

**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
with confidential Prosecution and Defence only annexes**

**Prosecution's application for authorisation to add a further expert report on age
determination to the evidence to be relied on at trial**

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

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley

Ms Carine Bapita Buyangandu

Legal Representatives of 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

Mr Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 28 March 2008 the Prosecution disclosed to the Defence the remainder of its incriminating evidence, in compliance with the Trial Chamber's oral order of 13 March 2008.¹
2. On 1 April 2008, the Prosecution became aware of the fact that, due to an oversight,² an expert report ("Expert Report") on the age of one of the former UPC/FPLC child soldiers who is on the Prosecution's witness list was not disclosed on 28 March 2008. The Prosecution immediately informed the Defence accordingly, and invited the Defence to a disclosure meeting on 2 April 2008.
3. At 11:00 am on 2 April 2008, the Prosecution disclosed to the Defence the Expert Report.³ The Prosecution informed the Defence that it would apply to the Chamber for authorisation to add the Expert Report to the Prosecution's list of evidence and that it was disclosing it to the Defence at the earliest possible opportunity.⁴

Submission and request

4. Despite the implementation of technical measures by the Prosecution, human error led to the non-disclosure of the Expert Report by 28 March 2008.
5. The Prosecution submits that the delay in disclosing the Expert Report to the Defence was very short and it thus did not cause prejudice to the Defence's

¹ ICC-01/04-01/06-T-79-ENG ET WT, p 10, lines 2-4.

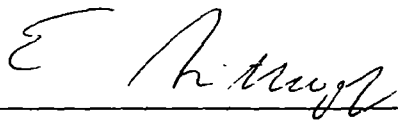
² The Prosecution failed to tag this document for disclosure in RingTail.

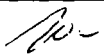
³ The disclosure report for the Expert Report can be found in the Confidential, Prosecution and Defence only Annex 1.

⁴ The Prosecution refers to its letter to the Defence of 2 April 2008, which can be found in the Confidential, Prosecution and Defence only Annex 2.

right to receive the evidence sufficiently in advance of the trial to enable adequate preparation.⁵

6. The Prosecution seeks authorisation from the Trial Chamber to add the Expert Report to its list of incriminating evidence. The Prosecution brings this application pursuant to Regulation 35 of the Regulations of the Court.



 Luis Moreno-Ocampo
Prosecutor

Dated this 3rd day of April 2008

At The Hague, The Netherlands

⁵ The Prosecution refers to the information provided to the Trial Chamber on 2 April 2008 at 14:31, indicating the Defence's preparedness to receive the Expert Report.