



Original: **French**

No.: **ICC-01/04-01/06**  
Date: **1 September 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**

**Defence Response to the “Prosecution’s application to lift the stay of proceedings”  
Dated 11 July 2008**

**Source: Mr Thomas Lubanga’s Defence Team**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo  
Ms Fatou Bensouda  
Mr Ekkehard Withopf

**Counsel for the Defence**

Ms Catherine Mabilie  
Mr Jean-Marie Biju-Duval  
Mr Marc Desalliers  
Ms Caroline Buteau

**Legal Representatives of Victims**

a/0001/06 to a/0003/06 and a/0105/06  
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**

## BACKGROUND

1. On 13 June 2008, Trial Chamber I (“the Chamber”) ordered a stay of the proceedings against Thomas Lubanga.<sup>1</sup>
2. On 24 June 2008, the Prosecutor made an oral application for a resumption of the proceedings.<sup>2</sup> The Chamber indicated to the Prosecutor that an application for a resumption of the proceedings had to be submitted in writing<sup>3</sup> and stated the conditions the application had to satisfy.<sup>4</sup>
3. In particular, the Chamber required that any such application must be accompanied by a comprehensive document transmitted to the Chamber and the Defence listing all article 67(2) and rule 77 documents covered by confidentiality agreements,<sup>5</sup> stating the nature of those documents, who provided them and the precise detail of any alternative arrangement for full disclosure of the documents.
4. The Chamber also made four observations in order to assist the Prosecutor in his preparation of any application for a resumption of the proceedings:
  - a. The matter of resuming the proceedings should be addressed comprehensively as part of a single application once the Prosecutor has made his overall submissions regarding the material covered by confidentiality agreements;
  - b. The Chamber will not be able to approve a system based on the judges’ ability to memorise the information contained in the relevant documents;

---

<sup>1</sup> ICC-01/04-01/06-1401.

<sup>2</sup> ICC-01/04-01/06-T-91-ENG, 24 June 2008, p. 20, line 8.

<sup>3</sup> *Idem*, lines 19 ff.

<sup>4</sup> *Ibidem*, p. 30, line 21 to p. 33, line 8.

<sup>5</sup> *Ibidem*, p. 31, lines 6 ff.

- c. One of the essential requirements of a fair trial is to ensure that any appealable decision of a first instance chamber can be properly reviewed on appeal. The Chamber should therefore be able to set out the reasoning for its written decision by referring to details contained in the material submitted for its consideration. The Chamber indicated that it is unlikely that it would agree to consider evidence which would only be submitted to the Appeals Chamber if the Appeals Chamber agreed to be subject to the same conditions as the Trial Chamber;
- d. Lastly, the Chamber indicated that it should not be assumed that it would approve summaries.

5. On 11 July 2008, the Prosecutor filed the “Prosecution’s application to lift the stay of proceedings”<sup>6</sup> (“the Application”). The Application was followed by three supplemental filings.<sup>7</sup>

6. On 31 July 2008, the Defence informed the Chamber by e-mail that it would respond to the Application once it had received all of the Prosecutor’s filings.

7. On 26 August 2008, the Trial Chamber ordered the Defence to respond to the Application by 16.00 on Monday 1 September 2008.<sup>8</sup>

8. The Defence objects to the Application on the following grounds:

## **OBSERVATIONS**

9. In its Decision of 13 June 2008, the Chamber concluded that “*the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial*”.<sup>9</sup> The seriousness of the situation means that, if the Prosecutor

---

<sup>6</sup> ICC-01/04-01/06-1431.

<sup>7</sup> ICC-01/04-01/06-1451, ICC-01/04-01/06-1454 and ICC-01/04-01/06-1462.

<sup>8</sup> ICC-01/04-01/06-1463.

<sup>9</sup> ICC-01/04-01/06-1401, para. 93.

intends to resume the proceedings, he must offer solutions to guarantee the fairness thereof. As demonstrated below, the solutions put forward by the Prosecutor do not provide a remedy for the current situation, nor do they make the proceedings fair.

## **1 – The Prosecutor’s Application does not satisfy the Chamber’s conditions**

### **a) Incomplete and hypothetical nature of the Prosecutor’s proposals**

10. The Chamber explicitly stipulated that the matter of resuming the proceedings should be addressed comprehensively as part of a single application once the Prosecutor has undertaken all of the proper steps with his information providers relating to the material covered by the confidentiality agreements. In particular, it ordered the Prosecutor to provide the precise detail of any alternative arrangement proposed to compensate for the non-disclosure of evidence kept confidential, while stressing the likely inappropriateness of “summaries”.<sup>10</sup>

11. Yet, not only does the Application span four documents, each relating to a new situation, more to the point, the proposals put forward by the Prosecutor are all subject to further steps whose outcome is purely hypothetical.

12. Hence, in relation to evidence provided by the UN, it is suggested that, in the event that the Chamber does not accept summaries instead of the documents at issue, the UN would be prepared to consider using “other means”.<sup>11</sup> The identification of these “other means” implies new approaches with the UN, with no guarantee that they will result in solutions acceptable to the Chamber.

13. Likewise, the majority of the other information providers make disclosure to the Defence contingent on additional negotiations, the outcome of which is uncertain.<sup>12</sup>

---

<sup>10</sup> ICC-01/04-01/06-T-91-ENG, 24 June 2008, p. 32, lines 23 and 24.

<sup>11</sup> ICC-01/04-01/06-1431, para. 22(ii).

<sup>12</sup> *Idem*, paras. 40, 43, 47 and 48, and Annex 2.

14. In fact, on reading the Prosecutor's Application,<sup>13</sup> we must conclude that the six non-UN information providers are currently refusing to disclose the relevant documents, as well as their identity, to the Defence. Furthermore, it appears that four of the six information providers are refusing any disclosure whatsoever to the Defence.<sup>14</sup>

15. Far from providing the Chamber with a precise and effective mechanism that would resolve the disclosure difficulties which led to the stay of the proceedings, the Prosecutor is demonstrating his inability to ensure that acceptable solutions are actually put in place and is highlighting that he is still dependent on his main information providers.

16. This uncertainty over possible solutions and the intentions of his information providers confirms that, as the Chamber stated in its Decision of 13 June 2008,<sup>15</sup> there is no prospect that the current impossibility of conducting a fair trial will be remedied.

**b) Lack of details on the nature of the documents and who provided them**

17. The Chamber made its consideration of any application for the resumption of the proceedings subject to the Prosecutor's providing a comprehensive document, transmitted to the Chamber and the Defence, detailing all the article 67(2) and rule 77 documents that are covered by the confidentiality agreements.<sup>16</sup> Amongst others, the document must state the nature of the documents that are not to be disclosed to the Defence and who provided them.

18. However, the Prosecutor has not transmitted to the Defence the annexes of his Application stating the nature of all article 54(3)(e) materials. This omission is even

---

<sup>13</sup> See the redacted version which is available to the Defence: ICC-01/04-01/06-1431.

<sup>14</sup> *Idem*, paras. 26 to 44.

<sup>15</sup> ICC-01/04-01/06-1401, para. 91.

<sup>16</sup> ICC-01/04-01/06-T-91-ENG, 24 June 2008, pp. 31 ff, lines 6 ff.

more unjustifiable, given that nothing in the agreements concluded with the UN stipulated that such information must be withheld, since stating the nature of a document in no way affects the confidentiality of its title or contents.

19. Recourse to *ex parte* submissions, already heavily practised by the Prosecutor throughout the proceedings, is patently unwarranted in this case, and is seriously detrimental to the image of justice as rendered by the International Criminal Court, in particular in the context of these proceedings, the purpose of which is to attempt to remedy the improper use of confidentiality.

20. Similarly, the Prosecutor refuses to name the NGOs which provided him with exculpatory evidence under confidentiality agreements, and redacts his observations in such a way as to significantly hamper understanding thereof. No grounds are provided in support of these redactions, which are inconsistent with the Chamber's recommendations, and incidentally, make the deliberate failure to provide details about the relevant documents even more inexcusable.

21. These redactions sometimes appear to protect general information for no reason. Since the Defence is completely unaware of the identity of the information providers, it is possible for it to be informed, at no risk and in general terms, of the circumstances of and reasons for the information providers' refusal to disclose to the Defence the relevant documents or their identity.<sup>17</sup>

22. It follows that the Defence, having been deprived of information which is crucial to the proceedings, is unable to discuss constructively all of the aspects of the Prosecutor's Application.

---

<sup>17</sup> See, for example, ICC-01/04-01/06-1431, para. 43: "43. REDACTED has informed the OTP that it is currently REDACTED to what extent, if at all, the document concerned can be disclosed to the Defence and the accused, in the event that the Trial Chamber upon review of the documents deems such a disclosure necessary."

**2 – The proposals submitted to the Chamber do not satisfy the requirements of a fair trial**

23. No ground of confidentiality – however compelling it may be – can take precedence over the right of the accused to a fair trial.<sup>18</sup> Non-disclosure to the Defence of potentially exculpatory evidence may be authorised by the judges, in exceptional circumstances, only if it does not deny the accused a fair trial<sup>19</sup> and is “adequately counterbalanced by procedural safeguards, to protect the rights of the accused”.<sup>20</sup>

24. In the instant matter, the Chamber will note, firstly, that all of the relevant documents are inherently material to the defence of the accused; secondly, that certain information providers have confirmed their total refusal that they be disclosed; and, lastly, that the alternatives to full disclosure do not satisfy the requirements of a fair trial.

**a) The proposals made in the Application are inconsistent with the principle of open adversarial justice**

25. The Prosecutor admits that all of the documents at issue in the Application are potentially exculpatory or material to the preparation of the Defence.<sup>21</sup> As such, full disclosure thereof “as soon as practicable”<sup>22</sup> is a prerequisite for a fair trial.

26. The Defence is not disputing the Chamber’s power under article 67(2) to review the documents if their exculpatory nature is uncertain. However, in this case, since the Prosecutor has acknowledged the exculpatory nature of all of the

---

<sup>18</sup> ICC-01/04-01/06-1401, para. 80.

<sup>19</sup> *Idem*, paras. 80 and 88.

<sup>20</sup> *Ibidem*, para. 82.

<sup>21</sup> ICC-01/04-01/06-1401, para. 63.

<sup>22</sup> Article 67(2).

documents at issue, it would serve no further purpose for the Chamber to review them in order to determine their potentially exculpatory nature.<sup>23</sup>

27. However, the Defence objects to the idea that the Chamber undertake an *ex parte* determination of the level of importance of this exculpatory evidence. Such a determination can be undertaken only as part of public adversarial proceedings, which is the very essence of the trial.

28. If done on an *ex parte* basis, establishing such a hierarchy among the potentially exculpatory material would be inconsistent with “the principles of open adversarial justice”<sup>24</sup> and would seriously tarnish the image of international criminal justice.

29. The principle of open adversarial justice requires both parties in the trial to be privy to any material that is likely to influence the decision of the Chamber and to be afforded the opportunity to respond to such material.<sup>25</sup>

30. *De facto*, the Chamber has come up against the impossibility of determining precisely what is likely to benefit the defence of the accused and, a fortiori, what he actually intends to rely on in his defence. Such a determination, which may evolve as the trial unfolds, is the sole prerogative of the Defence which, in order to make such a determination, must receive all potentially exculpatory documents, whatever their purported importance.

31. Hence, all potentially exculpatory documents in the Prosecutor’s possession should, without exception, be disclosed to the Defence so that a resumption of proceedings might be contemplated.

---

<sup>23</sup> William A. Schabas, “Rights of the accused”, in Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: observers’ notes, article by article*, 2nd ed, 2008, pp. 1247-1275 at p. 1271.

<sup>24</sup> ICC-01/04-01/06-1401, para. 82.

<sup>25</sup> *Lobo Machado v. Portugal*, ECHR, 15764/89, *Judgment*, 20 February 1996, para. 31; *Morel v. France*, ECHR, 34130/96, *Judgment*, 6 June 2000, para. 27.

**b) The proposals made in the Application do not allow for a full disclosure of the exculpatory material in accordance with the Statute**

32. The Trial Chamber clearly indicated the choice the Prosecution faces: *“either it must disclose all the potentially exculpatory material in its possession (in accordance with the Statute) to the accused or it will choose not to do so because of the improper agreements it has reached with information-providers”*,<sup>26</sup> and so would have to bear the inevitable consequences.

33. The Chamber must be satisfied, should the need arise, that all the exculpatory material in the Prosecutor’s possession can be disclosed in accordance with fair trial requirements.

34. And yet, for one thing, most of the information providers confirm their refusal to lift the seal of confidentiality and, for another, the alternative arrangements proposed do not safeguard the rights of the accused.

**i) Lifting the seal of confidentiality**

35. The Prosecutor’s Application<sup>27</sup> indicates that as matters stand, the six non-UN information providers have refused to disclose to the Defence the documents at issue and to reveal their identity. Four of them have refused to make any disclosures whatsoever to the Defence.<sup>28</sup>

36. Only one of them might accept the principle of disclosing summaries or redacted versions of the confidential documents if the Chamber were to consider such disclosure necessary for the continuation of the trial.<sup>29</sup> This acceptance involves only three (3) of the fifty-two (52) documents transmitted by these information providers.

---

<sup>26</sup> ICC-01/04-01/06-1401, para. 75.

<sup>27</sup> See the redacted version available to the Defence: ICC-01/04-01/06-1431. The redactions sometimes hamper understanding.

<sup>28</sup> *Idem*, paras. 26-44.

<sup>29</sup> *Ibidem*, para. 34.

37. On the other hand, one of the information providers clearly confirms its refusal to make any disclosure regardless of the form of such disclosure,<sup>30</sup> while the others indicate no more than a willingness to consider further discussions.<sup>31</sup> Moreover, all these information providers refuse to allow their identities to be disclosed to the Defence.

38. The UN, for its part, refuses to lift completely the seal of confidentiality from the overwhelming majority of the documents covered by the article 54(3)(e) agreements .

39. It follows that as matters stand, the Prosecutor is still not in a position to fulfil his disclosure obligations under article 67(2) and rule 77.

## ii) Alternative arrangements

40. The Prosecutor maintains that some information providers would agree to the disclosure of summaries, redacted documents, and even redacted summaries.<sup>32</sup>

41. The disclosure of summaries or redacted documents does not meet fair trial requirements. It is settled jurisprudence before the international tribunals that exculpatory material must be disclosed in a form that enables the Defence to put them to effective use.<sup>33</sup> The identity of the author of such material is part and parcel of the essential information that must be disclosed.<sup>34</sup>

---

<sup>30</sup> *Ibidem*, para. 37.

<sup>31</sup> *Ibidem*, paras. 30, 40 and 43.

<sup>32</sup> In the case of the UN, summaries approved beforehand by the UN. See, for example, the letter of 3 July 2008, Anx2, p. 3/5, "*Provision of narrative summaries, subject to review and clearance by United Nations*"; for other information providers, see ICC-01/04-01/06-1431, paras. 30 and 34.

<sup>33</sup> *Prosecutor v. Blagojević*, Case No. IT-02-60-T, *Joint Decision on Motions Related to Production of Evidence*, 12 December 2002, para. 24; *Prosecutor v. Brđanin*, Case No. IT- 99-36-T, *Decision on motion for relief from Rule 68 violations by the Prosecutor and for sanctions to be imposed pursuant to Rule 68 bis and motion for adjournment while matters affecting justice and a fair trial can be resolved*, 30 October 2002, para. 26; *Prosecutor v. Brđanin and Talic*, Case No. IT-99-36-T, *Decision on Second motion by Prosecution for Protective Measures*, 27 October 2000, footnote 62; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-99-42-T, *Decision on disclosure of Identity of Prosecution Informant*, 24 May 2006, para. 5; *Prosecutor vs. Sesay*,

42. The UN indicates that it might consider allowing the Defence to view some of the documents at issue *ex parte* and in closed session. This procedure would be of no real use since the Defence may neither keep copies of the said documents nor use them to buttress its case.

43. Non-disclosure to the defence of potentially exculpatory materials cannot be countenanced except in exceptional circumstances provided the accused is not thereby denied a fair trial<sup>35</sup> and such non-disclosure is “*adequately counterbalanced by procedural safeguards, to protect the rights of the accused*”.<sup>36</sup>

44. In this case, the Chamber will note:

- That no overriding reason or exceptional circumstances justifying the refusal to disclose potentially exculpatory material to the Defence have been advanced, as the misuse of article 54(3)(e) cannot be considered a legitimate justification;
- That the Prosecutor offers no satisfactory remedy to offset the non-disclosure *in toto* of the exculpatory evidence in his possession;
- That, under the circumstances, the impediment to the continuation of the proceedings which the Chamber highlighted in its 13 June 2008 Decision cannot be considered to have been removed.

**c) The proposals made in the Application impose unacceptable conditions on the Court**

---

*Kallon and Gbao*, SCSL-04-15-T-189, *Decision on Defence motion for disclosure pursuant to Rules 66 and 68 of the rules*, 9 July 2004, para. 34.

<sup>34</sup> *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, *Decision on Second motion by Prosecution for Protective Measures*, 27 October 2000, footnote 62; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-99-42-T, *Decision on disclosure of Identity of Prosecution Informant*, 24 May 2006, para. 5.

<sup>35</sup> ICC-01/04-01/06-1401, paras. 80 and 88.

<sup>36</sup> *Idem*, para. 82.

45. The effect of the Prosecutor's Application is to impose on the Court conditions that seriously contravene the principles of judicial independence,<sup>37</sup> in particular:

- the submission of summaries for final approval to the UN;
- redactions unilaterally made by the UN;<sup>38</sup>
- redaction, by the judges, of their own notes taken during the perusal of the documents;
- prohibiting the Chambers from keeping copies of the said documents;
- the imposition of restrictions on the Chambers with regard to information likely to inform the merits of any decisions that might be taken in respect of the said documents.

46. Not only is the UN demanding that the Trial Chamber and the Appeals Chamber comply with such conditions, but the Chambers must also make an undertaking, in a written decision, to follow the procedure unilaterally prescribed by the UN.<sup>39</sup>

47. It would be completely unacceptable for any information provider, even the UN, to dictate to a Chamber a course of action or working methods, or to seek to replace the Chamber in the performance of its judicial functions. The Chamber

---

<sup>37</sup> Internationally recognised law: *Rome Statute*, article 41(1); *International Covenant on Civil and Political Rights*, Article 14.1: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". In fact, the UN expressly recognised this principle of the judicial independence of the Court in the *Negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations*, Article 2.1, ICC-01/04-01/06-1267-Anx1, p. 3/13.

<sup>38</sup> Eighty three of the 136 documents provided by the UN can only be disclosed to the Defence in a redacted form. The UN imposes on the Chamber "the redactions subject to which they may be disclosed." ICC-01/04-01/06-1451-Anx1, para. 2.

<sup>39</sup> ICC-01/04-01/06-1431-Anx2, pp. 3/5 and 4/5.

cannot undertake to restrict the powers with which it is vested by the legal instruments.<sup>40</sup>

**3 – The infringement as of now of the right to a fair trial is so serious that the judicial proceedings are irretrievably tainted and cannot be resumed for the following reasons, amongst others:**

**a) The Prosecutor has irretrievably compromised his independence**

48. As a result of the Prosecutor's near-systematic use of article 54(3)(e) confidentiality agreements, information providers have been vested with the discretion to select the evidence to be presented to the judges, the parties and the general public.

49. Consequently:

- The Prosecutor is divested – to the benefit of individuals, States and national or international organisations – of his power to act in total independence in seeking and disclosing evidence material to the determination of the truth and the holding of a fair trial;
- Article 67(2) or rule 77 evidence, which is crucial to the defence of the accused, may knowingly be kept confidential merely because its provider refuses to waive the ill-advised undertaking entered into by the Prosecutor.

50. Hence, the Prosecutor's interpretation of article 54(3)(e) must necessarily entail his relinquishment of part of his fundamental mission and his independence to the benefit of individuals or organisations outside the Court, and the concealment of evidence crucial to a fair trial.

---

<sup>40</sup> Articles 64, 67 and 68; rule 84.

**b) The result of the misuse of article 54(3)(e) is to prevent the continuation of investigations into exonerating circumstances with the main information providers**

51. The judges' power to ensure the fairness of proceedings and, if necessary, to "[o]rder the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties"<sup>41</sup> has been severely affected and may well be neutralised by the prohibitions set forth in rule 82.

52. The implications of these prohibitions are all the more important because the UN is the principal information provider, and played an important role in the situation in the DRC.

**c) The Prosecutor's conduct has resulted in a serious breach of the accused's right to be tried without undue delay**

53. The issue of exculpatory material covered by article 54(3)(e) confidentiality agreements has been discussed on numerous occasions since the beginning of proceedings in this case.<sup>42</sup> The Prosecutor first raised this issue before the Pre-Trial Chamber in April 2006.<sup>43</sup>

54. As early as 8 May 2006, the Defence argued that the Prosecutor could not use article 54(3)(e) confidentiality agreements as justification for the non-disclosure of exculpatory material.<sup>44</sup>

55. Since 2006, the Pre-Trial and Trial Chambers have been asking the Prosecutor to secure the consent of the information providers at the earliest opportunity in order to enable the disclosure of article 54(3)(e) exculpatory material<sup>45</sup> to the Defence.

---

<sup>41</sup> Article 64(6)(d).

<sup>42</sup> See, in particular, ICC-01/04-01/06-T-8-CONF-ENG, 24 May 2006, p. 24, lines 22 and ff. ; ICC-01-04-01/06-T-13-ENG, 24 August 2006, p. 50 and ff; ICC-01/04-01/06-T-17-CONF-ENG, 5 September 2006, p. 49, lines 3-10; ICC-01/04-01/06-T-20-ENG, 26 September 2006, p. 59, lines 13 and ff; ICC-01-04-01/06-T-22, 9 October 2006, p. 11, lines 1-5; ICC-01-04-01/06-611, para. 6 and ff.

<sup>43</sup> ICC-01/04-01/06-T-5-CONF-ENG, p. 4, lines 18-21.

<sup>44</sup> ICC-01/04-01/06-93, paras. 9-15. As far back as then, the Defence was already of the opinion that the appropriate remedy for the failure to disclose this exculpatory material to the Defence would be the discontinuance of the proceedings and the release of the accused.

56. Furthermore, the Trial Chamber had already indicated to the Prosecutor that his *“late requests [...] to lift the confidentiality agreements should not be allowed to endanger the accused’s right to be tried without undue delay and to adequate time and facilities for preparation”*.<sup>46</sup>

57. The Prosecutor’s failure to obtain the consent of the providers has led to unjustifiable delays in the proceedings, thus depriving the accused of his right to be tried without undue delay.<sup>47</sup>

## CONCLUSION

58. To conclude, it appears that only 53 of the 204 documents referred to in the Prosecutor’s Application may be disclosed in full to the Defence. In some cases, the providers would agree to the provision of summaries to the Defence and, in others, to versions redacted by the providers. In yet other cases, the provider has clearly declined to allow any information whatsoever to be disclosed to the Defence.

59. The end result is that no viable solution to the issues that led to the stay of the proceedings has been provided.

## FOR THESE REASONS, MAY IT PLEASE THE TRIAL CHAMBER I TO:

**DENY** the Prosecutor’s Application;

**MAINTAIN** the decision of 13 June 2008 and **ORDER** that the proceedings against Mr Thomas Lubanga be stayed once and for all;

**CONFIRM** the immediate release of Mr Thomas Lubanga.

---

<sup>45</sup> ICC-01/04-01/06-490. The Pre-Trial Chamber ordered the Prosecutor to obtain the consent of the providers to disclose in full and unredacted form the article 67(2) and rule 77 documents. See, in particular, ICC-01/04-01/06-T-52-ENG, 1 October 2007, p. 17, lines 5-10 and ICC-01/04-01/06-1019[1], para. 19.

<sup>46</sup> ICC-01/04-01/06-1019, para.19. See also ICC-01/04-01/06-T-52-ENG, 1 October 2007, p. 17, lines 5-10.

<sup>47</sup> Article 67(1)(c).

\_\_\_\_\_  
[signed]  
**Catherine D. Mabile,**  
**Counsel**

Dated this 1 September 2008

At The Hague, The Netherlands