

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 May 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 authorising the lifting of redactions to, and seeking submissions on, one
document**

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 Ekkehard Withopf

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Catherine 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

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. This decision concerns the Office of the Prosecutor (“prosecution”)’s application of 23 April 2008 in which it requested the Chamber to authorise the lifting of redactions to a particular document.¹ These redactions had been authorised by Pre-Trial Chamber I on 4 October 2006 for reasons of witness protection in the current proceedings.² The prosecution now seeks authorisation to lift these redactions on the basis that they are no longer justified at this stage in the proceedings.³

Background and submissions

2. On 9 November 2007, Trial Chamber I ordered, *inter alia*, the prosecution to serve the entirety of the evidence on which it intends to rely at trial in a non-redacted form by 14 December 2007.⁴
3. On 4 December 2007, the Chamber ruled that the removal of any redactions made pursuant to Rule 81(4) of the Rules requires the authorisation of the Trial Chamber.⁵
4. On 10 December 2007, the prosecution submitted its “Application for Extension of Time Limit for Disclosure”⁶ in which it requested an extension beyond 14 December 2007 in relation to certain items of evidence including “the evidence which the Prosecution intends to disclose in redacted form by 14 December 2007; the evidence which will not be collected prior to the 14 December 2007 deadline; the evidence the collection of which is being finalised; the evidence subject to Article 54(3)(e) restrictions; and the evidence

¹ Prosecution’s Application to lift redactions to one document, 23 April 2008, ICC-01/04-01/06 1294.

² Decision concerning the prosecution proposed summary evidence, 4 October 2006, ICC-01/04-01/06-517.

³ Prosecution’s Application to lift redactions to one document, 23 April 2008, ICC-01/04-01/06 1294, paragraph 3

⁴ Decision regarding the timing and manner of disclosure and the date of trial, 9 November 2007, ICC-01/04-01/06-1019, paragraph 25.

⁵ ICC-01/04-01/06-T-62-ENG, page 23, lines 12-20.

⁶ 10 December 2007, ICC-01/04-01/06-1072-Conf-Exp and Prosecution application for extension of time limit for disclosure, Public redacted version, 10 December 2007, ICC-01/04-01/06-1073.

to be taken from expert witnesses".⁷

5. On 11 December 2007 the prosecution informed the defence that the individual for whose protection the redactions that form the subject of the present order had been authorised on 4 October 2006 would no longer be called as a witness by the prosecution.⁸

6. At a Status Conference on 13 December 2007, the Chamber permitted the prosecution to delay disclosure of certain material, as identified in its 10 December 2007 application.⁹ The Chamber allowed the prosecution to serve redacted or summary versions of statements provided by witnesses in respect of whom a decision by the Victims and Witnesses Unit of the Court was outstanding as of 14 December 2007, with service of full non-redacted statements to be effected by 31 January 2008. The Chamber expressed the view that the limited extension of the deadline until 31 January 2008 should facilitate the process of determining the applications for protective measures and, where appropriate, effecting their implementation.¹⁰ The time limit for the disclosure of expert witness evidence and of the transcripts of re-interviews with witnesses was extended until 29 February 2008 (with video/audio recordings of the re-interviews to be disclosed by 31 January 2008).¹¹ For other categories of evidence, the 14 December 2007 deadline was not altered.

7. On 13 March 2008, the Chamber granted the prosecution "until 4 p.m. on Friday, the 28th of March, 2008, to serve their case in full, save to the extent that redactions have been approved in advance by the Chamber."

⁷ Prosecution application for extension of time limit for disclosure, 10 December 2007, ICC-01/04-01/06-1073, paragraph 6.

⁸ ICC-01/04-01/06-T-76-ENG, page 9, lines 7-10.

⁹ ICC-01/04-01/06-T-65-ENG, page 12, lines 10-24.

¹⁰ ICC-01/04-01/06-T-65-ENG, page 10, lines 19-25.

¹¹ ICC-01/04-01/06-T-65-ENG, page 15, lines 11-14.

8. On 13 May 2008 the defence responded to the prosecution's application, stating that the prosecution had not provided an explanation for filing its request at the present time, and in particular after the expiry of the 28 March deadline. Accordingly, the defence submitted, the redactions should be lifted but the document itself should be ruled as inadmissible.¹²

Analysis and conclusions

9. The Chamber unhesitatingly agrees there is no justification for retaining the redactions within the document in question, and accordingly authorises the prosecution's request for their removal.

10. However, the Chamber is concerned about the apparent tardiness in seeking the lifting of these redactions, along with its impact on the prosecution's obligations of timely disclosure. Accordingly, before ruling on the admissibility of the document, the Chamber hereby orders the prosecution to provide in writing no later than 26 May 2008, in a form available to at least the defence and the Chamber, a submission outlining:

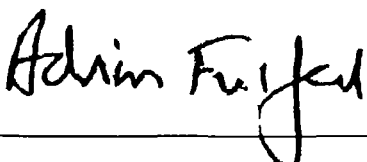
- The reasons for the prosecution's request being made at the present time, particularly in light of the deadlines for disclosure enumerated above; and
- The relevance to the prosecution's presentation of evidence of the document in question, and the manner in which it is proposed the document will be entered into evidence.

11. The defence is requested to file its response, if any, to that submission no later


¹² Réponse de la défense à la « Prosecution's application to lift redactions to one document » déposée le 23 avril 2008, 13 May 2008, ICC-01/04-01/06-1320, paragraphs 7-10.

than 30 May 2008.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 20 May 2008

At The Hague, The Netherlands