

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 22 October 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

**With Confidential – *ex parte* – Prosecution only Annexes 1 to 94
and public Annex 95**

**Prosecution's submission of 93 documents highlighting the passages of
potentially exculpatory value or falling within the parameters of Rule 77**

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

Mr Luc Walley

Mr Franck Mulenda

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

Background

1. On 14 October 2008, the Prosecution filed its "Prosecution's Application for Trial Chamber to Review all the Undisclosed Evidence Obtained from Information Providers"¹ (Application), in which the Prosecution informed the Trial Chamber that it is now in a position to comply with each of the Trial Chamber's pre-conditions to its review of the Undisclosed Evidence.²
2. On 15 October 2008, the Trial Chamber issued its "Order for further information regarding potentially exculpatory documents and for expedited defence response"³ (Order), and requested the Prosecution *"to file with the Registry, no later than 16.00 on 22 October 2008, copies of the 93 documents which cannot be disclosed directly to the defence highlighted so as to reveal the particular passages which it considers may be of exculpatory value together with a short explanation for each passage as to why they may have exculpatory effect or may assist the defence in other ways."*⁴

Submission of the 93 documents with highlights

3. The Prosecution submits the 93 documents.⁵ Orange highlights indicate the passages that the Prosecution considers may be of potentially exculpatory

¹ ICC-01/04-01/06-1477-Conf-Exp (with 214 Confidential – *ex parte* – Prosecution only annexes), and public redacted version, ICC-01/04-01/06-1478 (with 15 public annexes, 3 Confidential – Prosecution and Defence only annexes and 196 Confidential – *ex parte* – Prosecution only annexes).

² *Ibid*, at paragraph 2.

³ ICC-01/04-01/06-1480. - For details of the procedural history, the Prosecution refers to paragraphs 1 and 2 of the Order.

⁴ *Ibid*, at paragraph 5.

⁵ The documents are attached as Confidential – *ex parte* – Prosecution only Annexes 1 to 93.

value. Purple highlights indicate the passages that the Prosecution considers may assist the Defence in other ways.

4. There are, out of those 93 documents, only 5 documents for which, at this stage, methods of disclosure have not been identified. For 2 of those documents, answers from the information providers are pending. For another 3 of those documents, the information providers would resume consultations, if needed, upon a Trial Chamber's decision.

Submission of a chart with short explanations for each highlighted passage

5. Furthermore, the Prosecution submits a chart⁶ providing for the short explanations as requested by the Trial Chamber, outlining for each passage that is highlighted in the documents as to why it may have exculpatory effect or fall within the parameters of Rule 77 (in column "Summary of Relevant Content").
6. In addition, the chart provides for details on available analogous information (in column "Analogous Evidence")⁷ and, where applicable, on whether proposed redactions concern information which is potentially exculpatory or fall within the parameters of Rule 77 (in column "Consented to Disclosure with Proposed Redactions").

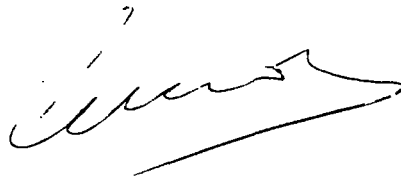
⁶ As Confidential – *ex parte* – Prosecution only Annex 94.

⁷ Depending on the outcome of the review, further analogous information can be provided for the categories of potentially exculpatory information and Rule 77 materials.

7. The Prosecution also provides for a concordance chart⁸ detailing the relation between the Annexes to the present filing and the Annexes to the Application.

Prosecution's criteria for potentially exculpatory information and Rule 77

8. The Prosecution has previously⁹ provided its criteria for potentially exculpatory information and Rule 77.¹⁰ The Prosecution adopted a broad reading of such criteria, and in cases of doubt, the Prosecution has routinely disclosed the material concerned.



Luis Moreno-Ocampo
Prosecutor

Dated this 22nd day of October 2008
At The Hague, The Netherlands

⁸ As public Annex 95.

⁹ "Prosecution's submission on undisclosed documents containing potentially exculpatory information", ICC-01/04-01/06-1248, 28 March 2008 (28 March 2008 Submission).

¹⁰ *Ibid*, at paragraphs 10 to 16 and 19 to 26. The criteria that were provided in the 28 March 2008 Submission were limited to the categories that at the time were relevant to the Undisclosed Evidence.