 6 and 16 May 2008.³
2. On 13 May 2008 the Prosecution informed the Trial Chamber that it had complied with the Disclosure Decision by disclosing to the Defence certain items of evidence by 9 May 2008 and by providing access to certain evidence to the Office of Public Counsel for Victims on 12 May 2008.⁴
3. The Prosecution informs the Trial Chamber that, in compliance with the Disclosure Decision, it disclosed to the Defence the statements and related materials of eighteen witnesses who have provided potentially exculpatory evidence which the Prosecution cannot concede.⁵ These witness statements and related materials were disclosed to the Defence on 16 May 2008 in a non-redacted form, except for a small number of items which were disclosed with redactions that are necessary to protect third parties or further investigations. The Prosecution has sought the Trial Chamber's authorisation for these redactions.⁶

¹ ICC-01/04-01/06-1311-Conf-Annex2.

² These items were referred to in Annex C of the *ex parte* version of the 24 April 2008 Decision.

³ ICC-01/04-01/06-1311-Conf-Annex2, para 95.

⁴ ICC-01/04-01/06-1325, paras 2-5.

⁵ ICC-01/04-01/06-1311-Conf-Annex2, para 28.

⁶ ICC-01/04-01/06-1331.

Provision of materials for pre-inspection

4. The Prosecution further informs the Trial Chamber that it also provided to the Defence fourteen items for pre-inspection, which the Prosecution believes are material to the preparation of the Defence. The Prosecution has applied to the Trial Chamber for authorisation to add these items to the Prosecution's incriminating evidence to be relied on at trial.⁷ The Prosecution acknowledges that the Defence has requested the Trial Chamber to reject the Prosecution's application.⁸ However, independent of the decision that the Trial Chamber may take on the Prosecution's application, the Prosecution is of the view that it is under the obligation to allow the Defence to have access to these fourteen items pursuant to Rule 77. The Defence agreed to receive these items pursuant to Rule 77 only, but maintains that the Prosecution may not rely on them as incriminating evidence.⁹

Application for authorisation to add one item to the evidence to be relied on at trial

5. The Prosecution recalls that on 8 May 2008 it applied to the Trial Chamber for authorisation to add the "statement of limited use" of witness DRC-OTP-WWWW-0055 to the evidence which the Prosecution will rely on at trial.¹⁰ The Prosecution also recalls¹¹ that the text of this document was read out to the witness in Swahili during the witness' interview in January 2008, and its

⁷ ICC-01/04-01/06-1312, paras 5(b) through (g) and 22.

⁸ ICC-01/04-01/06-1321.

⁹ Reference is made to the List of provided materials and its accompanying cover letter, which are attached as Confidential Annex 1.

¹⁰ ICC-01/04-01/06-1312, paras 13 and 22. The Prosecution informs the Trial Chamber of the fact that the item for which it has sought the Chamber's authorisation to rely on at trial is in Swahili.

¹¹ ICC-01/04-01/06-1312, para 13.

contents are therefore already included in the materials which were disclosed to the Defence on 28 March 2008.

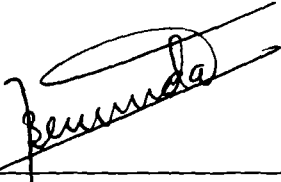
6. The Prosecution informs the Trial Chamber that on 16 May 2008, it provided the French translation of the signed version of the statement of limited use of witness DRC-OTP-WWWW-0055 to the Defence for pre-inspection, pursuant to Rule 77. The Defence agreed to receive this item pursuant to Rule 77 only, and maintains that the Prosecution may not rely on it as incriminating evidence.¹²
7. The Prosecution now seeks the Trial Chamber's authorisation to rely on the French translation of the statement of limited use, should the Trial Chamber grant the Prosecution's application to add the Swahili version of the statement of limited use to its incriminating evidence.
8. Given the fact that the full content of the document has been disclosed to the Defence since 28 March 2008, the Prosecution submits that delayed disclosure of the French translation of this document will cause no prejudice to the accused.¹³

¹² Reference is made to the List of provided materials and its accompanying cover letter, which are attached as Confidential Annex 2.

¹³ ICC-01/04-01/06-1312 para 13.

Request

9. In the light of the submission set out at the paragraphs 5-8 of this filing, the Prosecution seeks the Trial Chamber's authorisation to add the French translation of the signed version of statement of limited use of witness DRC-OTP-WWWW-0055 to the evidence to be relied on at trial. The Prosecution brings this application pursuant to Regulation 35 of the Regulations of the Court.



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

Dated this 21st day of May 2008
At The Hague, The Netherlands