

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 8 August 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 public Annexes 1 and 3 and Confidential – *ex parte* – Prosecution only
Annexes 2 and 4**

**Prosecution's provision of further information supplementing the "Prosecution's
application to lift the stay of proceedings"**

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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**Unrepresented Applicants for
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Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 30 July 2008, the Prosecution submitted a filing ("the 30 July 2008 filing") entitled "Prosecution's provision of information supplementing the "Prosecution's application to lift the stay of proceedings"". ¹
2. The Prosecution appended to the 30 July 2008 filing two letters from the United Nations providing for the lifting of Article 54(3)(e) confidentiality restrictions in respect of 63 documents.² Of these 63 documents, the United Nations consented to disclose 50 without redactions and the remainder with redactions.
3. In the 30 July 2008 filing, the Prosecution further informed the Trial Chamber that the United Nations would continue to review³ 90 outstanding documents subject to Article 54(3)(e) confidentiality restrictions with a view to considering the possibility of disclosure to the Defence.

¹ ICC-01/04-01/06-1451.

² Letters from the United Nations dated 18 July 2008 and 28 July 2008 appended to the Prosecution's filing of 30 July 2008. The 18 July 2008 United Nations letter with its Annexes I and II was attached as Annex 1. Annexes III and IV to the 18 July 2008 United Nations letter were attached to the 30 July 2008 filing as Confidential - *ex parte* - Prosecution only Annex 2. The 28 July 2008 United Nations letter with its Annexes I and II was attached to the 30 July 2008 filing as Annex 3. Annex III to the 28 July 2008 United Nations letter was attached to the 30 July 2008 filing as Confidential - *ex parte* - Prosecution only Annex 4.

³ ICC-01/04-01/06-1451 at para. 16 and Annex 4.

Additional information

4. As a result of its ongoing review mentioned in paragraph 3 above, the United Nations has now conveyed to the Prosecution two further letters dated 1 August 2008 and 7 August 2008 respectively.⁴

1 August 2008 United Nations Letter

5. As detailed in the 1 August 2008 letter, the United Nations has consented to lift Article 54(3)(e) restrictions in respect of 31 additional documents. Annex I to the letter specifies the one (1) document that can be now disclosed without redactions; Annex II details thirty (30) documents⁵ that can be disclosed with redactions.

7 August 2008 United Nations Letter

6. As detailed in the 7 August 2008 letter, the United Nations has consented to lift the Article 54(3)(e) restrictions in respect of another 23 documents. Annex I to the letter details the one (1) document that can be disclosed without redactions; Annex II details the twenty-one (21) documents that can be disclosed with redactions; Annex III details one (1) document that may be disclosed with redactions and subject to a Defence undertaking not to divulge the content thereof in addition to other appropriate protective measures.⁶

⁴ The 1 August 2008 letter from the United Nations with its Annexes I and II is attached as Annex 1. Annex III to the letter of 1 August 2008 is attached as Confidential – *ex parte* – Prosecution only Annex 2.

⁵ Two of the 30 documents identified in Annex II to the 1 August 2008 Letter by the following ERNs are in fact duplicates: DRC-OTP-0152-1487 and DRC-OTP-0112-0194 .

⁶ The 7 August 2008 letter from the United Nations with its Annexes I and II is attached as Annex 3. Annex III to the letter of 7 August 2008 is attached as part of the Confidential – *ex parte* – Prosecution only Annex 4. For the sake of clarity, the content of Annex III to the letter of 7 August 2008 remains confidential pending a Defence undertaking not to divulge its contents and the settling of protective measures attaching to its production at trial.

Remaining documents

7. The United Nations has informed the Prosecution that in order fully to assist the Court it continues to review 36 outstanding items not covered in its correspondence mentioned in this filing and that of 30 July 2008 with a view to lifting Article 54(3)(e) confidentiality restrictions.⁷ The Prosecution wishes to clarify that, given the previous disclosure to the Defence of one document which was accidentally included in Annex III of the letter from the United Nations of 28 July 2008,⁸ the actual number of outstanding items stands at 35.
8. In summary, therefore, out of 152 documents received from the United Nations and subject to Article 54(3)(e) confidentiality restrictions as of the filing of the application to lift the stay of proceedings on 10 July 2008⁹, 52 can now be disclosed with no redactions, 65 can be disclosed in a redacted form and 35 are still under consideration.

The Defence Failure to Respond to the Prosecution's Application to Lift the Stay

9. The Prosecution draws the Trial Chamber's attention to the fact that the Defence has failed to file a timely response to the application to lift the stay. In an e-mail message sent to the Legal Officer of the Trial Chamber on 31 July 2008 and copied to the Prosecution, the Defence informed the Trial Chamber that, in the absence of a court order to the contrary, it would only respond to

⁷ Annex IV to the letter of 7 August 2008 details all outstanding United Nations documents presently subject to confidentiality restrictions which are still being reviewed with a view to further disclosure. Annex IV to the letter of 7 August 2008 is attached to this filing as a further part of the Confidential – *ex parte* – Prosecution only Annex 4.

⁸ DRC-OTP-0181-0492 ; disclosed to the Defence in January 2008.

⁹ ICC-01/04-01/06-1430 Conf-Exp ; the Prosecution filed the public redacted version (ICC-01/04-01/06-1431) on 11 July 2008.

the Prosecution's application to lift the stay when it had received the entirety of the Prosecution's filings supplementing the application to lift the stay.¹⁰

10. While recognizing the Defence's right to respond to a document filed by any participant,¹¹ the Prosecution stresses that the purpose of this filing and the filing of 30 July 2008 is to keep the Trial Chamber abreast of the decisions of the United Nations to waive confidentiality restrictions. The Prosecution submits that this is an ongoing process which is to be viewed independently of the formal application to lift the stay of proceedings.

11. It will be recalled that the Defence has refused to accept further disclosure so long as the decision on the stay of proceedings has not been lifted.¹² For this reason, the Prosecution has not offered these additional documents to the Defence. For this reason, also, the Defence cannot argue that their present request for a delay in responding to the application to lift the stay is warranted by the need to make material and detailed representations on the contents of the documents which the United Nations is now prepared to disclose.

¹⁰ E-mail dated 31 July 2008 at 16:51 the content of which is quoted *verbatim* :

"Subject: réponse de la défense à la reprise de la procédure

Chère Madame,

La défense vient de recevoir ce jour des observations complémentaires du procureur visant à la reprise de la procédure. Dans ce document , le procureur indique qu'il déposera de nouvelles observations dans une dizaine de jours. Sauf indication contraire de la chambre, la défense se propose de déposer un document unique lorsque le procureur aura déposé l'intégralité de ses écritures , le délai de réponse commençant à courir à réception du dernier document.

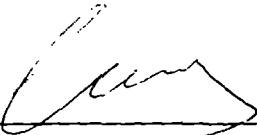
Je vous prie d'agréer , Chère Madame, l'expression de mes meilleurs sentiments".

¹¹ Regulation 24(1) of the Regulations of the Court.

¹² On 23 July, the Prosecution informed the Defence by way of e-mail about its preparedness to disclose certain documents concerned and suggested a disclosure meeting. Consistent with its position already expressed on 16 June 2008, the Defence, on 24 July 2008, informed the Prosecution that it is not prepared to accept any disclosure materials so long as the stay of proceedings remains in force.

Relief Sought

In light of the aforementioned, the Prosecution submits that the ongoing provision of information on the lifting of confidentiality restrictions should not form the basis of a delay in the consideration of the request of the Prosecution to lift the stay of the proceedings.



Luis Moreno-Ocampo, Prosecutor

Dated this 8th day of August 2008
At The Hague, The Netherlands