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No.: ICC-01/04-01/06
Date: 28 November 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

– with confidential - *ex parte* - Prosecution and Registry only ANNEX

**Prosecution's Response to the "Requête de la Défense aux fins de divulgation
des demandes de participation ou de réparation présentées en qualité de
victimes, par les témoins du Procureur et de toutes autres déclarations faites
par lesdits témoins et non divulguées à ce jour"**

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

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**Unrepresented Applicants for
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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 12 June 2008, the Defence filed an application entitled "Requête de la Défense aux fins de divulgation des demandes de participation ou de réparation présentées en qualité de victimes, par les témoins du Procureur et de toutes autres déclarations faites par lesdits témoins et non divulguées à ce jour" (hereinafter "Defence Request")¹ requesting the Trial Chamber to order the Prosecution and the Registry to disclose to the Defence (i.) un-redacted applications for participation and reparations filed by victim applicants who are also trial witnesses of the Prosecution (hereinafter "Defence's first request") and (ii.) all other statements obtained from these witnesses, which have not yet been disclosed to the Defence (hereinafter "Defence's second request").
2. On 13 June 2008 the Trial Chamber rendered the "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" imposing a conditional stay of proceedings.²
3. On 18 November 2008, during a public hearing the Trial Chamber lifted the stay of proceedings and ordered the Prosecution to file its response to the Defence Request by 28 of November 2008.³

Attachment

4. The Prosecution attaches a confidential – *ex parte* Prosecution and Registry only Annex – outlining the victim application number corresponding to each

¹ ICC-01/04-01/06-1393.

² ICC-01/04-01/06-1401.

³ ICC-01/04-01/06-T-98-ENG ET WT 18-11-2008 1-44 SZT, at page 7 line 2 to 13.

trial witness and the court record number attributed to the application as filed within the case file.

Prosecution's Submissions

5. On the "Defence's first request" to receive un-redacted applications for participation and reparations filed by victim applicants who are also trial witnesses of the Prosecution, it is submitted that applications for victim participation and reparations are dealt with solely between the applicants or their legal representatives and the Registry.⁴ Once the Registry deems that applications are complete it submits them by groups, accompanied by a report to the relevant Chamber.⁵ Only upon order of the Chamber are applications for victim participation notified to the parties by the Registry in a manner deemed appropriate by the Chamber taking into consideration the protection needs of victims and witnesses spelled out in Article 68(1),⁶ which may or may not include redacting the applications.
6. So far the applications of victim applicants or recognized victims who are also trial witnesses of the Prosecution have been notified to the Defence in redacted form.⁷ Notification of victim applications to the Prosecution has varied over time. Whilst the Pre-Trial Chamber decided to notify the Prosecution with un-redacted copies of applications,⁸ the Trial Chamber instructed the Registry to notify only redacted versions of the applications.⁹ The Prosecution has on a previous occasion informed the Chamber that it is in possession also of un-redacted copies of the application forms,¹⁰ amongst others those of the dual status victim/witnesses.

⁴ See Rule 89 (1) of the Rules of Procedure and Evidence, Regulations 86 and 88 of the Regulations of the Court, Regulation 104 to 110 of the Regulations of the Registry.

⁵ Regulation 86 (5) of the Regulations of the Court, Regulation 106 (2) of the Regulations of the Registry.

⁶ The procedure outlined reflects the current practice of the Court, see for instance ICC-01/04-01/06-1308.

⁷ See ICC-01/04-01/06-1308.

⁸ See ICC-01/04-367.

⁹ ICC-01/04-01/06-1308.

¹⁰ ICC-01/04-01/06-1322.

7. In light of the existing protection measures ordered by the Trial Chamber, and in absence of a further order of a Chamber, the Defence currently cannot be provided with these un-redacted applications. In any case, the Prosecution submits that the Registry is the competent authority for victim applications and for notification of the relevant documents to the Defence.¹¹
8. Concerning the Defence's request for any applications for reparations, the Prosecution submits that it has not received any such applications for reparations, nor has it received any information regarding applications for reparations, beyond what has been announced by legal representatives in public session.¹²
9. In response to the "Defence's second request", the Prosecution acknowledges its disclosure obligations and clarifies that it does not treat prior statements of dual status victims/witnesses under Rule 76 differently from prior statements of other trial witnesses.



Luis Moreno-Ocampo, Prosecutor

Dated this 28th day of November 2008
At The Hague, The Netherlands

¹¹ The Prosecution notes that both the redacted and un-redacted versions of the victim applications already form part of the case record.

¹² See ICC-01/04-01/06-T-57-ENG [29Oct2007Edited], at page 16 lines 19 to 24.