

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 June 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 documents that were obtained by the Office of the Prosecutor from the United Nations pursuant to Article 54(3)(e) on the condition of confidentiality and solely for the purpose of generating new evidence and that potentially contain evidence that falls under Article 67(2)

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 Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Ms Catherine Bapita Buyangandu

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

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Purpose of the filing

1. The Prosecution provides information on the situation in respect of the documents that the Office of the Prosecutor (OTP) obtained from the United Nations (UN) pursuant to Article 54(3)(e) on the condition of confidentiality and solely for the purpose of generating new evidence and that potentially contain evidence that falls under Article 67(2).
2. Information on the materials that were obtained from other information providers will be provided on 3 June 2008.

Background

3. The Prosecution makes reference to the background section of the "Prosecution's additional information on the Undisclosed Evidence"¹ and to the submissions and discussions during the Status Conferences of 6 May 2008² and of 28 May 2008.³

Information

4. Subsequent to the status conference of 28 May 2008, the UN informed⁴ the OTP that they will not respond favorably to the procedure that the Trial Chamber was prepared to apply,⁵ namely to consent that the OTP provides the Trial Chamber with the documents concerned subject to the condition that they will remain *ex parte* throughout the proceedings and will not be disclosed to the Defence or any other participant.

¹ ICC-01/04-01/06 at paras.1 to 5.

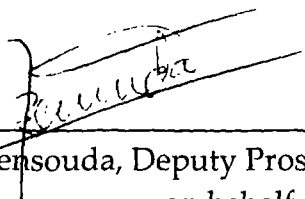
² ICC-01/04-01/06-T-86-ENG, at pages 2 to 37, in particular at page 35, lines 20 to 25, page 36 and page 37, lines 1 to 23.

³ ICC-01/04-01/06-T-88-ENG, at pages 1 to 3, 43 to 46 and 47 to 48.

⁴ The information at this stage was provided orally. The OTP was advised that a letter would follow. To date, the OTP has not received the letter.

⁵ ICC-01/04-01/06-T-86-ENG, at page 35, lines 20 to 25 and at page 36, lines 1 to 10.

5. The Prosecutor traveled to New York and will address this issue and explore alternative solutions⁶ with Mr Nicholas Michel, Under-Secretary-General for Legal Affairs and UN Legal Counsel. The respective meeting is scheduled for 3 June 2008.
6. The Prosecution undertakes to inform the Trial Chamber in due course about the outcome of these discussions.



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

Dated this 2nd day of June 2008
At The Hague, The Netherlands

⁶ The UN will be informed that any considered option is subject to a decision by Chambers.