

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06 OA11

Date: 18 April 2008

THE APPEALS CHAMBER

Before: Judge Philippe Kirsch, Presiding Judge
Judge Georgios M. Pikis
Judge Navi Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

**Prosecution's Response to Application by the International Criminal Bar for leave
to file Proposed Amicus Curiae Submission pursuant to Rule 103**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Procedural Background

1. On 13 December 2007, the Trial Chamber issued an oral decision on a number of Prosecution applications for the lifting, retention and imposition of redactions.¹
2. Between 12 December 2007 and 14 January 2008 the Prosecution made a series of further applications, in large part pursuant to the 13 December 2007 decision, to lift, make or maintain redactions, disclose certain material in summary form, and withhold certain information (in most cases on a temporary basis).²
3. On 18 January 2008, the Trial Chamber issued a further oral decision on these prosecution filings.³
4. On 28 January 2008, the Defence sought leave to appeal the Decision.⁴ The Prosecution opposed the Application for Leave to Appeal in part, but did not oppose leave being granted for the issue relating to the interpretation of Rule 77.⁵
5. On 6 March 2008, the Trial Chamber granted leave to appeal three issues.⁶
6. On 17 March 2008, the Defence filed the “Acte d’appel de la Défense relatif à la Décision relative aux expurgations et à l’obligation de communication rendue oralement le 18 janvier 2008”.⁷
7. On 28 March 2008, the Prosecution filed its Response to the Appeal Brief, in which it opposed the appeal in relation to the first two issues, but did not oppose the appeal in relation to the third issue regarding the interpretation of Rule 77.⁸
8. On 10 April 2008, the International Criminal Bar filed an application for leave to make submissions as *amicus curiae*, pursuant to Rule 103, on the third issue in this appeal regarding the interpretation of Rule 77.⁹

¹ ICC-01/04-01/06-T-65-ENG. The principles from the 13 December 2007 decision which are relevant to the present Decision are summarised by the Trial Chamber in the Decision: ICC-01/04-01/06-T-71-ENG, 18 January 2007, p. 4, line 9 to p. 6, line 1.

² These applications are listed and summarised by the Trial Chamber in the Decision: ICC-01/04-01/06-T-71-ENG, 18 January 2007, p. 1, line 17 to p. 3, line 11.

³ ICC-01/04-01/06-T-71-ENG (“the Decision”).

⁴ ICC-01/04-01/06-1134.

⁵ ICC-01/04-01/06-1153, 1 February 2008.

⁶ ICC-01/04-01/06-1210.

⁷ ICC-01/04-01/06-1227 OA11 (“Appeal Brief”).

⁸ ICC-01/04-01/06-1243 OA11.

9. On 14 April 2008, the Defence filed observations on the Application to File *Amicus Curiae* Submissions which did not object to submission by the International Criminal Bar under Rule 103.¹⁰
10. On 16 April 2008, the Appeals Chamber ordered that the may Prosecution file its response to the Application to File *Amicus Curiae* Submissions by 18 April 2008.¹¹

Prosecution's Submissions

11. The Prosecution does not oppose the International Criminal Bar being granted leave to file submissions on the third issue in this appeal, regarding the interpretation of Rule 77, under Rule 103 as requested in its Application.
12. The Prosecution has considered the proposed *amicus curiae* submission attached to the Application,¹² and if the Appeals Chamber does grant leave as requested by the International Criminal Bar, then the Prosecution does not consider that it would need to file any response to the proposed submission.¹³



Luis Moreno-Ocampo
Prosecutor

Dated this 18th day of April, 2008

At The Hague, The Netherlands

⁹ ICC-01/04-01/06-1273 OA11 ("Application to File *Amicus Curiae* Submissions" or "Application").

¹⁰ ICC-01/04-01/06-1276 OA11.

¹¹ ICC-01/04-01/06-1282 OA11.

¹² ICC-01/04-01/06-1273-AnxA OA11 ("Proposed *Amicus Curiae* Submission").

¹³ The Prosecution wishes to take this opportunity to clarify one misunderstanding in the Proposed *Amicus Curiae* Submission. Contrary to that submission (p. 1), the Prosecution did not "mistakenly" disclose the material in question, relating to the recruitment and use of child soldiers by other armed groups in Ituri during the relevant time period, to the Defence under Article 67(2). The Prosecution has taken a liberal approach to its disclosure obligations throughout the proceedings, and has consequently disclosed material beyond its obligations. As a result, it intentionally disclosed under Article 67(2) material which could be considered to support a claim of *tu quoque*. In September 2007, the Prosecution communicated to the Defence its view that this could not be considered as a valid or viable defence. However, in light of the Defence's request to continue to receive such materials pursuant to Rule 77, the Prosecution agreed to continue to provide access to such material (see ICC-01/04-01/06-T-69-ENG, 10 January 2008, p. 59 line 18 to p. 60 line 15; ICC-01/04-01/06-1243 OA11 28 March 2008, para. 32).