



Original: **English**

No.: ICC-01/04-01/06
Date: **29 October 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

**Prosecution's Application for an Order directing the Defence to provide
photographs of the witnesses they intend to call**

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 Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to the Trial Chamber's "Decision on disclosure by the Defence" (Disclosure Decision) on 20 March 2008, paragraph 41(d), and Rule 79(4) of the Rules of Procedure and Evidence (Rules), the Prosecution requests the Trial Chamber to issue an order directing the Defence to provide the Prosecution with photographs of witnesses it intends to call in order to enable the Prosecution to effectively investigate and prepare for the Defence case.¹
2. Specifically, the Prosecution requests that the Defence provide it with photographs of Defence witnesses DRC-D01-WWWW-0001, 0002, 0003, 0004, 0005, 0006, 0012, 0014, 0015, 0016, 0023, 0024, 0025 and 0026, 0027, should they be in the Defence's possession.²
3. The Prosecution contends that the rationale behind the order in paragraph 41 (d) of the Disclosure Decision³ is to enable the Prosecution to establish with certainty the identity of prospective Defence witnesses so that it can conduct appropriate enquiries. Such enquiries could include speaking to individuals who know or know of the Defence witnesses.
4. Several of the Defence witnesses will be proffered to contradict testimony of some of the Prosecution's witnesses. Among other things, they may claim that they had close relationships with Prosecution witnesses and may provide information based on those relationships. In order to prepare for that testimony, it will be necessary to establish if the Defence witnesses in fact are who they purport to be and are known to our witnesses.
5. Although the Prosecution has received the names, addresses and dates of birth of the witnesses mentioned above, the use of photographs would further assist the Prosecution in confirming their identities and eliciting other relevant information.

¹ ICC-01/04-01/06-1235, para. 41 (d).

² For information, the Prosecution notes that it did make an *inter partes* request for the photographs.

³ Order to the Accused to "furnish the prosecution and the Chamber after the presentation of the evidence of the prosecution is completed with the name, address and date of birth of any witness, to enable the prosecution to conduct appropriate enquiries"

6. In addition, during this trial it was established that the use of names in the DRC is not straightforward and that sometimes persons are known by several names.⁴ Indeed, it is against this backdrop that the Chamber determined that the calling of an expert on naming and cultural conventions in the DRC would be beneficial to this issue.
7. Therefore, given the possibility that some of the Defence witnesses may be known by different names, the use of photographs would greatly assist the Prosecution in verifying their identities and in making appropriate enquiries in preparation for the Defence case. Accordingly, the provision of photographs would ensure that the purpose behind paragraph 41(d) of the Disclosure Decision is realised.
8. Lastly, the Prosecution remains cognisant of the need to respect the confidentiality of the witnesses and will take all appropriate measures to ensure that their identities are not disseminated unless for legitimate investigative enquiries. However, in the Prosecution's submission, the use of the photographs of Defence witnesses should entail no additional risks. The witness' identities are known to the Prosecution. These are witnesses who are being called by the Defence and they face no known risk of harm from the Prosecution, unlike the situation of witnesses testifying against an accused person. The Prosecution also notes that its enquiries are governed by Trial Chamber Order #1372.⁵

Relief Requested

9. The Prosecution requests the Trial Chamber to order the Defence to provide the Prosecution with the photographs of the Defence witnesses DRC-D01-WWWW-0001, 0002, 0003, 0004, 0005, 0006, 0012, 0014, 0015, 0016, 0023, 0024, 0025, 0026 and 0027, should they be in the Defence's possession.
10. Given the urgency and simplicity of this request and the need for the Prosecution to continue its investigation as rapidly as possible and given that the trial is due

⁴ See ICC-01/04-01/06-T-119-CONF-ENG pages 23 to 25.

⁵ ICC-01/04-01/06-1372, 04 June 2008, specifically paragraph 9.

to resume shortly, the Prosecution respectfully requests for an abridgment of the time allotted for any response.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is positioned above a horizontal line.

Luis Moreno-Ocampo,
Prosecutor

Dated this 29th day of October 2009
At The Hague, The Netherlands