



Original: English

No.: ICC-01/04-01/06

Date: 29 April 2010

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, President  
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 Redacted Version**

**Prosecution's Request for Disclosure of Information by the Defence**

**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 Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

Ms Paolina Massida

**States Representatives**

**Amicus Curiae**

**REGISTRY**

**Registrar**

**Defence Support Section**

Ms Silvana Arbia

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

In order to permit the Prosecution to conduct its ongoing investigations into the Defence case, to respond to a possible abuse of process motion and to prepare for the upcoming testimony of DRC-OTP-WWWW-0297, and in accordance with decisions #1372 and #2192 of this Chamber, Article 54(1)(b), 64(6)(d) of the Rome Statute (Statute) and Rules 79(4) and 84 of the Rules of Procedure and Evidence (Rules), the Prosecution requests the Trial Chamber to order the Defence to disclose photographs used during the Defence interview of W-0297 and to disclose the full identity of one individual named by both W-0297 during the Defence interview of the witness and during the testimony of DRC-D01-WWWW-0004.

## **Prosecution's Submissions**

### ***Production and Use of Photographs***

1. First, the Prosecution requests production of photographs shown to W-0297 by the Defence during its interview of this witness. This request is necessary to enable the Prosecution to conduct necessary and legitimate investigative action with respect to the photographs pursuant to this Chamber's Decision #1372.<sup>1</sup>
2. In the Defence interview with witness W-0297 conducted on 3 and 4 December 2009, the Defence presented a number of photographs to the witness and asked him to comment upon them.<sup>2</sup> The photographs are an integral part of the interview. The witness did not recognize the persons in the photographs, but his non-recognition is a meaningless fact absent the photographs themselves and information as to whom they purportedly

---

<sup>1</sup> ICC-01/04-01/06-1372, 3 June 2008.

<sup>2</sup> The transcript of this interview has been filed by the Defence in 'Annexe I à la Requête de la Défense aux fins de la comparution du témoin DRC-OTP-WWWW-0297 en qualité de témoin de la Cour', ICC-01/04-01/06-2307-Conf-AnxI. It is unclear exactly how many photos were used in this interview. Referring to the last 4 digits of the ERNs at the bottom of each page of the annex, the references to a photo being shown to the witness are at page -2541, line 9; page -2542, lines 3, 6 and 9; page -2544, line 5; -2550, line 8.

portray. The Prosecution requested copies of the photographs from the Defence but has not received the photographs to date.

3. Nor can there be an objection to production of the photographs on the ground that the identity of the persons photographed is confidential. Prior to the commencement of the trial, in its decision #1372, the Chamber set clear parameters within which a party must treat any confidential material disclosed by the opposing party. In doing so, the Chamber recognised the right of each party to be able to conduct reasonable and legitimate inquiries during investigations using confidential documents disclosed by either party.<sup>3</sup>
4. The Defence has opted to bring a positive case and to call a number of witnesses aimed at dismissing the charges against the Accused on the grounds of abuse of process. The Prosecution has a right to conduct reasonable investigations into the Defence case. This Chamber has acknowledged this right, including in its decision # 2192<sup>4</sup> on disclosure by the Defence so as to permit the Prosecution to conduct reasonable investigations. Such investigations would be conducted within the parameters of decision #1372<sup>5</sup> on the investigative use that can be made by both parties of non-public documents disclosed *inter-partes*.
5. Additionally, the Prosecution is bound by Article 54(1)(b) to take appropriate measures in the investigation and prosecution of crimes to respect the interests and personal circumstances of victims and witnesses. The Prosecution fully intends to respect this obligation and to conduct its inquiries discretely without exposing the persons in the photographs to a security risk.
6. The Prosecution submits that the photographs shown to W-0297 during his interview are necessary for a complete and proper understanding of the

---

<sup>3</sup> ICC-01/04-01/06-1372, 3 June 2008, paragraph 11.

<sup>4</sup> ICC-01/04-01/06-2192-Conf, 19 November 2009, paragraphs 64-65.

<sup>5</sup> ICC-01/04-01/06-1372-Conf, 3 June 2008, paragraphs 12-13.

information provided by witness W-0297 in his interview with the Defence and to prepare for his upcoming testimony.

### *Disclosure of Specific Information*

7. Second, the Prosecution seeks from the Defence the full name of an individual referred to as '[REDACTED]' during both the Defence interview of W-0297 and the testimony of Defence witness W-0004. During his interview by the Defence, witness W-0297 indicated that he had been informed that a person named [REDACTED] could facilitate contact with the lawyers of Thomas Lubanga and that [REDACTED] works in the office [REDACTED] in Bunia.<sup>6</sup> According to the evidence of the Defence's own witness (W-0004), [REDACTED] met with the Defence resource person on several occasions in advance of and during meetings with identified [REDACTED] witnesses in late 2007 and in 2008.<sup>7</sup>
8. "[REDACTED]" is a nickname, and neither W-0297 nor Defence W-0004 knows the real or complete name of [REDACTED]. While the Prosecution has attempted to conduct independent inquiries, it is stymied without the actual name of this individual. The most efficient way to obtain the information is from the Defence, who could ask its resource person for the name and address of the person. It seems apparent that the resource person knows [REDACTED], since [REDACTED] was with him at meetings with identified individuals in 2007 and 2008 at [REDACTED]'s home and at the UPC offices in Bunia. See, for example, the following extracts of the testimony of DW-0004:

---

<sup>6</sup> See the transcript of this interview in 'Annexe I à la Requête de la Défense aux fins de la comparution du témoin DRC-OTP-WWWW-0297 en qualité de témoin de la Cour', ICC-01/04-01/06-2307-Conf-AnxI, page 53, lines 13-26 and page 54, lines 1-8.

<sup>7</sup> See the transcript of the hearing on 11 February 2010, ICC-01/04-01/06-T-245-CONF-ENG ET at page 30, line 17-19; page 31, lines 11 to page 35, line 22; page 38; lines 6-17; and page 43, line 13 to page 45, line 18.

- a. “[REDACTED]”<sup>8</sup>
  - b. “[REDACTED]”<sup>9</sup>
  - c. “[REDACTED]”<sup>10</sup>
  - d. “[REDACTED]”<sup>11</sup>
  - e. “[REDACTED]”<sup>12</sup>
  - f. “[REDACTED]”<sup>13</sup> (Emphasis added).
9. Upon inquiry, the Defence responded that it was not in a position to determine the identity of the individual.
10. The full name of ‘[REDACTED]’ is necessary in order to prepare for the testimony of W-0297 and to investigate other aspects of the Defence case. The Prosecution’s position is that supporters of Thomas Lubanga are active in Bunia and can apply pressure to witnesses and their families. It is therefore important for the Prosecution to know whether such active supporters in Bunia have been meeting with Defence witnesses and the family members of Prosecution witnesses. [REDACTED] having played an apparently significant role with respect to at least one witness, it is critical that the Prosecution be able to investigate whether he is connected to any such group.
11. While the Prosecution recognizes that the scope of the Defence’s disclosure obligations is limited to specific circumstances, the information the Prosecution seeks arises directly from the abuse of process application that the Defence intends to bring and from the evidence of its chosen witnesses. Having opted to mount this challenge and call evidence on the point, the

---

<sup>8</sup> T-245 at page 31, lines 11-13.

<sup>9</sup> T-245 at page 33, lines 5-6.

<sup>10</sup> T-245 at page 34, lines 13-15.

<sup>11</sup> T-245 at page 38, lines 15-17.

<sup>12</sup> T-245 at page 43, lines 22-23.

<sup>13</sup> T-245 at page 44, line 25 to page 46, lines 1-2.

Defence cannot withhold relevant information in its possession. Once the issue arose through the testimony of its very own witness, the information can legitimately be requested by the Prosecution.

### **Relief sought**

12. Pursuant to Article 64(6)(d) of the Statute and Rules 79(4) and 84 of the Rules, the Prosecution requests the Trial Chamber to order disclosure by the Defence and as soon as possible of the following:
  - a. The photographs shown to witness W-0297 during the course of his interview on 3 and 4 December 2009 so that the Prosecution can conduct necessary and legitimate investigations; and
  - b. The full name and address of the person referred to as “[REDACTED]” by W-0297 during his Defence interview and during the testimony of defence witness W-0004.



---

Luis Moreno-Ocampo  
Prosecutor

Dated this 29<sup>th</sup> day of April 2010  
At The Hague, The Netherlands