



Original: **English**

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

Date: **19 July 2010**

THE APPEALS CHAMBER

Before: Judge Daniel David Ntanda Nsereko
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

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

Public Document

Prosecution's Application for an extension of page limit for its document in support of appeal against Trial Chamber I's decision of 8 July 2010 staying the proceedings for abuse of process

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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1. On 15 July 2010, Trial Chamber I granted the Prosecution's request for leave to appeal the Chamber's decision from 8 July 2010 staying all proceedings in the *Lubanga* case.¹ The issue certified for appeal, as framed by the Trial Chamber, is "whether it was necessary to stay these proceedings as an abuse of the process of the Court because of: (i) the Prosecution's material noncompliance with the Chamber's orders of 7 July 2010; and (ii) the Prosecutor's clearly evinced intention not to implement the Chamber's orders that are made in the Article 68 context, if he considers they conflict with his interpretation of the Prosecution's other obligation".² A full factual and legal discussion is essential to the Prosecution's argument that it did not willfully refuse to comply with an order of the Chamber or express that its protection duties justified noncompliance, and that the stay of proceedings was not necessary.
2. The case involves an order to disclose to the defence team the identity of a person who assisted the Prosecution in initially identifying and contacting potential witnesses in the case prior to the VWU's implementation of previously authorized substantial protective measures. The Chamber rejected that Article 68(1) of the Rome Statute's mandate that "the Prosecutor shall take [...] measures [of protection] particularly during the investigation and prosecution" of crimes imposes a right and duty on the Prosecution to protect persons at risk on account of their interaction with the Prosecution. It refused to consider the Prosecution's reservations about disclosure particularly to a resource person against whom there are documented allegations of misconduct with respect to potential and actual prosecution witnesses. And it declined the Prosecution's requests that it postpone disclosure to permit the Prosecution to seek leave to appeal and/or request the views of the VWU and implement interim emergency protection.

¹ ICC-01/04-01/06-2517-Red..

² ICC-01/04-01/06-T-314-ENG 15-07-2010, p. 16.

3. The Trial Chamber's order and its framing of the issue on appeal presupposes that the Prosecution's request to delay disclosure to permit an application for leave to appeal and then to permit the implementation of interim protective measures were in place -- the action that triggered the Chamber's suspension of the trial -- was factually and legally unsupported and defiant of the Chamber's order.
4. Additional pages are necessary for the Prosecution to fully present the context in which the impugned decision arose. The factual context will include the sequence of events leading to the disclosure order, the risks involved for the person whose identity was ordered disclosed and the VWU's analysis of the need for and degree of protection that had to be provided. It will include an explanation why the defence wanted the information and objected to deferred disclosure. It will also include information regarding the resource person known to the Chamber and the parties and brought out before and during the trial itself but not cited in the stay order. The legal context will include arguments based on judicial precedent and statutory provisions that relate to the Court's protection scheme, the Prosecutor's particular responsibilities and obligations, and the remedies and sanctions available to the Chamber. These legal and factual issues cannot be fully presented and discussed within the ordinary page-limit of 20 pages.³
5. Accordingly, the Prosecution requests that the Chamber authorize submission of a brief not to exceed 40 pages, while assuring the Chamber that it will endeavor to streamline the submission and that its brief will likely be shorter than the requested 40 pages.

³ The Appeals Chamber has recognized that the complexity of the issues justified an extension of the page-limit, in order to allow a party to properly present its case. See *Prosecutor v. Lubanga*, [Decision on the Prosecutor's Motion for Extensions of the Time and Page Limits](#), ICC-01/04-01/06-177, 3 July 2006, Para. 6



Luis Moreno-Ocampo,
Prosecutor

Dated this 19th day of July 2010
At The Hague, The Netherlands