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No.: ICC-01/04-01/06 OA13

Date: 14 October 2008

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

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

Public Document

Prosecution's Notice to the Registrar of its Discontinuance, as Moot, of the First and Second Grounds of Appeal in its Appeal against Decision to Stay 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

Counsel for the Defence

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Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Legal Representatives of 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

The Prosecution hereby notifies the Registrar, pursuant to Rule 157, of its discontinuance of Grounds One and Two in the pending Appeal in ICC-01/04-01/06-1446-Anx1 OA13, filed 24 July 2008, in the case of the *Prosecutor v. Lubanga*.

The Prosecution submits the following:

1. The Prosecution is appealing three Decisions of the Trial Chamber in this case: the 13 June 2008 Decision to Stay the Proceedings;¹ the 2 July 2008 Decision on Release of the Accused;² and the 3 September 2008 Decision on the Prosecution's Application to Lift the Stay of Proceedings.³
2. This Notice affects the 24 July 2008 Appeal Against Decision to Stay the Proceedings.⁴ The Prosecution raised three grounds in that interlocutory appeal. The First Ground argued that "the Chamber erred in law in the interpretation of the nature and scope of Article 54(3)(e)." The Second Ground argued that "the Chamber erred in characterization of the Prosecution's conduct under Article 54(3)(e)." The Third Ground argued that "the Chamber erred in imposing an excessive and premature remedy."
3. The Prosecution's Notice affects the first two grounds, involving the interpretation of and conduct under Article 54(3)(e). It does not affect the third ground in that appeal, on the imposition of the stay of trial, nor does it affect the appeals from the decisions to release the accused (2 July 2008) and to deny the Prosecution's Application to Lift the Stay of Proceedings (3 September 2008).
4. Rule 157 of the Rules of Procedure and Evidence allows a party to discontinue an appeal "at any time before judgment has been delivered." The Appeals Chamber has confirmed that "[a] notice of discontinuance is neither subject to approval by nor acknowledgement from the Court." *Prosecutor v. Lubanga*, ICC-01/04-01/06-176 OA2, Decision on Discontinuance of Appeal, 3 July 2006, Para. 8; see also

¹ ICC-01/04-01/06-1401 ("Decision to Stay Proceedings").

² ICC-01/04-01/06-1418 ("Decision on Release").

³ ICC-01/04-01/06-1467 ("Denial of Application for Lifting of Stay").

⁴ ICC-01/04-01/06-1446-Anx1 OA13.

Prosecutor v. Lubanga, ICC-01/04-01/06-393 OA2, Decision on Application for referral to the Pre-Trial Chamber, 6 September 2006, Para. 12.⁵

5. The Prosecution filed on 14 October a submission providing the Trial Chamber with all undisclosed documents received from information providers under Article 54(3)(e) that were the object of the 13 June Decision on the stay of the proceedings.⁶ The information providers now agree to allow both the Trial Chamber and the Appeals Chamber, should this be necessary, complete and unfettered access to all the Article 54(3)(e) documents. Therefore the grounds concerning the interpretation and implementation of Article 54(3)(e) that arose from the Decision no longer present an issue whose resolution is necessary to decide the case.
6. Accordingly, the Prosecution files with the Registrar this Notice of Discontinuance of the First and Second Grounds in the pending Appeal in ICC-01/04-01/06-1446-Anx1 OA13, filed 24 July 2008.



Luis Moreno-Ocampo

Prosecutor

Dated this 14th day of October 2008

At The Hague, The Netherlands

⁵ Similarly, the ICTR Appeals Chamber held that “a party may withdraw an appeal or a particular ground of appeal simply by giving notice and need not necessarily provide any further justification. ... [T]he Appeals Chamber sees no reason to require [the Prosecution] to pursue an appeal it no longer finds necessary in the context of this case.” (*Prosecutor v. Karemera*, ICTR-98-44-AR72.7, “Decision on Prosecution Motion to Withdraw Appeal Regarding the Pleading of Joint Criminal Enterprise in a Count of Complicity in Genocide”, 25 August 2006, emphasis added - <http://69.94.11.53/ENGLISH/cases/Karemera/decisions/250806.htm>).

⁶ ICC-01/04-01/06-1478.