

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 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
Order on the "Prosecution's submission on undisclosed documents containing
potentially exculpatory information"**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Ekkerhard Withopf

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Legal Representatives of the 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

Registrar

Mr Bruno Cathala

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Trial Chamber ruled orally on 13 March 2008 that the final deadline for disclosure was 28 March 2008.¹ On 28 March 2008, the Office of the Prosecutor (“prosecution”) filed a “Prosecution’s submission on undisclosed documents containing potentially exculpatory information” which informed the Trial Chamber that a total of 216 items containing potentially exculpatory information and/or information falling within the scope of Rule 77 have not been disclosed to the defence.² The prosecution submits that this material “does not materially impact on the Court’s determination of the guilt or innocence of the accused.”³ Although the prosecution’s submission attaches a number of documents as examples of the type of potentially exculpatory information which has been disclosed to the defence,⁴ the material at issue has not been provided to the Chamber for its consideration.
2. Given the urgency of the matter and in order for the Trial Chamber to progress the issue in a timely fashion, this order is issued at this stage pending a response by the defence to the prosecution’s submission. However, it is without prejudice to a further consideration of the matter in light of any defence response.
3. In order to enable the Chamber to consider the issue fully, the prosecution is ordered to file the material referred to in the prosecution’s submission together with a document indicating for each document why it is said that it does not show or tend to show the innocence of the accused or mitigate the guilt of the accused, or affect the credibility of prosecution evidence, by 14 April 2008. If there are agreements and undertakings which purport to prevent the prosecution from providing the material to the Chamber, the prosecution is directed to furnish the Chamber with the relevant material by

¹ Transcript of hearing on 13 March 2008, ICC-01/04-01/06-T-79-ENG, page 10.

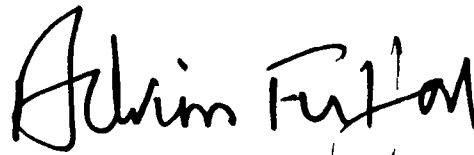
² 28 March 2008, ICC-01/04-01/06-1248, paragraph 7.

³ *Ibid*, paragraph 31.

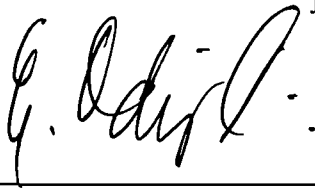
⁴ ICC-01/04-01/06-1248-Conf-Anx 1 to ICC-01/04-01/06-1248-Conf-Anx23.

Monday 7 April and the issue will be listed for an *ex parte* hearing on Wednesday 9 April 2008.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 3 April 2008

At The Hague, The Netherlands