

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 23 November 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

Public with confidential annex

**Prosecution's communication of originals of incriminatory evidence disclosed
to the Defence on 22 November 2007**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence

Ms Catherine Mabilie
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1. The Prosecution herewith submits electronic versions of the items disclosed to the Defence as incriminating evidence on 22 November 2007. In compliance with the Trial Chamber's 9 November 2007 "Decision Regarding the Timing and Manner of Disclosure and the Date of Trial" ("Trial Chamber's Decision"),¹ the Prosecution also submits the evidence in its original form.

2. The items disclosed to the Defence on 22 November 2007 are listed in the annexed "List of disclosed materials".² The Prosecution draws the Chamber's attention to the fact that these items include further evidentiary materials that would support the view that the armed conflict in Ituri during portions of the period relevant to the Document containing the charges was of an international character.³ The Prosecution

¹ ICC-01/04-01/06-1019, para 22.

² The list of disclosed materials is attached as – confidential – Annex 1.

³ These materials include the documents which had previously been disclosed as PEXO or provided for pre-inspection under Rule 77, with the following ERNs: DRC-OTP-0014-0152, DRC-OTP-0019-0035, DRC-OTP-0019-0040, DRC-OTP-0019-0066, DRC-OTP-0019-0073, DRC-OTP-0019-0076, DRC-OTP-0019-0081, DRC-OTP-0019-0087, DRC-OTP-0019-0100, DRC-OTP-0019-0150, DRC-OTP-0019-0153, DRC-OTP-0019-0223, DRC-OTP-0019-0225, DRC-OTP-0029-0262, DRC-OTP-0035-0069, DRC-OTP-0038-0047, DRC-OTP-0038-0068, DRC-OTP-0038-0126, DRC-OTP-0038-0157, DRC-OTP-0038-0171, DRC-OTP-0038-0256, DRC-OTP-0038-0258, DRC-OTP-0038-0262, DRC-OTP-0038-0416, DRC-OTP-0038-0493, DRC-OTP-0038-0629, DRC-OTP-0038-0668, DRC-OTP-0038-0790, DRC-OTP-0045-0194, DRC-OTP-0074-0010, DRC-OTP-0074-0019, DRC-OTP-0074-0021, DRC-OTP-0074-0026, DRC-OTP-0074-0061, DRC-OTP-0074-0073, DRC-OTP-0074-0074, DRC-OTP-0074-0094, DRC-OTP-0074-0102, DRC-OTP-0074-0117, DRC-OTP-0074-0128, DRC-OTP-0074-0136, DRC-OTP-0074-0195, DRC-OTP-0074-0526, DRC-OTP-0074-0881, DRC-OTP-0077-0304, DRC-OTP-0077-0345, DRC-OTP-0077-0468, DRC-OTP-0077-0500, DRC-OTP-0091-0867,

emphasizes that the disclosure of these documents does not have a bearing on the position it took in its 12 September and 20 November 2007 submissions on the characterisation of the armed conflict.⁴

3. In addition, the Prosecution informs the Trial Chamber that four documents disclosed to the Defence contain redactions that are either based on Rule 81 (1) or Article 54(3)(e). These documents are identified in the "List of disclosed materials".⁵
4. The Prosecution has not submitted these four documents in their original form. The Prosecution will address the issue of submission of originals of redacted materials with the Trial Chamber in a separate filing which will be submitted by the end of November 2007.

DRC-OTP-0093-0034, DRC-OTP-0093-0037, DRC-OTP-0093-0767, DRC-OTP-0094-0241, DRC-OTP-0094-0251, DRC-OTP-0099-0160, DRC-OTP-0100-0210, DRC-OTP-0100-0278, DRC-OTP-0100-0306, DRC-OTP-0102-0022, DRC-OTP-0107-0857, DRC-OTP-0107-0864, DRC-OTP-0107-0866, DRC-OTP-0107-0870, DRC-OTP-0172-0185, DRC-OTP-0172-0189, DRC-OTP-0172-0273 and DRC-OTP-0172-0276. In light of the fact that the Document containing the charges made no reference to an armed conflict of an international character, the Prosecution has linked these documents to paragraph 7 of the Document containing the charges in the "ICC-01/04-01/06 Element of Statement of Facts" field. The Defence has been duly informed.

⁴ See Prosecution's submission regarding the subjects that require early determination: status of evidence heard by the Pre-Trial Chamber; status of decisions of the Pre-Trial Chamber; and manner in which the evidence shall be submitted, ICC-01/04-01/06-953, 12 September 2007, and the transcript of the hearing on 20 November 2007, ICC-01-04-01-06-T-61-ENG.

⁵ These materials had previously been disclosed to the Defence with the same redactions. They bear the following ERNs: DRC-OTP-0035-0069, DRC-OTP-0038-0047, DRC-OTP-0038-0171 and DRC-OTP-0038-0493.



 Luis Moreno-Ocampo
Prosecutor

Dated this 23rd day of November 2007

At The Hague, The Netherlands