

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 15 October 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

**Order for further information regarding potentially exculpatory documents and
for expedited defence response**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita

Legal Representatives of the 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

1. On 13 June 2008 the Trial Chamber imposed a stay on the proceedings in the trial of Thomas Lubanga Dyilo.¹ The Office of the Prosecutor (“prosecution”) filed an application to lift the stay on 10 July 2008,² which was refused by the Trial Chamber on 3 September 2008 in its “Decision on the Prosecution’s Application to Lift the Stay of Proceedings”.³ In that decision, the Trial Chamber provided that “if all of the Documents from all the information providers are submitted to the Chamber in a non-redacted form for the entirety of the trial and if the Appeals Chamber is able to consider in a similar, non-redacted form all of the relevant materials and any decision of the Trial Chamber on the issue, the Bench would be prepared to review all the Documents (prior to lifting the stay) to assess which Documents need to be disclosed and whether the proposed methods of disclosure accord with the accused’s right to a fair trial.”⁴

2. In decisions issued on 2 July 2008,⁵ and 24 September 2008,⁶ the Chamber granted the prosecution leave to appeal some issues addressed in the decisions of 13 June and 3 September 2008. On 14 October 2008, the prosecution filed a “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”.⁷

¹ Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008, ICC-01/04-01/06-1401.

² Prosecution’s application to lift the stay of proceedings, 10 July 2008 (notified on 11 July 2008), ICC-01/04-01/06-1430-Conf-Exp; and public redacted version filed on 11 July 2008, ICC-01/04-01/06-1431.

³ Decision on the Prosecution’s Application to Lift the Stay of Proceedings, 3 September 2008, ICC-01/04-01/06-1466-Conf-Exp, and public redacted version, ICC-01/04-01/06-1467.

⁴ *Ibid*, paragraph 40(v).

⁵ Decision on the Prosecution’s Application for Leave to Appeal the “Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused”, 2 July 2008, ICC-01/04-01/06-1417.

⁶ Decision on the Prosecution’s Application for Leave to Appeal the “Decision on the Prosecution’s Application to Lift the Stay of Proceedings”, 24 September 2008, ICC-01/04-01/06-1473.

⁷ ICC-01/04-01/06-1479.

3. On 14 October 2008 the prosecution filed its "Application for Trial Chamber to Review all the Undisclosed Evidence Obtained from Information Providers"⁸ ("Application") in which it informed the Chamber that it is now able to comply with each of the preconditions to the Bench's review of the documents set out above.⁹ In the Application, the prosecution sets out that all of the relevant potentially exculpatory documents (228) will be available to the Chamber in non-redacted form for the duration of the trial and confirmed that the Appeals Chamber will be able to subject any Trial Chamber decision on disclosure to "full appellate review".¹⁰
4. In the Application the prosecution stated that of the 228 relevant, potentially exculpatory documents, 135 may be disclosed to the defence directly and in non-redacted form whereas "93 documents cannot be disclosed directly and/or in fully non redacted form to the Defence".¹¹
5. In order to assist the Chamber in its review of the documents which have now been provided to it under potentially satisfactory circumstances, the Chamber hereby orders the prosecution to file with the Registry, no later than 16.00 on 22 October 2008, copies of the 93 documents which cannot be disclosed directly to the defence highlighted so as to reveal the particular passages which it considers may be of exculpatory value together with a short explanation for each passage as to why they may have exculpatory effect or may assist the defence in other ways.
6. The Chamber notes that, pursuant to Regulation 34 of the Regulations of the Court, the defence may file a response to the Application within 21 days of

⁸ Application for Trial Chamber to Review all the Undisclosed Evidence Obtained from Information Providers ICC-01/04-01/06-1477-Conf-Exp, with 214 confidential *ex parte* prosecution only annexes, and public redacted version of the Application, ICC-01/04-01/06-1478, with 15 public annexes, 3 confidential prosecution and defence only annexes, and 196 *ex parte* prosecution only annexes.

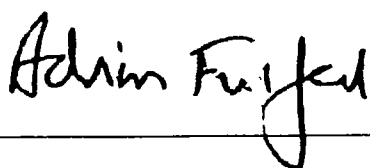
⁹ *Ibid.*, paragraph 2.

¹⁰ *Ibid.*, paragraphs 9-10.

¹¹ *Ibid.*, paragraphs 13-14.

notification thereof. Given the need to deal with this issue expeditiously the Chamber hereby orders the defence to file its response, if any, to the Application no later than 16.00 on 21 October 2008.

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 15 October 2008

At The Hague, The Netherlands