

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 23 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 annex**

**Prosecution's application for variation of time limit for filing and serving on the
Defence of expert witness' report**

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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Background

1. On 10 December 2007, the Trial Chamber rendered its “Decision on the procedures to be adopted for instructing expert witnesses”,¹ in which the Trial Chamber ordered the parties to, *inter alia*, seek to instruct a joint expert on any relevant issue.² On 13 December 2007, the Chamber delivered an oral decision and held that “expert evidence must be served by 29 February 2008”.³
2. On 29 February 2008 the Prosecution filed the “Prosecution’s application for variation of time limits for disclosure of expert witnesses’ evidence”,⁴ requesting an extension of the deadline for disclosure of the expert’s report until one month prior to the commencement of trial.⁵
3. At a hearing on 12 March 2008, the Trial Chamber reminded the parties of the Chamber’s order that there should be joint instruction wherever possible,⁶ and of their obligation to discuss with each other the possibility of joint instruction of experts in relevant fields.⁷ The Trial Chamber set the 23rd of May 2008 as the new deadline for transmission of the experts’ evidence.
4. At a status conference on 6 May 2008, the parties reported to the Trial Chamber on certain difficulties encountered in the process of discussing joint instruction of an expert on background,⁸ and the Prosecution informed the

¹ ICC-01/04-01/06-1069.

² ICC-01/04-01/06-1069, page 10, section E(i).

³ Transcript of the hearing on 13 December 2007, ICC-01-04-01-06-T-65-ENG ET, p 16, lines 2-3.

⁴ ICC-01/04-01/06-1204.

⁵ ICC-01/04-01/06-1204, para 9.

⁶ Transcript of the hearing on 12 March 2008, ICC-01-04-01-06-T-78-CONF-ENG ET, p 65, lines 6-8.

⁷ Transcript of the hearing on 12 March 2008, ICC-01-04-01-06-T-78-CONF-ENG ET, p 65, lines 10-13.

⁸ Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 51, line 18, to page 53, line 24.

Chamber that the Prosecution would only instruct an expert if instruction were to be made jointly with the Defence.⁹ The Defence informed the Chamber, furthermore, that it was unable to agree with the Prosecution's proposals of potential experts.¹⁰ The Trial Chamber encouraged the parties to continue to consider the possibility of instructing an expert jointly,¹¹ and encouraged the Prosecution to otherwise reconsider its decision to call an expert on background only as a joint party expert.¹²

Information on the status of discussions with the Defence on joint instruction of expert

5. Following the status conference on 6 May 2008, the Defence informed the Prosecution verbally that it was considering as a potential expert a person who might already be known to the Prosecution, and that it would invite the Prosecution to meet that potential expert together with the Defence.¹³
6. On 9 May 2008 the Prosecution informed the Defence that it had reconsidered its position regarding the instruction of an expert on background, and that it was prepared to instruct Gerard Prunier as a party expert.¹⁴ The Prosecution requested the Defence to transmit to the Prosecution by 14 May 2008 the name of the person the Defence was considering as a potential expert, in order to

⁹ Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 54, lines 1-4.

¹⁰ Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 55, lines 8-9.

¹¹ Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 56, lines 13-15.

¹² Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 56, lines 15-19 and p 59, lines 4-9.

¹³ See the Prosecution's email to the Defence of 9 May 2008, Confidential, Prosecution and Defence Only Annex.

¹⁴ See the Prosecution's email to the Defence of 9 May 2008, Confidential, Prosecution and Defence Only Annex.

enable the Prosecution to decide whether joint instruction of an expert was still possible.¹⁵

7. Following a number of exchanges between the Prosecution and the Defence, the Defence informed the Prosecution on 22 May 2008 that it had not been in a position to establish contact with the potential expert. In these circumstances, the Prosecution informed the Defence on 22 May 2008 that it would instruct Gerard Prunier as a party expert on context and background.¹⁶

Instruction of Gerard Prunier as an expert on context and background for the Prosecution

8. On 22 May 2008 the Prosecution instructed Gerard Prunier as a party expert on context and background. Mr Prunier is a Senior Researcher with the Paris-based *Centre National de la Recherche Scientifique* and the Director of the French Centre for Ethiopian Studies in Addis-Ababa, Ethiopia.
9. Subject to a decision from the Trial Chamber on the present application, the Prosecution instructed Mr Prunier to write a report covering two questions:
 - a. The situation of Ituri: its history, characteristics and its place / role within the Democratic Republic of the Congo leading up to and at the time relevant to the Document Containing the Charges;

¹⁵ See the Prosecution's email to the Defence of 9 May 2008, Confidential, Prosecution and Defence Only Annex.

¹⁶ See the Prosecution's email to the Defence of 22 May 2008, Confidential, Prosecution and Defence Only Annex.

- b. The conflict and reasons for tensions between the various communities in Ituri

10. Subject to the outcome of the present application, the expert report addressing these two questions will be filed on 16 June 2008 and a copy will be served on the Defence. The Prosecution envisages calling the expert to expand on his report during his testimony in the course of the trial.

Request

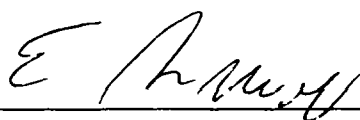
11. In light of the above, and pursuant to Regulation 35 of the Regulations of the Court, the Prosecution requests the Trial Chamber to grant an extension to the time limit for filing and serving the expert's report. The Prosecution requests to be authorised to file and serve on the Defence the expert's report on 16 June 2008.

12. In support of this application, the Prosecution emphasizes that to date both parties have made efforts to secure the joint instruction of an expert, in compliance with the Trial Chamber's 10 December 2007 "Decision on the procedures to be adopted for instructing expert witnesses". The Prosecution submits that the uncertainties as to the possibility that the parties would reach agreement on joint instruction which existed until very recently¹⁷ prevented the Prosecution to instruct the expert as a party expert at an earlier date.

13. Furthermore, the Prosecution refers to the importance attributed by the Trial Chamber and by the parties to the appearance of an expert on context and

¹⁷ The Prosecution refers to 6-8 above.

background,¹⁸ and submits that the Defence has already heard the expert witness' preliminary answers to the questions put to him, given that they had an opportunity to jointly meet him together with the Prosecution on 24 April 2008.



Ekkehard Withopf, Senior Trial Lawyer,
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of May 2008
At The Hague, The Netherlands

¹⁸ The Prosecution refers to the comments made in this regard by the Presiding Judge and by the Defence at the 6 May 2008 hearing. Transcript of the hearing on 6 May 2008, ICC-01-04-01-06-T-86-ENG ET, p 56, lines 19-23 and p 55, lines 9-13.