

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 16 February 2009

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 Public Annex 1**

Prosecution's Submission on Witness Summaries

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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Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

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Ms Paoline Massidda

Unrepresented Victims

**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

Mr Simo Vaatainen

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Background

1. On 13 February 2009, the Trial Chamber stated that it had "been shown a proposal of witness summaries prepared by the Office of the Prosecutor which it is suggested should receive wide dissemination and [...] including by way of going on to the web site of the court."
2. The Trial Chamber proposed a different approach: "The Chamber proposes that we will compile after each witness a short summary of that witness's evidence which in our view is balanced, short, and sufficiently represents what has been said. That can then be made available to the press department of this court for publication."
3. The Trial Chamber sought the views of the Prosecution on this proposal by 16 February 2009.

Prosecution's Submissions

4. The Prosecution submits that a summary of Court proceedings as suggested by the Trial Chamber would be beneficial for the dissemination of trial information to members of the public. The Prosecution took the initiative because there are no such summaries at the moment.
5. The two documents to which the Trial Chamber referred were OTP documents not intended to be presented as Court-wide information. The Prosecution was providing information about its own activities to be presented on the OTP website, which is distinct from the Court website. The documents did not refer and should not refer to defence statements. The defence and the legal representative of victims have made their own communications through the press. By proceeding in

this way, the Prosecution was following a common practice of the International Tribunals.

6. The first OTP document at issue is an advance notice, intended for the media and the public, of the witnesses who are intended to be called during the week and a brief summary of anticipated evidence. The Prosecution notes that such advance notice with summaries of anticipated evidence are currently prepared at the Special Court for Sierra Leone (SCSL). These weekly documents are prepared by the Office of the Prosecutor, and the fact that they emanate from the OTP is expressly set out on the letterhead in which the summaries appear. Attached as **Annex 1** is an example of a summary of anticipated evidence for Week 12, 16 January 2009, in relation to witness TF1-355. The OTP for the SCSL has qualified at the outset that “the witness may provide evidence in relation to the following”, following which the general lines of the witness’ evidence are described in some detail.

7. The advance notice summaries are prepared by the OTP at the SCSL, formatted by the Public Information Unit of the Court, and then reviewed again by the OTP prior to the appearance of the witness. The final version of the summary of anticipated evidence is then disseminated to journalists by the Public Information Unit. The Prosecution was following this model.

8. Furthermore, the Prosecution notes that Rule 65^{ter} of the Rules of Procedure and Evidence at the International Criminal Tribunal for the former Yugoslavia (ICTY) expressly requires the Prosecution to file written summaries of anticipated evidence. Such filings must include detailed summaries of anticipated evidence, the background of the witness, the expected length of time of testimony, and the relevance of the expected testimony by referencing specific paragraphs of the indictment and pre-trial brief¹. These filings are made publicly so that the public can access them.

¹ See Rule 65^{ter} (E) (ii).

9. Such advance notice of the witnesses to be called brings the proceedings closer to the victims and to citizens of the Democratic Republic of Congo. It will serve to assist the public to know in advance what is expected to come in open Court, particularly given that a number of witnesses have been afforded in-Court protection. Indeed, this has been requested by numerous Congolese journalists. The Prosecution submits that so long as the proper qualification is provided that the anticipated evidence is expected only and may or may not actually correspond to the evidence that the witness ultimately gives, there is no harm to the integrity of the proceedings. Further, providing information that assists in encouraging the public to observe the trial necessarily enhances the public nature of the trial as prescribed in Article 64(7) of the Rome Statute (Statute).

10. In addition, the Prosecution notes that it has already filed pursuant to the Trial Chamber's Order, an updated summary of Prosecution evidence. This has been filed publicly and is the Prosecution's position regarding the anticipated evidence.²

11. The second document at issue is a summary of the evidence of witnesses called by the Prosecution following their testimony. The Prosecution recalls the approved practice at the SCSL. At the SCSL, daily summaries are prepared which are entitled 'Trial Minutes'. These Trial Minutes are posted on the SCSL website. The Trial Minutes are prepared by the Court Management Services (CMS). They are then reviewed and approved by the relevant parties (Prosecution, Defence, Victim and Witnesses Unit). The Public Information Unit then posts the approved daily Trial Minutes on the website.

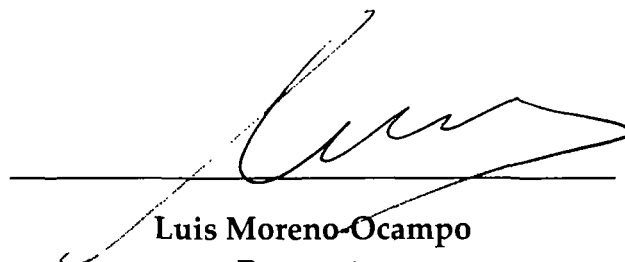
12. A different approach is taken currently at the ICTY. A very short weekly update of Court Proceedings is prepared by the Registry's Press Office. This update is limited to the most basic factual information: witness name/position, number of

² "Provision of the Prosecution's Updated Summary of Presentation of Evidence", ICC-01/04-01/06-1363, 30 May 2005.

hours testified, language of testimony, and therefore the update is reviewed and approved only by Registry's Head of Communications. Updates are posted every Friday on the ICTY website under the Case concerned and also on the Press Pages. Summaries are also mailed out to media by the Press Office. The current practice of producing very short updates is a result of the sheer number of ongoing cases at ICTY. Initially, the Tribunal produced much more detailed summaries containing additional information such as what witnesses testified about. Additionally there are weekly press conferences including the parties.

13. The Prosecution treats with caution the proposal that the summaries are to be prepared by the Trial Chamber, in view of its neutral and independent role in the trial proceedings. In all cases, it would be difficult for the summaries to emanate from the Trial Chamber given the real risk that the public will confuse them with pronouncements or determinations by the Trial Chamber on the evidence.

14. The Prosecution submits that the adoption of the SCSL or the ICTY practice would eliminate any need for litigation on this matter. The Prosecution does not seek judicial resolution of the matter and will endeavour to discuss the issue with the Registry, the Defence and the Legal Representatives.



Luis Moreno-Ocampo
Prosecutor

Dated this 16th day of February 2009
At The Hague, Netherlands