

1 International Criminal Court

2 Trial Chamber I

3 Situation Democratic Republic of the Congo - ICC 01/04-01/06

4 Hearing - Open Session

5 Thursday, 13 December 2007

6 The hearing starts at 10.09 a.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session. Please be seated.

9 PRESIDING JUDGE FULFORD: The Bench will deal first with the
10 public section of this oral decision.

11 The Chamber has been asked to deal with three separate
12 applications that were filed respectively on 31 October 2007, 7
13 December 2007, and 10 December 2007. They will be dealt with in that
14 order.

15 On 31 October 2007, the Prosecutor filed a public with
16 confidential, ex parte, Prosecution only attachments entitled
17 "Prosecution's Application for Direction on the Lifting of Redactions
18 and for Non-disclosure of Information".

19 In that filing, the Prosecution applied for three things. First,
20 to lift certain redactions previously authorised by the Pre-Trial
21 Chamber that relate to further or ongoing investigations which are now
22 complete, or to other information that the Prosecution acknowledge is
23 relevant to the charges the accused faces. Second, for a ruling
24 whether under Rule 81(2) (that relates to further or ongoing
25 investigations) the Prosecution needs the authorisation of the Chamber

1 to lift redactions previously approved by the Pre-Trial or Trial
2 Chamber once they are no longer required. Third, to retain in a
3 redacted form certain passages in witness statements, because
4 disclosure of them would prejudice further investigations or the
5 safety of particular individuals whose identity and current
6 whereabouts are irrelevant to the present case (Rule 81(2) and (4)).

7 The Chamber ruled on 4 December 2007 that the Prosecution do not
8 have to seek the leave of the Chamber to lift redactions that they had
9 applied for when the reason for authorisation was that disclosure may
10 prejudice ongoing or further investigations (Rule 81(2) of the Rules
11 of Procedure and Evidence).

12 It is convenient to observe that at paragraph 15 of the filing,
13 the Prosecution accepted that they are not seeking to maintain, or to
14 have imposed, any redactions that relate to the ongoing investigation
15 against the accused in relation to the current case against him as set
16 out in the warrant of arrest issued on 10 February 2006. The
17 Prosecutor accepts that all information relevant to the current
18 charges against Mr. Lubanga Dyilo must be disclosed prior to trial.
19 Furthermore, the Prosecution accepts that the Prosecution must
20 disclose information that is potentially exonerating pursuant to Rule
21 67(2) of the Rules of Procedure and Evidence or any material which
22 falls for inspection under Rule 77 of the Rules of Procedure and
23 Evidence (see paragraph 17 of the filing).

24 It is against that background that the Chamber considered
25 particular passages in relation to which the Prosecution seeks to

1 maintain redactions. In due course, in an ex parte section of this
2 oral decision, the Bench will address the particular redactions that
3 the Prosecution have sought. All the Chamber need say for these
4 purposes is that the approach that has been adopted throughout is to
5 ensure that if redactions are maintained or imposed, the material is
6 irrelevant to the accusations that Mr. Lubanga Dyilo faces, and in
7 particular, the Chamber has ensured it neither tends to undermine the
8 Prosecution case on the charges confirmed by the Pre-Trial Chamber,
9 nor give any support for the defence case, namely that the accused is
10 innocent of the charges. Furthermore, the Chamber notes the
11 redactions are few in number, and they do not render the statements or
12 documents in any way unintelligible or markedly difficult to deal
13 with. It is to be stressed that some of the redactions relate to
14 further investigations which are unconnected with the subject matter
15 of the present trial. During the ex parte part of this ruling, the
16 Chamber has ordered the removal of various redactions for which
17 judicial permission is necessary.

18 On 9 November 2007, the Trial Chamber ordered the Prosecution to
19 disclose its incriminatory materials, including witness statements, by
20 14 December 2007. It further ordered, if the Prosecution considers
21 redactions are necessary, it must explain and justify each redaction.

22 On 5 December 2007, the Prosecution disclosed an updated list of
23 trial witnesses. This was communicated to the Chamber on
24 7 December 2007, in the Prosecution's submission of originals of
25 incriminatory evidence disclosed to the Defence on 5 December 2007.

1 On Monday, 10 December 2007, at midday, the Trial Chamber was
2 notified of a public application which accompanied a confidential
3 ex parte Prosecution application which were both entitled
4 "Prosecution's Application for Lifting of Redactions, Non-disclosure
5 of Information and Disclosure of Summary Evidence", which had been
6 filed after 4.00 p.m. on 7 December 2007. These filings focused on
7 the position of 13 of the Prosecution's witnesses, and the application
8 was mixed in nature. In part, it requested authorisation to lift
9 redactions made by the Pre-Trial Chamber under Rule 81(4), and
10 informed the Chamber of an intention to lift certain redactions under
11 Rule 81(2). The filing also requested permission to disclose part of
12 the Prosecution case in a redacted form, or by way of summary
13 evidence, or, in some instances, by the complete non-disclosure of
14 particular documents, all of a temporary nature, in order to ensure
15 the continuing protection of witnesses referred to the Victims and
16 Witnesses Unit for inclusion in the protection programme. The
17 Prosecution also requested redactions under Article 54(3)(f) of the
18 Rome Statute (under which measures can be requested to ensure
19 confidentiality of information, protection of people, and preservation
20 of evidence) and requested redactions for the protection of further
21 investigations. The application, which itself is short (12 pages),
22 was accompanied by 107 annexes, totaling 2.936 pages. It was not
23 marked as urgent, and it didn't reach the Chamber until, as has just
24 been observed, after midday on Monday, 10 December 2007, four days
25 before the deadline of 14 December 2007. The Defence also did not

1 receive it until Monday.

2 The current situation as regards these 13 witnesses is that for
3 eight of them, with the leave of the Pre-Trial Chamber, summaries or
4 redacted versions of their witness statements were used during the
5 Confirmation Hearing. Two of these eight witnesses had their
6 statements served with redactions, and for six the Prosecution relied
7 on summaries of their evidence.

8 As for the other five of this group of 13 witnesses, although
9 they will now form part of the Prosecution case, they were not relied
10 on during the confirmation stage.

11 Overall, 34 witnesses have been referred to the Victims and
12 Witnesses Unit for protective measures to be implemented. A number of
13 those referrals were only made at the end of September. Twelve have
14 been accepted; two have been rejected; two applications were withdrawn
15 by the Prosecutor; 12 are awaiting a decision from the Registrar; and
16 six are pending clarification or assessment. Of these 13 witnesses,
17 11 were referred to the Victims and Witnesses Unit on 24 April 2007,
18 and 24, 25 and 27 September 2007. This summary of the present
19 position was agreed between the Prosecution and the Victims and
20 Witnesses Unit on 11 December 2007.

21 The Prosecution also advanced submissions on the uncertain
22 security situation in the relevant part of the Democratic Republic of
23 the Congo which do not require rehearsing for the purposes of this
24 ruling. It is uncontested for these purposes that in certain parts of
25 Bunia and Ituri, and elsewhere, there is significant insecurity at the

1 present time.

2 As regards the general position for all the witnesses referred to
3 the Victims and Witnesses Unit, save for any referrals that were made
4 after September and save for two witnesses who have only recently been
5 seen, it is expected that the process of determining the applications
6 for protective measures will be complete by the end of this week.
7 Thereafter, it is likely for those that are accepted into the
8 programme, protective measures will be in place by the end of January
9 2008, although the representative of the Victims and Witnesses Unit
10 made it clear that this is a likely rather than a definite date.

11 Although a significant number of these referrals to the Victims
12 and Witnesses Unit were not made until the end of September 2007
13 (which was unreasonably late in our view), nearly two and a half
14 months have elapsed since then, and the Prosecution self-evidently do
15 not have control over how long the assessment or implementation
16 processes take once the applications are made.

17 The Prosecution, in those circumstances, submits that for any
18 witness who is awaiting a decision from the Registrar on protective
19 measures and its implementation if the application is accepted, or who
20 is awaiting the identification of other protective avenues if the
21 Registrar rejects the application, it is unable to disclose
22 non-redacted copies of the witness statements and supporting documents
23 because this would place the witnesses at risk. They propose, as an
24 alternative, to serve redacted statements and documents or summaries
25 on the Defence team and not on the accused until the Victims and

1 Witnesses Unit's protective measures are in place or other protective
2 avenues have been identified. The Prosecution suggested Mr. Lubanga
3 Dyilo should be denied access to all this material to give the Chamber
4 time to read it and to decide independently whether it considered that
5 additional redactions should be implemented to protect the witnesses.
6 This was a course that the Prosecution suggested the Pre-Trial Chamber
7 had adopted on occasion.

8 Given that the Prosecution are only seeking a delay of a few
9 weeks before this material is served so that appropriate protection
10 can be put in place, it did not invite our scrutiny in court of the
11 detail of the proposed redactions to the statements, of every document
12 that it suggested should temporarily be withheld, or of every summary
13 that it seeks to serve. Instead, the Prosecution outlined the
14 approach they have taken, which is to remove all references to
15 biographical information. This includes family names, current and
16 past employment, educational history, in some cases ethnic origin and
17 religion when the context may make that an identifying feature,
18 contact with the UPC or FPLC, or links with members of those groups,
19 and other discrete individual identifying features. As regards
20 certain NGO workers who are still working on the ground and one other
21 category that we will refer to in the ex parte section of this
22 decision, careful redactions are proposed.

23 The representative of the Victims and Witnesses Unit, when
24 addressing the Chamber on the issue of the risk to witnesses, referred
25 to the possibility of individuals or organisations with hostile

1 motives harming or otherwise having a negative impact on vulnerable
2 witnesses. He suggested that problems of this kind may emanate from
3 the accused, who is possibly communicating with others from custody,
4 and to guard against that possibility he raised two options: First,
5 of the Registrar monitoring his non-privileged communications from
6 custody and, second, of disclosing the identities of the Prosecution
7 witnesses to the Defence team but not to the accused. The
8 representative of the Victims and Witnesses Unit undertook to submit
9 any details that indicated the defendant has been passing out
10 information from the place of detention in a way that is to the
11 detriment of the witnesses by 4.00 p.m., 14 December 2007, although at
12 the present time he has not provided any evidence in this regard.

13 The Defence representative indicated that he had had scant time
14 to do read the filing of 7 December 2007. The Chamber was invited to
15 ensure that our order of 9 November 2007 was maintained in order to
16 allow the Defence to prepare for trial, and he remarked that about
17 two-thirds of the Prosecution's witness statements have not yet been
18 revealed to the Defence either at all or in full. The suggestion that
19 material should be disclosed to the Defence but not to the accused was
20 strongly resisted on the basis that it breached his right to know
21 adequately in advance of the trial the case he has to meet. The
22 Defence representative was concerned to know whether there is any risk
23 of the Prosecution seeking further charges against Mr. Lubanga Dyilo
24 in this trial (to which he received a firm assurance from the
25 Prosecution in open court that this would not happen). The Defence

1 representative, in his written submissions, argued that none of the
2 arguments and reasons advanced by the Prosecution for their various
3 applications are acceptable. The Chamber was reminded that in its 9
4 November 2007 decision, the Bench took into account the constraints
5 then imposed on the Prosecution, and it is submitted that the
6 Prosecution has offered no new reason which would justify the Chamber
7 revising its decision.

8 The Defence suggested that the fact that the Prosecution or the
9 Registry have not met the deadlines set by the Court does not justify
10 violating the rights of the accused, and, in particular, that he is
11 entitled to be judged without excessive delay and to have the
12 necessary time and facilities for the preparation of his defence.

13 As regards the suggestion by the Prosecution that it needs to
14 re-interview some of its witnesses, and that it has recently made
15 contact with new potential witnesses, the Defence reminds the Court
16 that the Prosecution's investigations began at the beginning of 2004,
17 and it has therefore had sufficient time to carry out its
18 investigations, resulting in the charges being confirmed by Pre-Trial
19 Chamber I. It is suggested the Prosecution has offered no good reason
20 for needing to interview new witnesses, or to re-interview existing
21 witnesses.

22 The Defence submitted that in agreeing to the 14 December 2007
23 deadline, the Prosecution implicitly recognised that its
24 investigations had to be complete and its case in orders by that date.

25 In the event, the Defence requests the Chamber to reject the

1 Prosecution's requests, save as regards expert witnesses, and to rule
2 that items of evidence not disclosed in their complete and
3 non-redacted form before the deadline may not be relied upon by the
4 Prosecution.

5 In the alternative, it is submitted that if the Chamber cannot
6 maintain the disclosure deadline, the trial date should be moved to
7 ensure that the trial does not commence until 12 weeks following the
8 completion of full disclosure.

9 Finally, the Defence accept that expert evidence may be disclosed
10 later than 14 December 2007, so long as the Defence has adequate time
11 to prepare.

12 On these competing submissions, the Chamber has reached the
13 following conclusions: The Chamber considers it is of high importance
14 that the trial date of 31 March 2008 is not vacated, if this is
15 reasonably achievable, and as a result, the date of 14 December 2007
16 is to be maintained for the service of the Prosecution case in full,
17 save that for witnesses who have been referred to the Victims and
18 Witnesses Unit for protection (whether or not they have been accepted
19 by the Unit) the statements and accompanying documents can be served
20 by way of redactions, summaries, or, where indicated in the filing, by
21 withholding certain items of evidence but only until 31 January 2008.
22 Any delay in serving the non-redacted document after that date will
23 have to be justified following a further application witness by
24 witness, document by document, because the Chamber considers the
25 period up to 31 January 2008 should provide sufficient time for the

1 Victims and Witnesses Unit to implement any security measures or for
2 other security avenues to be investigated and secured by the
3 Prosecution if witnesses are not accepted in the protection programme.
4 The Chamber considers that taking this approach is necessary to secure
5 protection of particular identified witnesses for a finite period; the
6 Defence will still have a considerable amount of material available to
7 it for the purposes of case preparation; and the Defence will
8 thereafter receive this material in full two months in advance of the
9 trial.

10 The Chamber rejects the suggestion that the redacted or
11 summarised statements and documents should not be served on the
12 accused. He is entitled to know the case he is to face at trial
13 sufficiently in advance, and at this late stage, the maximum number
14 possible disclosure should be made to him at the earliest possible
15 moment. The redactions or summaries (together with any information
16 that is withheld) should be framed so as to protect the identity of
17 the witnesses or their whereabouts.

18 Furthermore, the Chamber rejects the suggestion that it should
19 check the Prosecution's disclosure decisions. It is for the
20 Prosecution, if necessary having consulted with the Victims and
21 Witnesses Unit, to decide which redactions are necessary to protect
22 the witnesses, and it would impose an intolerable burden on the
23 Chamber if it was expected to undertake this exercise de novo. The
24 Prosecution has a far greater depth of understanding at this stage
25 than the Chamber as to the precise circumstances of their witnesses

1 and the dangers that are posed to them and to any other people
2 referred to in the statements and documents. The Chamber would
3 perforce be guessing rather than making informed decisions if the
4 members of the court were to read this very considerable body of
5 material, attempting to assess whether or not the Prosecution had
6 sufficiently excised references to people, events, or places that
7 might put an individual or others at risk of harm. Not only would
8 this be excessively time-consuming, but it would not be a useful
9 exercise, given the Chamber's lack of information about the detailed
10 circumstances of each of the potentially relevant individuals. At
11 this stage, the core responsibility lies with the Prosecution, since
12 the material relates to the witnesses, the statements, and the
13 documents they seek to rely on, which they have gathered and about
14 which they should have appropriate knowledge and insight. The
15 Chamber's role at this point in time is principally to rule on any
16 particular issues that arise following filings and any oral
17 submissions.

18 The Chamber therefore grants until 31 January 2007, the
19 Prosecution's request as set out in paragraph 31 of the filing of
20 7 December 2007, and authorises:

- 21 (i) ... the non-disclosure of information in accordance with
22 Rule 81(2) to four statements from two witnesses and to.
23 four documents;
24 (ii) ... the non-disclosure of information in accordance with
25 Articles 54(3)(f), 64(6)(a), 61(11), 64(6)(c), 64(7), 68

- 1 and/or Rules 87 and 81(4) to four statements of three
2 witnesses and to 56 documents;
- 3 (iii) ... the lifting of redactions based on Articles 54(3)(f),
4 64(6)(a), 61(11), 64(6)(c), 64(7), 68 and/or Rules 87 and
5 81(4) to six documents;
- 6 (iv) ... the temporary disclosure of summary evidence under
7 Article 68(5) in relation to statements of eight witnesses;
8 and
- 9 (v) ... the temporary non-disclosure of seven documents in order
10 to protect the identity of witnesses.

11 The Chamber will review the temporary redactions, the summaries,
12 and the instances of non-disclosure to ensure they are justified. A
13 hearing will be listed if any cause the Chamber concern so that
14 submissions can be made.

15 On 10 December 2007, the Prosecution filed the "Prosecution's
16 application for Extension of Time Limit for Disclosure". This was
17 served by way of a public redacted version and a confidential,
18 ex parte, Prosecution only version. In this filing, the Prosecution
19 suggested that compliance in full with the 14 December 2007 deadline
20 was impossible as regards certain item of evidence. They are in seven
21 categories:

- 22 (i) First, the statements of witnesses and related
23 documents who have been referred to the Victims and
24 Witnesses Unit (and including the witnesses referred to
25 in the 7 December 2007 filing);

- 1 (ii) Second, the material that will result from the
2 re-interviews in January 2008 of certain witnesses
3 which the Chamber has approved in our decision of
4 21 November 2007;
- 5 (iii) Third, certain additional witnesses who may appear at
6 trial whose redacted statements will be disclosed by
7 14 December 2007, and whose full statements will be
8 served after protective measures are put in place if
9 referrals to the Victims and Witnesses Unit are
10 successful;
- 11 (iv) Fourth, material that is being gathered concerning the
12 exact age of certain witnesses which it is expected in
13 some instances will be available by 14 December 2007,
14 and in other instances 31 December 2007, but in any
15 event, the Prosecution intend only to serve
16 non-redacted statements for those witnesses whose
17 identities the Defence already are aware of;
- 18 (v) Fifth, certain witnesses who are said to be key to the
19 case, whose statements and transcripts are being
20 finalised (one witness will not be interviewed until
21 later in December 2007);
- 22 (vi) Sixth, evidence covered by Article 54(3)(e)
23 restrictions where the information providers have not
24 yet given their consent; and
- 25 (vii) Seventh, evidence from such expert witnesses as are

1 instructed.

2 The Chamber notes that it has been told that eight witnesses have
3 been referred to the Victims and Witnesses Unit within the last two
4 weeks.

5 In the main these applications are premature. The Chamber,
6 having been told that the Prosecution was anticipating and was
7 prepared for the trial to begin in December 2007 (see the e-mail from
8 Mr. Withopf to Ms. Mabilille dated 27 July 2007; the Prosecution filing
9 of 11 September 2007, paragraph 24; and the transcripts for 4
10 September 2007, page 13; and 10 October 2007, page 17), it concluded
11 it was reasonable to impose a deadline for serving the full
12 Prosecution case by 14 December 2007, with a trial date of 31 March
13 2008. The Chamber has already extended the date of 14 December 2007
14 to 31 January 2008 in relation to full disclosure of certain documents
15 and statements where applications have been made to the Victims and
16 Witnesses Unit. In the light of this filing (10 December 2007) that
17 approach is extended to all witnesses who have been referred to the
18 Victims and Witnesses Unit (category one). Redacted versions or
19 summaries must be served by 14 December 2007. If summaries or
20 redacted versions have not been served by that deadline, or if
21 non-redacted versions cannot be served by 31 January 2008, separate
22 applications must be made explaining the delay and the significance of
23 the evidence to the case, once the evidence is available, so that the
24 Chamber can assess each additional area of evidence on its merits,
25 having considered the statements, documents, or transcripts, and

1 including the effect it will have on the trial of the accused.

2 The exceptions to this general approach are that expert evidence
3 must be served by 29 February 2008 (category seven). Given the likely
4 complexity of the issues and the impact of our decision on expert
5 evidence, issued on 10 December 2007, the Chamber is of the view that
6 this will secure fairness to both parties. The statements and the
7 audio/videotapes of the re-interviews of certain witnesses are to be
8 served by 31 January 2008, with the transcripts by 29 February 2008
9 (category two). The Chamber considers that for this discrete area,
10 the Defence will have sufficient notice of the content to deal with
11 any issues at trial. Subject to the exception for witnesses who have
12 been referred to the Victims and Witnesses Unit, which is that service
13 of summaries and redacted statements and the non-disclosure of certain
14 evidence is permissible until 31 January 2008, all statements dealing
15 with the age of the witnesses are to be served in non-redacted form by
16 31 December 2007 (category four). Again, given the limited ambit of
17 this area of evidence, the Chamber does not consider this will cause
18 any unfairness? Otherwise, all evidence not served in full by
19 14 December 2007 must be put before the Chamber by way of an
20 application or applications when it is ready to be served in a
21 complete form so that a decision can be taken as to whether or not the
22 Prosecution are to be permitted to rely on it.

23 This decision is not meant to deter the Prosecution from securing
24 and relying on evidence of importance that it has been unable, for
25 good reason, to obtain by 14 December 2007, but instead to ensure that

1 if it is proposed that that deadline should be breached in any way,
2 the Chamber is able to assess the impact on the accused's trial at the
3 point in time when the Prosecution is able to serve the evidence in
4 full, unredacted form on the Defence. A ruling now in the absence of
5 the full facts would disable the Chamber from making a properly
6 informed decision about the effect of late disclosure on these
7 proceedings which must remain fair throughout.

8 That concludes the public section of this decision.

9 Having delivered the public part of the decision, may I now
10 indicate that, for the record, the Prosecution are this morning
11 represented by Mr. Withopf and Ms. Samson and Ms. Struyven, and are
12 assisted by another member of their team.

13 The Defence are represented by Ms. Buteau and Mr. Desalliers, and
14 they are assisted by members of their team.

15 The Office of Public Counsel for Victims is represented by
16 Ms. Massidda and Ms. Margitic, and I assume that Ms. Massidda also
17 appears today for the various particular victims who have been given
18 leave to participate, and I see Ms. Massidda nod. Thank you very
19 much.

20 And finally for the Registry, Mr. Vaatainen and Mr. Roussos are
21 in attendance together with another representative of the Registry.

22 We have this morning received notification of a further
23 application that is to be made by the Prosecution.

24 Mr. Withopf, can I ask, please, whether the Defence and the
25 representative of the Office of Public Counsel for Victims have been

1 informed of the filing that has been made and the application which
2 the Prosecution wish to make?

3 MR. WITHOPF: Mr. President, your Honours, to our knowledge they
4 have been informed.

5 PRESIDING JUDGE FULFORD: Thank you very much indeed.

6 Therefore, I'm going to ask Ms. Buteau whether she is -- or
7 Mr. Desalliers, whoever is dealing with this, whether the Defence have
8 been notified of this, and if they have, whether they've had an
9 opportunity of reading the application.

10 MR. DESALLIERS (interpretation): Thank you, Mr. President. We
11 have been notified. We were notified by e-mail. I think it was
12 yesterday. Yes, it was yesterday at 14.49 that there would be
13 filings, but these filings have not been notified to us so far. So we
14 have not been able to be made aware of any subsequent applications,
15 but we have been informed that they would be made.

16 PRESIDING JUDGE FULFORD: That couldn't be clearer,
17 Mr. Desalliers, and I think it follows from that that if you haven't
18 seen them, you're not in a position to make any representations on
19 them. Thank you very much.

20 Are you in the same position, Ms. Massidda?

21 MS. MASSIDDA: Yes, your Honour.

22 PRESIDING JUDGE FULFORD: Thank you very much indeed.

23 Mr. Withopf, in those circumstances, what we propose is this: We
24 hope in the decision that we have just handed down that we have
25 identified the principles that we are proposing to adopt from now on

1 in relation to any disclosure that is going to breach the 14th of
2 December deadline. It is possible that in the light of those general
3 guidelines it will be otiose for you now to pursue the applications
4 which the Chamber was notified of late last night.

5 What we propose to do is to provide you, for your assistance,
6 with a written copy of the decision that we have just handed down.
7 We're going to invite you, once we have concluded the ex parte part of
8 the ruling, to consider in detail what we have said and to reflect on
9 whether it's appropriate now, and by that I mean today, for the
10 Prosecution to pursue the applications that were filed last night,
11 which I make it clear the Bench only received this morning, and we
12 have not had sufficient time to read it.

13 Is that acceptable?

14 MR. WITHOPF: Mr. President, this is entirely acceptable. Thank
15 you.

16 PRESIDING JUDGE FULFORD: Thank you very much.

17 Now, in those circumstances, I think that concludes the public
18 section of today's hearing unless any of the parties or participants
19 have any other matters that they wish to raise, and now is the moment
20 to do so, because we are shortly going to go into closed session so
21 that we can conclude the ruling dealing with ex parte matters.

22 MR. WITHOPF: Mr. President, your Honours, if you allow me to
23 indicate that the Prosecution, of course after careful consideration
24 of the decision, may or may not, but probably likely will, file an
25 application for the extension of the deadline of 14th of December in

1 relation to a number of currently Article 54(3)(e) protected
2 materials.

3 In such a situation, I believe that the respective submissions
4 can be made in a public court hearing, and I wanted to alert both the
5 Chamber and my learned friends from the Defence that this may or may
6 not result, obviously at the discretion of the Trial Chamber, in a
7 further hearing prior to the 14th of December deadline.

8 PRESIDING JUDGE FULFORD: Well, Mr. Withopf, thank you for
9 putting us on notice, but I am going to ask you to read very carefully
10 the general guidelines that we have just delivered, because I think
11 you will find that even 54(3)(e) applications are now covered by the
12 indications that we have given, and that the result may be that you
13 will have to return to the Chamber once you are in a position to serve
14 the evidence in full so that we can assess at that point in time
15 whether or not it is fair for the Prosecution to rely on that evidence
16 if the trial date of the 31st of March is to be maintained.

17 We're not preventing you from making a further application later
18 today, but I repeat, we do ask you to consider very carefully whether
19 in light of the directions we've given there is any useful purpose to
20 be served by doing so.

21 MR. WITHOPF: That's well-understood, Mr. President.

22 PRESIDING JUDGE FULFORD: Thank you very much indeed.

23 MR. DESALLIERS (interpretation): With your leave, Mr. President,
24 I would just like to indicate that after the verifications of my
25 colleague, if there were to be a hearing or discussion of this point,

1 I would like to inform the Chamber that there will be no one from the
2 Defence team to deal with this for this week. Ms. Mabilie and
3 Mr. Biju-Duval will only be available next week, and Ms. Buteau and I
4 will not even be able later this day to assist the Chamber if such a
5 plan were made. I just wish to inform the Chamber that it would not
6 be possible this week.

7 PRESIDING JUDGE FULFORD: Mr. Desalliers, that is perfectly
8 reasonable. You've been given no adequate notice of the applications
9 that Mr. Withopf is considering making later today, and if you are
10 professionally unavailable, you are professionally unavailable.

11 Mr. Withopf, that, I think, underlines the need for you to
12 consider very carefully indeed as to whether or not there's any useful
13 purpose to be served by pursuing applications, particularly if they
14 are to be advanced in the absence of anybody from the Defence team to
15 resist them.

16 We are -- Mr. Vaatainen.

17 MR. VAATAINEN: May I address an issue, a factual matter from
18 your decision that probably would require precision because it is of
19 relevance? Your Honour, you referred -- you said that eight witnesses
20 have been referred to the Victims and Witnesses Unit in the last two
21 weeks. That is not the case. We haven't received these referrals.
22 We believe those referrals will be made, but we are not aware at which
23 stage.

24 PRESIDING JUDGE FULFORD: Thank you, Mr. Vaatainen. I took that
25 from one of the -- either submissions that were made by the

1 Prosecution or one of their written submissions, but thank you for
2 clarifying that you haven't received them. That's very helpful.

3 Thank you all very much for your attendance here this morning.
4 We will now rise so that all parties and participants, save for the
5 Prosecution, can leave. We will then sit again in closed session so
6 that we can complete the ex parte part of this decision.

7 Thank you all very much.

8 The hearing ends at 10.53 a.m.

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