

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/06  
Date: 17 December 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**

**Instructions to the Court's expert on background and context**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo  
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  
Mr Joseph Keta Orwinyo  
Mr Jean Louis Gilissen  
Mr Jean Chrysostome Mulamba  
Nsokoloni  
Mr Paul Kabongo Tshibangu  
Mr Hervé Diakiese

**Unrepresented Victims**

**Legal Representatives of the Applicants**

**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**

Mr Roberto Garretón

## Background

1. At the status conference on 25 November 2008, the Trial Chamber ordered the parties and participants to set out any relevant matters and questions which they wish to have taken into account by Mr Roberto Garretón, the Court's expert on background and context.<sup>1</sup>
2. The Chamber reiterated its view that expert evidence of this nature should be called at the beginning of evidence in the case in order to put the evidence that relates to the individual charges in its proper context.<sup>2</sup>
3. Also, at the status conference the defence submitted that it requires at least 4 weeks between receiving the reports from the experts and the introduction of their testimony.<sup>3</sup>
4. The parties submitted on 3 December 2008 the matters and questions they respectively seek to have taken into account, for the Chamber's consideration.<sup>4</sup> No filing was received on this issue from any of the participants in the proceedings.
5. Both parties set out certain issues which they submitted should be addressed by Mr Garretón which, to the extent that is relevant, are reflected below.

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<sup>1</sup> ICC-01/04-01/06-T-99-ENG, page 18, lines 12-16.

<sup>2</sup> ICC-01/04-01/06-T-99-ENG, page 16, lines 17-23

<sup>3</sup> ICC-01/04-01/06-T-99-ENG, page 17, lines 8-13

<sup>4</sup> Questions proposées par la Défense à l'expert désigné par la Chambre de première instance, 3 December 2008, ICC-01/04-01/06-1529 ; Prosecution's submission of questions to the Court's expert on background and context and on further matters concerning the Court's and the Prosecution's experts on background and context, 3 December 2008, ICC-01/04-01/06-1530

6. The prosecution requested that Mr Garretón is instructed to file his expert report publicly, no later than 3 weeks before his oral testimony. Furthermore, it requested that the parties and participants are given the opportunity to file supplementary questions once they have received Mr Garretón's report, no later than 1 week prior to his evidence in court, thereby giving the expert and the parties sufficient opportunity to address properly all relevant matters.<sup>5</sup>
7. The prosecution indicated that it proposed to call its own expert on background and context, following the testimony of Mr Garretón, whom it understood to be the first witness in the trial, and the former child soldiers.<sup>6</sup> However, the Chamber informed the parties and participants on 9 December 2008 that the Court's expert on background and context will not be the first witness and he will be called as and when considered appropriate by the Chamber.<sup>7</sup>
8. In its response to the prosecution's submission filed on 12 December 2008, the defence submitted that it would be preferable for the prosecution's expert on background and context to be the first witness in the trial to enable the Chamber and the parties to understand the general context of the events in Ituri before the presentation of evidence on the facts of the case.<sup>8</sup>

### **Analysis and conclusions**

9. Taking into account the submissions of the parties, the Chamber hereby instructs Mr Garretón to address in his report, and to prepare to give testimony on, the following issues, within the framework of the general subject matter and context of this trial:

<sup>5</sup> ICC-01/04-01/06-1530, paragraph 3.

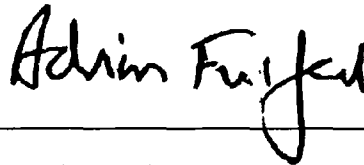
<sup>6</sup> ICC-01/04-01/06-1530, paragraphs 4 and 5

<sup>7</sup> Email communication from the Chamber through the Legal Adviser to the Trial Division on 9 December 2008.

<sup>8</sup> Réponse de la Défense à la "Prosecution's submission of questions to the Court's expert on background and context and on further matters concerning the Court's and the Prosecution's experts on background and context", déposée le 3 décembre 2008, 12 December 2008, ICC-01/04-01/06-1554.

- a) The situation in Ituri: the recent history of the region, extending from 1996 up until August 2003, with reference to its people and its place in the Democratic Republic of the Congo (DRC);
  - b) The conflict in Ituri: the reasons for the conflict and the role of any actors involved therein, including the government of the DRC, other countries in the region and non-state actors including international organisations and the corporate sector.
10. In light of the impending trial of Mr Thomas Lubanga Dyilo, the Chamber directs Mr Garretón to submit his report to the Court, on a public basis if possible, no later than Friday 23 January 2009. The parties and participants are directed to identify any supplementary questions for his consideration no later than 2 weeks after receiving notification of the report.
11. Given the imminent commencement of the trial and need to give Mr Garretón sufficient time to prepare his report and testimony, whilst also ensuring that the evidence relating to the charges is presented in an appropriate overall context, the Chamber directs the prosecution to call its own expert on background and context as the first witness in the case.

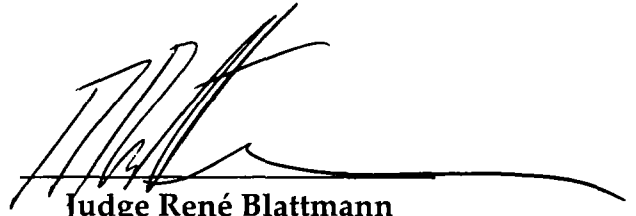
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 17 December 2008

At The Hague, The Netherlands