



Original: **French**

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

Date: **16 July 2008**

THE APPEALS CHAMBER

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

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

Public Document

**Defence Observations on the Inadmissibility of the "Prosecution's Document in
Support of Appeal against Decision to Stay Proceedings"**

Source: Mr Thomas Lubanga Dyilo's Defence Team

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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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

BACKGROUND

1. On 2 June 2008, the Defence submitted to Trial Chamber I (“the Chamber”) an application for the discontinuance of the prosecution and the release of the accused.¹
2. On 2 July 2008, the Chamber ordered the release of Mr Thomas Lubanga.²
3. That same day, the Chamber granted the Prosecutor leave to appeal the Decision of 13 June 2008 ordering the stay of the proceedings.³
4. On 14 July 2008, the Prosecutor filed the “Prosecution’s Document in Support of Appeal against Decision to Stay Proceedings”⁴ (the “Document in Support of Appeal”).
5. Prior to any discussion on the merits, the Defence submits that the Prosecutor’s Document in Support of Appeal is inadmissible for the following reasons:

OBSERVATIONS

The Document in Support of Appeal filed by the Prosecutor is not in proper form

6. Regulations 23, 36 and 37 of the *Regulations of the Court* set out the rules governing the format and content of judicial documents, as well as the rules on the calculation of page limits.
7. The Document in Support of Appeal comprises 21 pages, thereby exceeding *prima facie* the page limit stipulated in regulation 37 of the *Regulations of the Court*.

¹ ICC-01/04-01/06-1366.

² ICC-01/04-01/06-1418.

³ ICC-01/04-01/06-1417.

⁴ ICC-01/04-01/06-1434.

The Prosecutor should therefore have obtained prior authorisation from the Chamber to extend the page limit.⁵

8. But over and above this, an analysis of the Document in Support of Appeal shows that the totality of the Prosecutor's observations, including those contained in the footnotes, is far in excess of the 20-page limit set by the *Regulations of the Court*.

9. Regulation 36(4) stipulates the use of a 12-point typeface with 1.5 line spacing for the body of the text and a 10-point typeface with single spacing for footnotes. An average page must not exceed 300 words.

10. The Prosecutor, however, appears to use in his Document a format other than that prescribed for the body of the text. He has also used the footnotes to submit a large part of his substantive arguments, the volume of the footnotes being almost equivalent to that of the body of the text.

11. As a result, an average page of the Prosecutor's Document in Support of Appeal contains around 600 words, namely twice as many as prescribed by the *Regulations of the Court*.

12. The Defence is concerned to make it clear that it would not have considered it appropriate to draw the Chamber's attention to an excess of a mere page. However, had the Prosecutor complied with the provisions of regulation 36, his Document would have run to some 30 pages instead of 21, resulting in a distinct disadvantage for the Defence, which itself remains bound by the page limit set by the *Regulations of the Court*.

13. The Defence therefore requests that the Prosecutor's Document in Support of Appeal be declared inadmissible.

⁵ Regulation 37(2) of the *Regulations of the Court*.

14. The Defence further reserves the right to submit its observations on the substance of the points raised in the Prosecutor's Document in Support of Appeal.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:

DECLARE inadmissible the Prosecutor's Document in Support of Appeal.

Or, in the alternative,

ORDER the Prosecutor to submit a document in support of the appeal which complies with the *Regulations of the Court*.

Ms Catherine Mabile, Principal Counsel
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Dated this 16 July 2008, at The Hague