

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 30 January 2008

TRIAL CHAMBER

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

Decision on remote access to the broadcast of closed session proceedings

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Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, following the Status Conference on 4 December 2007, delivers the following decision on the remote access to the broadcast of closed session proceedings:

Background

1. On 16 October 2007 the Registry filed the “Information and Request from the Registrar concerning the live broadcast of audiovisual recording of hearing within the ICC”,¹ in which it informed the Chamber that remote access to the live unredacted broadcast of courtroom proceedings (including of closed session hearings) extended beyond the courtroom to several specified groups within the Court. The Registrar stated that the current configuration of the equipment providing remote access did not allow for a management of access rights that is fully safe, and that this could potentially affect the protection of witnesses.²
2. On 18 October 2007, the Trial Chamber issued an “Instruction to the Registrar on access to the broadcast of the closed hearing on 19 October 2007”³ which limited the live broadcast of that specific hearing as an interim measure, until an adequate access rights management system was in place.
3. The Office of the Prosecutor (“prosecution”) filed a response to the Registrar’s filing on 2 November 2007.⁴ The defence did not file a response. The issue of access to the live broadcast of the audiovisual recording of hearings was listed on the agenda of the Status Conference on 4 December 2007.⁵ The Order

¹ ICC-01/04-01/06-984.

² *Ibid*, page 2.

³ ICC-01/04-01/06-989-Conf.

⁴ Prosecution’s response to the “Information and requests from the Registrar concerning the live broadcast of audiovisual recording of hearing within the ICC”, ICC-01/04-01/06-1012.

⁵ Order scheduling a hearing, 14 November 2007, ICC-01/04-01/06-1027; see also Order amending schedule for hearing, 16 November 2007, ICC-01/04-01/06-1031, and Order amending schedule for hearing and adding an item to the agenda, 27 November 2007, ICC-01/04-01/06-1044.

reclassified the Registrar's filing and the prosecution's response thereto as "public" documents.⁶

Submissions

4. In his filing, the Registrar *inter alia* requested the Chamber to:
 - 2) advise as to whether such access [to the unredacted broadcast of hearings] should be awarded at all beyond the courtroom itself;
 - 3) in the affirmative:
 - a. indicate what policy, if any, should be applied in order to ensure that the staff members use this live broadcast responsibly;
 - b. allow the Registry to research a suitable technical solution, and
 - c. order the termination of the live broadcast as currently provided until a suitable solution is devised.⁷

5. The prosecution requested in its response that remote access to live unredacted broadcast be maintained, as this tool is of considerable assistance to its work, and particularly in the organisation of its resources.⁸ The prosecution noted that staff were able to follow closed proceedings through real time transcription provided by the Livenote program.⁹ The prosecution emphasised that the staff members of the Office of the Prosecutor sign an additional confidentiality undertaking in this regard.¹⁰ The prosecution requested that a broader discussion "co-ordinated" by the Registry take place to research a suitable technical solution.¹¹ Nevertheless, the prosecution accepted there are confidentiality implications to broadcasting closed hearings beyond the courtroom, even if it is limited to the rooms of the Office of the Prosecutor.¹²

6. The defence agreed orally with the submissions made by the prosecution.¹³

⁶ ICC-01/04-01/06-1027, paragraph 20.

⁷ ICC-01/04-01/06-984, page 3. See also Transcript of hearing of 4 December 2007, ICC-01/04-01/06-T-62-ENG, pages 2, line 21, to page 4, line 11.

⁸ ICC-01/04-01/06-1012, paragraphs 11(2) and 11(3)(c).

⁹ *Ibid.*, paragraph 11(2).

¹⁰ *Ibid.*, paragraph 11(3)(a).

¹¹ *Ibid.*, paragraph 11(3)(b).

¹² ICC-01/04-01/06-T-62-ENG, page 5, lines 22-24.

¹³ ICC-01/04-01/06-T-62-ENG, page 8, lines 7-21.

7. During the Status Conference on 4 December 2007, the Trial Chamber requested the Registry to provide an indication of the timetable needed to establish a management system which would afford properly controlled access rights. The Registry gave an estimate of six months.¹⁴

Analysis and conclusions

8. As to the relevant provisions of the Rome Statute ("Statute"), Article 64(7) provides that the Trial Chamber has the power to decide that certain proceedings may be conducted in closed session in order to protect confidential or sensitive information, or for the purpose of the protection of victims and witnesses. Furthermore, Regulation 21(1) and (6) of the Regulations of the Court gives the Chamber the power to decide whether the broadcast of the proceedings will extend beyond the courtroom.
9. Although the issue raised by the Registrar concerns the broadcast of hearings generally, the real issue is that of the live broadcast of closed session hearings. There are two aspects to this: the first relates to the audiovisual recording of hearings which is broadcast live throughout the building; the second relates to the provision of the real time transcription through the Livenote program.¹⁵
10. The Trial Chamber considers that closed session proceedings significantly reduce the risk of leaks to the public of sensitive information, and as a result it is a crucial means of protecting the safety and security of victims and witnesses and the confidentiality of sensitive information. Therefore, permitting the live unredacted broadcast (or allowing access to the live transcription) of the proceedings beyond the courtroom will materially increase the risk of information being divulged to the public. This constitutes an unnecessary risk, because all the parties and participants who are entitled to participate have the opportunity of being present and represented at the hearing.

¹⁴ ICC-01/04-01/06-T-62-ENG, page 9 line 20 to page 10 line 4.

¹⁵ *Ibid*, page 1, lines 20-25, to page 2, lines 1-2.

11. Therefore, since only those entitled to participate in closed session hearings should be provided with the details of what occurred, remote access (including to the live transcription) shall be granted solely on exceptional grounds, following an application. Any broader access remotely to live unredacted broadcast would tend to defeat the purpose of closed session proceedings, since, as set out above, there is a real risk it will pose a material danger to victims, witnesses and sensitive and confidential information.
12. Therefore, parties and participants wishing to be granted remote access to the broadcast of closed session proceedings shall make a request to the Trial Chamber detailing the reasons why this exceptional measure is necessary and the names and roles of those it is submitted should be afforded remote access. The Trial Chamber will assess each request on its merits, taking into consideration, *inter alia*, whether the application is based on real necessity as opposed to the convenience of the applicant.
13. Whenever access of this kind is granted, the Registry will ensure that it is appropriately limited. However, until the Registry has installed and tested a suitable access rights management system, the Trial Chamber shall not grant any such request.
14. As to the later access to the record of closed session proceedings, whether audiovisual recordings or transcripts, they will only be available to the individuals who were in the courtroom at the time the particular closed session took place, and those persons who were granted special access rights for the particular hearing. Information from closed session proceedings may only be shared with individuals who by virtue of their position within the Court are entitled to receive it.

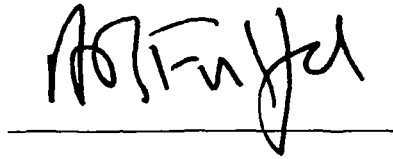
Orders of the Trial Chamber

15. For these reasons, the Chamber hereby orders that:

- 1) The Registrar investigate and implement a system whereby access to the live broadcast of closed session hearings and to the live transcription of such proceedings may be granted on a user by user basis as opposed to a group.
- 2) Once such a system is implemented, the parties and participants may apply for access to the live broadcast of closed session hearings and to the live transcription of such proceedings on a case by case basis.
- 3) The live broadcast of closed session hearings and to the live transcription of such proceedings shall not be accessible to anyone outside the courtroom up until the time a system allowing access management on a user by user basis is available.
- 4) Pending the implementation of Order 1) and 2), access to the unredacted broadcast of a closed session hearing after it is finished shall be restricted to those who were present in the courtroom; similarly, the transcript of a closed session hearing shall only be available to those who were present in the courtroom at the time (subject to 5) below).
- 5) Information from closed session hearings may only be shared with individuals who by virtue of their position within the Court are entitled to receive it.

Judge René Blattmann was consulted but is unavailable to sign the Decision as he is away from the seat of the Court on the day of signature.

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 30 January 2008

At The Hague, The Netherlands