



Original: English

No.: ICC-01/04-01/06
Date: 02 December 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
With Confidential - Prosecution and Defence Only - Annex 1, Confidential Annex
3 and Public Annex 2**

**Prosecution's Provision of Further Information Concerning Undisclosed Item of
Evidence Annex 26 Obtained from the United Nations**

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 Frank 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 and SUBMISSION

1. On 21 November 2008 the Prosecution filed its “Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008”¹ (21 November Filing), wherein it confirmed the disclosure to the Defence of all the items of undisclosed evidence that were the subject of the stay of proceedings.
2. In the filing the Prosecution notified the Trial Chamber that the disclosure of each item of undisclosed evidence had taken place in compliance with the modalities approved by the Trial Chamber.² Those modalities were specified in the confidential chart attached to the said filing as Confidential Annex C.
3. With respect to the item of undisclosed evidence identified as Annex 26³ the Prosecution proffered admissions of fact that it submitted encompassed the Rule 77 portions of the item of evidence, thereby obviating the need for disclosure of those particular Rule 77 portions. Hitherto, the Prosecution had been unable to disclose these particular portions because consent from the State concerned had not been forthcoming.
4. The Prosecution wishes to notify the Chamber that since the 21 November Filing the third State concerned has consented to the disclosure of the Rule 77 portions of the document. As a result, the Rule 77 portions can now be disclosed in a fully un-redacted form to the Defence. The final version of Annex 26 is attached as

¹ ICC-01/04-01/06-1502.

² Paragraph 2 of *ibid.*

³ Which appears at page 4 of Confidential Annex C (the Chart) of 21 November Filing; ERN DRC-OTP-0204-0332, formerly DRC-OTP-0044-0104.

Confidential Prosecution and Defence only Annex 1 to this filing⁴. Further, the letter from the United Nations detailing the consent is attached as Public Annex 2 and the specific response from the concerned State is attached as Confidential Annex 3.

5. In view of the above disclosure, and in particular, the fact that the source of the Rule 77 information is now revealed, the Prosecution submits that the admissions of fact are no longer necessary.



Luis Moreno-Ocampo
Prosecutor

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

⁴ For convenience, the Prosecution has also highlighted in purple the specific portions of text that have been identified as Rule 77 evidence that may now be disclosed in an un-redacted form. These highlights are contained in Confidential Prosecution and Defence only Annex 1 to this filing.