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

Date: 13 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**

**with confidential Prosecution and Defence only annexes 1-3**

**Prosecution's communication of original version of incriminatory evidence  
disclosed to the Defence on 9 May 2008 and information on the Prosecution's  
compliance with Trial Chamber's 24 April 2008 Decision**

**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**

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Mr Jean-Marie Biju-Duval

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**Unrepresented Victims**

**Unrepresented Applicants for  
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**The Office of Public Counsel for  
Victims**

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

**States Representatives**

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**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Simo Vaatainen

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **Submission of original of disclosed evidence**

1. The Prosecution informs the Trial Chamber that it disclosed to the Defence one video<sup>1</sup> as incriminating evidence on 9 May 2008. This video is a technically enhanced copy of a video<sup>2</sup> which had been disclosed to the Defence on 6 November 2006. The disclosed video is listed in the “List of disclosed material” which constitutes Annex 1 to this filing.<sup>3</sup> The Prosecution informs the Trial Chamber that the disclosure of this video took place with the consent of the Defence. The Prosecution herewith submits the original version of this video.

## **Information on the Prosecution’s compliance with the 24 April 2008 Decision**

2. On 24 April 2008 the Trial Chamber rendered its “Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters”<sup>4</sup> (“Disclosure Decision”), which required the Prosecution to disclose to the Defence and to the Office of Public Counsel for Victims (“OPCV”) certain items of evidence by 6 May 2008. The disclosure deadline of 6 May 2008 was subsequently extended by the Trial Chamber to 9 May 2008.<sup>5</sup>

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<sup>1</sup> DRC-OTP-0161-0014.

<sup>2</sup> DRC-OTP-0102-0003.

<sup>3</sup> The List of disclosed material is the Confidential Prosecution and Defence Only – Annex 1.

<sup>4</sup> ICC-01/04-01/06-1311-Anx2.

<sup>5</sup> ICC-01/04-01/06-1316, para 2.

3. The Prosecution informs the Trial Chamber that, in compliance with the Disclosure Decision,<sup>6</sup> it disclosed to the Defence the statements and relevant materials of seven witnesses who have provided potentially exculpatory evidence and who in the Prosecution's view require protective measures which they have refused, or who have declined to cooperate further with the Court, or both,<sup>7</sup> and who will be contacted by the Trial Chamber through the Registry in order to explore whether further cooperation is achievable.<sup>8</sup> These witness statements and relevant materials were disclosed to the Defence with redactions that have been authorised by the Trial Chamber on a temporary basis, until the next status conference scheduled for 28 May 2008.<sup>9</sup> The statement of an eighth witness falling within this category was not disclosed on 9 May 2008 because it had already been disclosed to the Defence previously.<sup>10</sup> The statements and relevant materials for these eight witnesses which were disclosed on 9 May 2008 appear on the two lists of disclosed materials which constitute Annex 2.<sup>11</sup>
4. In compliance with the Disclosure Decision,<sup>12</sup> the Prosecution also disclosed to the Defence a document setting out the Prosecution's proposed admissions of fact stemming from potentially exculpatory elements contained in the statements of twelve witnesses. These proposed admissions are listed in Annex 3.<sup>13</sup>

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<sup>6</sup> ICC-01/04-01/06-1311-Anx2, para 102

<sup>7</sup> ICC-01/04-01/06-1311-Anx2, para 96.

<sup>8</sup> ICC-01/04-01/06-1311-Anx2, para 100.

<sup>9</sup> ICC-01/04-01/06-1311-Anx2, para 102 and ICC-01/04-01/06-1316, para 5.

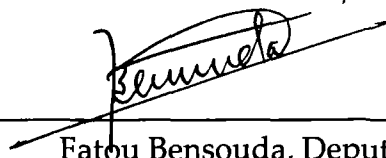
<sup>10</sup> ICC-01/04-01/06-1096-Conf-Anx, items 47 and 142.

<sup>11</sup> See Confidential Prosecution and Defence Only – Annex 2.

<sup>12</sup> ICC-01/04-01/06-1311-Anx2, para 90.

<sup>13</sup> The List of disclosed material is the Confidential Prosecution and Defence Only – Annex 3.

5. Finally, in compliance with the Disclosure Decision,<sup>14</sup> the Prosecution informs the Trial Chamber that it disclosed to the OPCV, in its capacity as legal representative of victim applicants who are Prosecution witnesses, the statements, tapes and transcripts of interviews of five witnesses.



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Fatou Bensouda, Deputy Prosecutor  
on behalf of  
Luis Moreno-Ocampo, Prosecutor

Dated this 13<sup>th</sup> day of May 2008  
At The Hague, The Netherlands

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<sup>14</sup> ICC-01/04-01/06-1311-Anx2, para 107.