

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 26 May 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO***

Public Document

Prosecution's Response to the Trial Chamber's Order dated 20 May 2008

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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Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. On 4 December 2007, the Trial Chamber rendered a decision orally that the Prosecution must apply to the Trial Chamber to lift redactions on the basis of Rule 81(4) of the Rules of Procedure and Evidence (Rules) that had previously been authorized by the Pre-Trial Chamber.¹
2. On 23 April 2008, the Prosecution filed the 'Prosecution's Application to Lift Redactions to One Document'.²
3. On 20 May 2008, the Trial Chamber issued an Order, authorizing the lifting of redactions to one document and requesting further submissions on the document.³

II. Scope of the Present Submission

4. The Trial Chamber has ordered the Prosecution to provide additional submissions by 26 May 2008 on the following issues:
 - (i) the reasons for the Prosecution's request being made at the present time, particularly in light of the deadlines for disclosure; and
 - (ii) 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.

¹ Transcript, ICC-01-04-01-06-T-62-ENG, 4 December 2007 at page 21, lines 19-25 and page 22, lines 1-11.

² ICC-01/04-01/06-1294, with Confidential, *ex parte* Annexes, 23 April 2008.

³ ICC-01/04-01/06-1340, 20 May 2008. The document is registered as DRC-OTP-0113-0052.

III. Prosecution's Submissions

(i) *Timing of the request*

5. On 12 December 2007, the Prosecution applied for the non-disclosure of redactions and the lifting of redactions for certain documents.⁴ Annex 75 (a confidential, *ex parte* Annex) of this filing contains a list of the documents for which a request for redactions or the lifting of redactions was being made and the justifications for the relief requested. Annex 70 (a confidential, *ex parte* Annex) of the 12 December 2007 filing contains the redacted document that is at issue in the present application.
6. At that time, the Prosecution noted that the document had already been disclosed⁵, with the previously authorized redaction to the second page and that, if the request for temporary non-disclosure was granted, the Prosecution would seek lifting of the redaction upon re-disclosure of the document as incriminating. The reason for the request for temporary non-disclosure of the document related to the initial decision by one witness not to testify in the proceedings. The Prosecution anticipated that should the witness reconsider, it would apply for the lifting of the previously authorized redactions to the second page of the document.
7. In light of ongoing discussions with the witness, the Prosecution did indeed disclose the relevant materials related to this witness as incriminating by the disclosure deadlines. However, during a review of relevant materials in mid-April 2008, the Prosecution realized that the document at issue contained a redaction for which it ought to have sought lifting. Accordingly, the Prosecution

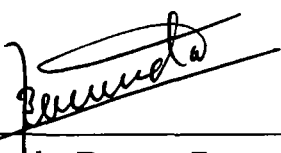
⁴ ICC-01/04-01/06-1081 with Conf-Exp Annexes.

⁵ The document was disclosed on 9 October 2006.

applied to the Chamber for authorization to disclose the document without the redaction.

(ii) Relevance of the document and manner of entering into evidence

8. The Prosecution relies on this document to establish (i) the date and place of creation of the UPC and (ii) the leading role of Thomas LUBANGA DYILO in the creation of the UPC.
9. The document, entitled 'Acte Constitutif', is written on the letterhead of the UPC 'Union des Patriotes Congolais'. It is stamped with the UPC (Bunia) seal and dated 15 September 2000. It was signed in Bunia by fifteen individuals who constitute "l'Assemblée constitutive de l'Union des Patriotes Congolais". Thomas LUBANGA DYILO figures prominently as the first signatory to this Act.
10. The Prosecution is not calling any of the individuals who figure on the list of signatories. To this end, therefore, the Prosecution will seek to tender this document into evidence from the bar table.



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

Dated this 26th day of May 2008
 At The Hague, The Netherlands