

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 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 the unredacted version of an expert report on age determination to the evidence to be relied on at the 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

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Ms Catherine Mabilie

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Legal Representatives of Victims

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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

Acting Registrar

Mr Ralph Martens

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 29 January 2008 the Prosecution disclosed to the Defence an expert report on the forensic examination of the age of a Prosecution witness ("Expert Report").¹ The Expert Report was disclosed to the Defence in redacted form.²
2. Following the implementation of protective measures, the Prosecution was able to disclose the identity of this witness to the Defence on 29 February 2008.³ By 28 March 2008, all materials related to the witness were disclosed to the Defence in unredacted form or with minor redactions which had been authorised by the Chamber. Due to an oversight,⁴ the Expert Report was not re-disclosed in unredacted form at this time.
3. On 4 April 2008 the Prosecution provided the Defence with a chart setting out the relationship between nine Prosecution witnesses, the x-ray examinations of each of them, the experts' reports on their age determination and the radiographer's reports on the process of digitalisation of the x-rays ("Chart").⁵ The names of the nine witnesses were listed on the Chart, as was the Expert Report.

¹ DRC-OTP-0182-0432. This is a report on the examination of radiographs for the determination of the bone and dental age of a Prosecution witness.

² The redactions had been authorised by the Trial Chamber. Reference is made to ICC-01/04-01-06-1145, paras 6 and 7. As the Expert Report was initially disclosed to the Defence in redacted form, the original was not filed with the Registry.

³ ICC-01/04-01/06-1205, para 5, Annex 2, item 26. The witness concerned is WWWW-0297.

⁴ The Prosecution failed to tag this document for re-disclosure in RingTail.

⁵ This chart is provided as Confidential – Prosecution and Defence Only - Annex 2.

4. On 7 and 8 April 2008, in the course of an exchange with the Defence, the Prosecution was alerted by the Defence to the fact that it had not re-disclosed the Expert Report in unredacted form. The Prosecution invited the Defence to a disclosure meeting for the purpose of disclosing the Expert Report, which took place on 8 April 2008.⁶

Submission and request

5. The Prosecution notes that it had already disclosed to the Defence on 29 January 2008 the redacted version of the Expert Report. The Prosecution further notes that, by providing the Chart to the Defence on 4 April 2008, the Prosecution effectively disclosed to the Defence the identity of the witness to whom the Expert Report relates.
6. The Prosecution submits that, in light of the short delay with which the Defence was made aware of the identity of the witness to whom the Expert Report relates and the equally short delay with which the Expert Report was disclosed, the disclosure of the unredacted version of the Expert Report to the Defence did not cause prejudice to the Defence's right to receive the evidence sufficiently in advance of the trial. Furthermore, the Prosecution notes that the Defence has agreed to receive the unredacted version of the Expert Report.

⁶ The disclosure report for the Expert Report can be found in the annexed "List of disclosed materials", Confidential Prosecution and Defence Only – Annex 1.

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

A handwritten signature in black ink, appearing to read 'E. Withopf', is written over a horizontal line.

Ekkehard Withopf, Senior Trial Attorney
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 10th day of April 2008

At The Hague, The Netherlands