

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 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

Decision regarding the admissibility of a document disclosed by the prosecution

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

The Office of the Prosecutor

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 Carine Bapita Buyangandu

Legal Representatives of the 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

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background and Submissions

1. This decision concerns the defence filing of 13 May 2008 in which it requested the Chamber to rule that a particular document, for which the Office of the Prosecutor (“prosecution”) had sought the lifting of redactions, is inadmissible and should not form part of the prosecution’s evidence in the trial of Thomas Lubanga Dyilo.¹
2. The document in question (“Document”) had been disclosed on 9 October 2006 in a redacted form, as authorised by Pre-Trial Chamber I pursuant to Rule 81(4) of the Rules of Procedure and Evidence. On 23 April 2008, the prosecution sought the authorisation of the Chamber for the lifting of the redactions to the Document.²
3. In its filing of 13 May 2008, the defence agreed that the redactions should be lifted but contended that the prosecution ought not to be permitted to rely upon the Document at trial. This contention was based on the fact that, in respect of this Document, the prosecution had failed to comply with the Chamber’s order for full disclosure of the incriminatory evidence on which it intends to rely at trial by 28 March 2008 and that no explanation had been offered for its failure.³
4. On 20 May 2008 the Chamber ordered the prosecution, first, to provide to the defence with a non-redacted version of the Document and, second, to provide an explanation: of
 - the reasons for the late application to lift the redactions,
 - the relevance of the Document to the prosecution’s case, and

¹ Réponse de la Défense à la « Prosecution’s Application to Lift Redactions to One Document » déposée le 23 avril 2008, 13 May 2008, ICC-01/04-01/06-1320.

² Prosecution’s Application to Lift Redactions to One Document, ICC-01/04-01/06-1294.

³ ICC-01/04-01/06-1320, paragraphs 7-10.

- the manner in which the prosecution intended to introduce the Document into evidence.⁴

5. On 26 May 2008, the prosecution filed its "Response to the Trial Chamber's Order dated 20 May 2008" in which it informed the Chamber that it had only realised in "Mid-April 2008" that the Document contained redactions (which required the Chamber's consent before they are lifted).⁵
6. The prosecution set out that it intended to rely upon the Document to show the date and place of the creation of the UPC and the role of the accused in that regard.⁶
7. The Document is entitled "Acte Constitutif"; it is written on UPC notepaper and is stamped with a UPC seal, and it bears 15 signatures, among which Thomas Lubanga Dyilo's is the first. The prosecution informed the Chamber that it does not intend to call a witness in relation to the document.⁷ The signatures, and including that of the accused, had been redacted when the document was originally disclosed.
8. The Defence did not respond to the prosecution's filing of 26 May 2008, although it informed the Chamber that it did not intend to add to its previous submissions.⁸

Analysis and Conclusions

9. The Chamber notes that the Document appears to be of self-evident importance to the prosecution's case. In its submissions, the Defence did not suggest that there is any challenge to the authenticity or the reliability of the

⁴ Order authorising the lifting of redactions to, and seeking submissions on, one document ICC-01/04-01/06-1340.

⁵ Prosecution's response to the Trial Chamber's Order dated 20 May 2008, ICC-01/04-01/06-1355, paragraph 7.

⁶ ICC-01/04-01/06-1355, paragraph 8.

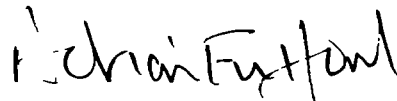
⁷ ICC-01/04-01/06-1355, paragraphs 9-10.

⁸ Email communication through the Legal Adviser to the Trial Division on 29 May 2008.

Document. Therefore, it is fair to infer on this application that at all material times the accused has been aware of its existence and its full content, particularly since, as set out above, a redacted version was disclosed by the prosecution to the defence at an earlier stage in these proceedings. In all the circumstances, the redacted version served on the defence provided the accused with sufficient information to enable him to prepare this issue for trial, and the late service of the non-redacted version has not caused him identifiable prejudice.

10. This decision does not excuse the prosecution's error in not seeking the Chamber's permission to lift the redactions at an earlier date and it does not preclude the defence from raising issues at trial concerning the authenticity or reliability of the Document.
11. In the circumstances, given the lack of identifiable prejudice to the defence and given the disproportionate prejudice to the prosecution that would be occasioned by granting the declaration of inadmissibility sought by the defence, the application is refused and the Chamber rules that the Document is, *prima facie*, admissible.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 4 June 2008

At The Hague, The Netherlands