

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 24 June 2008

**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 Document**

**URGENT**

**Prosecution's further information regarding the discovery and examination of  
additional material in the possession of the Prosecutor**

**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**

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Background

1. On 13 June 2008 the Trial Chamber placed a stay on the proceedings in this case and subsequently clarified that the Parties were not to make any further filings. However, given the nature of the information contained in this filing the Prosecution brings the matter to the immediate attention of the Trial Chamber.
2. On 20 June 2008, the Prosecution submitted its “Information Regarding the Discovery and Examination of Additional Material in the Possession of the Prosecutor”<sup>1</sup> (“Prosecutor’s 20 June 2008 Information”). On 23 June 2008 the Prosecution filed the “Prosecution’s Request to Reclassify its Previous Information Regarding the Discovery and Examination of Additional Material in the Possession of the Prosecutor”<sup>2</sup> The Prosecution refers to the relevant background set out in the Prosecutor’s 20 June 2008 Information.<sup>3</sup>
3. On 23 June 2008 the Prosecution filed the “Prosecution’s provision of the letter of the United Nations dated 20 June 2008 concerning documents that were obtained by the Office of the Prosecutor from the United Nations pursuant to Article 54(3)(e) on the condition of confidentiality and solely for the purpose of generating new evidence and that potentially contain evidence that falls under Article 67(2)”.<sup>4</sup>

## Finalisation of the review of the additional material

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<sup>1</sup> ICC-01/04-01/06-1406-Conf.

<sup>2</sup> ICC-01/04-01/06-1408.

<sup>3</sup> ICC-01/04-01/06-1406, at paras. 2 and 5-8.

<sup>4</sup> ICC-01/04-01/06-1409.

4. The Prosecution informs the Trial Chamber that it has finalised the review of the 1,172 additional items. The Prosecution's review of these items has revealed that 35 of them appear to fall within the Prosecution's disclosure obligations pursuant to Article 67(2) and Rule 77:<sup>5</sup> fifteen of the additional items appear to contain potentially exculpatory information, and 20 appear to contain information falling within the scope of Rule 77.
5. Of these 35 items, 13 were provided to the Prosecution with no restrictions on disclosure, and they can therefore be provided to the Defence immediately.
6. Among the remaining 22 items, 19 were provided to the Prosecutor pursuant to Article 54(3)(e) by the United Nations. With respect to these items, the Prosecution submits that it is requesting the urgent lifting of the confidentiality restrictions and informs the Trial Chamber that the agreement reached with the United Nations, as per the 20 June 2008 letter should apply to these documents.<sup>6</sup>
7. The remaining 3 items were obtained from another provider under the condition that necessary measures will be taken to ensure the confidentiality of the information and the protection of any person at risk. The Prosecution can supply the underlying material to the Trial Chamber, on a confidential basis and ex parte, if the Trial Chamber so requests. The Prosecution would, thereafter, propose to provide redacted versions or summaries of materials for disclosure and inspection to the Defence<sup>7</sup>

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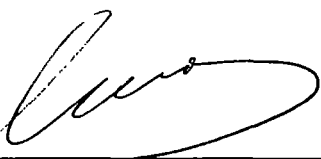
<sup>5</sup> The Prosecution informs the Trial Chamber and the Defence, that, pending a final review to ensure full consistency with the Prosecution's disclosure guidelines, the number of materials subject to disclosure may decrease slightly.

<sup>6</sup> ICC-01/04-01/06-1409-Anx1, at page 4, where the United Nations states: "The United Nations hopes to be able to resolve with you in a similar manner any similar problems that may arise in connection with any other documents held by you subject to and in accordance with Article 18, paragraph 3, of the Relationship Agreement".

<sup>7</sup> Reference is made to para. 8 of the Prosecutor's 20 June 2008 Information.

**Information on items of a formerly public nature**

8. The Prosecution takes this opportunity to inform the Trial Chamber that it is in possession of public materials from a UPC website, downloaded on a CD. As it is public material and the Prosecution is not relying on it, it has not been registered. In light of the public nature of these materials, the Prosecution anticipates that copies of those documents may already be available to the Defence. However it seems that the UPC website is now defunct. Therefore, subject to the leave of Chamber, and in order to fully assist the Defence, the Prosecution can disclose the material to the Defence.

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Luis Moreno-Ocampo, Prosecutor

Dated this 24<sup>th</sup> day of June 2008

At The Hague, The Netherlands