

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 05 November 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 Request for an *Ex- Parte* Hearing Pursuant to Rule 83 of the Rules of
Procedure and Evidence**

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 Frank Mulenda

Ms Carine 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

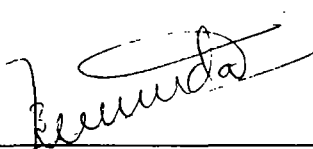
Detention Section

**Victims Participation and Reparations
Section**

Other

Ex Parte Filing

1. As a Confidential – *Ex Parte* – Prosecution only attachment, the Prosecution hereby submits its request pursuant to Rule 83 of the Rules of Procedure and Evidence (Rules) for an *ex parte* hearing to be held as soon as practicable before the Trial Chamber¹ in order to discuss issues related to the 93 items of undisclosed evidence that are the subject of the Trial Chamber's 13 June 2008 "Decision on the consequences 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"²
2. The Prosecution maintains that this filing as *Confidential-Ex Parte – Prosecution Only* is necessary.³
3. The rights of the Accused are maintained to the extent that he has been made aware of the filing and its legal basis, but cannot be privy to the specifics of the information that needs to be addressed. The Prosecution submits that no alternative procedures exist to deal with this filing.



 Fátou Bensouda, Deputy Prosecutor
 on behalf of
 Luis Moreno-Ocampo, Prosecutor

Dated this 5th day of November 2008
 At The Hague, The Netherlands

¹ Rule 83 reads: "The Prosecutor may request as soon as practicable a hearing on an *ex parte* basis before the Chamber dealing with the matter for the purpose of obtaining a ruling under Article 67, paragraph 2".

² ICC-01/04-01/06-1401.

³ Decision on the procedures to be adopted for *ex parte* proceedings, 7 December 2007, ICC-01/04-01/06-1058 at para. 12. On 6 December 2007, the Trial Chamber determined that *ex parte* procedures are only to be used exceptionally when other procedures are not available. The Court must ensure that the use of the *ex parte* procedure is proportionate given the potential prejudice to the Accused.