



Original: English

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

Date: 23 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

URGENT

Prosecution's provision of the letter of the United Nations dated 20 June 2008 concerning 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:

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**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. 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
2. On 2 June 2008, the Prosecution filed the “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)”.⁴ On 9 June 2008, the Prosecution provided additional information by the “Prosecution’s updated 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).”⁵
3. During the status conference of 10 June 2008, the Prosecution made further submissions,⁶ which it updated by the 11 June 2008 “Prosecution’s further updated 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)”.⁷

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 48.

⁴ ICC-01/04-01/06-1364.

⁵ ICC-01/04-01/06-1387, confidential – *ex parte* – Prosecution and Defence only.

⁶ ICC-01/04-01/06-T-89-ENG.

⁷ ICC-01/04-01/06-1391.

4. On 13 June 2008, the Trial Chamber rendered the “Decision on the consequence of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008” (13 June 2008 Decision),⁸ and ordered the stay of the proceedings, halting the trial process in all respects.⁹
5. The Trial Chamber in the 13 June 2008 Decision scheduled a hearing for Tuesday, 24 June 2008, in order to consider the release of the accused.¹⁰
6. On 20 June 2008, the Prosecution filed the “Prosecution’s additional updated 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)” (20 June 2008 filing).¹¹ In that filing, the Prosecution informed the Trial Chamber that it would provide the formalized agreement of the UN to the viewing of material under Article 54 (3) (e) in writing.

The UN letter of 20 June 2008

7. The Prosecution submits the letter of the United Nations, dated 20 June 2008.¹² The letter provides for further detail on the consent of the United Nations as outlined in the 20 June 2008 filing.

⁸ ICC-01/04-01/06-1401.

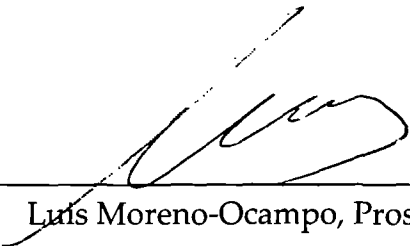
⁹ ICC-01/04-01/06-1401, at para. 94.

¹⁰ *Ibid.*

¹¹ ICC-01/04-01/06-

¹² Attached as public Annex. The letter was received on Saturday, 21 June 2008.

8. Although the letter refers at this stage to specific documents, the UN has indicated that it sets the legal framework by which the UN will endeavor to resolve in a similar manner any similar problems with any other UN documents held by the Office of the Prosecutor under article 54 (3) (e) and in accordance with Article 18 (3) of the Relationship Agreement.



Luis Moreno-Ocampo, Prosecutor

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