

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06 OA 11

Date: 22 April 2008

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public document

**Decision on “Motion for Leave to File Proposed Amicus Curiae Submission of the
International Criminal Bar Pursuant to Rule 103 of the
Rules of Procedure and Evidence”**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

International Criminal Bar

Ms Virginia C. Lindsay

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The Appeals Chamber of the International Criminal Court,

In the appeal of Mr. Thomas Lubanga Dyilo pursuant to the decision of Trial Chamber I of 6 March 2008, entitled “Decision on the defence request for leave to appeal the Oral Decision on redactions and disclosure of 18 January 2008” (ICC-01/04-01/06-1210),

Having before it the “Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence” of 10 April 2008 (ICC-01/04-01/06-1273),

Renders unanimously the following

DECISION

- (i) The Annex to the “Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence” is accepted, pursuant to rule 103 (1) of the Rules of Procedure and Evidence, as observations by the International Criminal Bar.
- (ii) Mr. Thomas Lubanga Dyilo and the Prosecutor may respond to the observations made in the Annex by 4 p.m. on Tuesday, 29 April 2008.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 10 April 2008, the International Criminal Bar submitted to the Appeals Chamber a “Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence” (ICC-01/04-01/06-1273; hereinafter: “Motion”), requesting leave to file observations as an *amicus curiae* pursuant to rule 103 of the Rules of Procedure and Evidence. The International Criminal Bar annexed to the Motion the observations it intends to submit, if

the Appeals Chamber were to grant the Motion (ICC-01/04-01/06-1273-AnxA; hereinafter: “Annex”).

2. The International Criminal Bar seeks leave to submit observations on aspects of the third issue in the appeal of Mr. Thomas Lubanga Dyilo (hereinafter: “appellant”) against the oral decision of Trial Chamber I of 18 January 2008 (see ICC-01/04-01/06-T-71). This issue has been defined by the Trial Chamber in paragraph 21 of the “Decision on the defence request for leave to appeal the Oral Decision on redactions and disclosure of 18 January 2008” (ICC-01/04-01/06-1210) as whether the conclusion of the Trial Chamber “that the prosecution is not under an obligation to ‘serve material that relates [to] the general use of child soldiers’ because it does not constitute exculpatory material contravenes Rule 77 of the Rules [of Procedure and Evidence]”. The International Criminal Bar submits that it is an appropriate organisation to act as an *amicus curiae* in the present appeal, given that it is an association of national and regional bar associations, professional legal associations, non-governmental organisations and individual members, that many of those listed on the Court’s List of Counsel are members of the International Criminal Bar, and that the International Criminal Bar has actively participated in consultations with the Registry, for example in respect of the legal aid scheme and the Code of Professional Conduct (Motion, paragraphs 5 to 9).

3. On 15 April 2008, the appellant filed the “Observations de la Défense relatives à la « Motion for Leave to file proposed Amicus Curiae submission of the International Criminal Bar pursuant to Rule 103 of the Rules of procedure and evidence » datée du 10 avril 2008” (ICC-01/04-01/06-1276), indicating at paragraph 7 that he is not opposed to the submission of observations by the International Criminal Bar, as contained in the Annex.

4. On 16 April 2008, the Appeals Chamber gave the Prosecutor until 4 p.m. on 18 April 2008 to file a response to the Motion (ICC-01/04-01/06-1282).

5. On 18 April 2008, the Prosecutor filed the “Prosecution’s Response to Application by the International Criminal Bar for leave to file Proposed Amicus Curiae Submission

pursuant to Rule 103” (ICC-01/04-01/06-1284), indicating at paragraph 11 that he is not opposed to the submission of observations by the International Criminal Bar.

II. DETERMINATION BY THE APPEALS CHAMBER

6. The Appeals Chamber determines, for the reasons set out below, that in the circumstances of the present case it is appropriate to accept, pursuant to rule 103 (1) of the Rules of Procedure and Evidence, the Annex as observations of the International Criminal Bar.

7. Under the heading “*Amicus curiae* and other forms of submission”, rule 103 (1) of the Rules of Procedure and Evidence provides as follows:

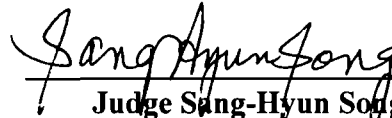
At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

8. Thus, it is left to the discretion of the Appeals Chamber to grant leave to any State, organisation or person to submit observations. In the present case, the Appeals Chamber considers that submissions by the International Criminal Bar on the third issue in respect of which leave to appeal was granted may assist the Appeals Chamber in the proper determination of the case. The Appeals Chamber notes that neither the appellant nor the Prosecutor has opposed the filing of submissions by the International Criminal Bar.

9. Pursuant to rule 103 (2) of the Rules of Procedure and Evidence, “[t]he Prosecutor and the defence shall have the opportunity to respond to observations submitted under sub-rule 1”. Accordingly, the Appeals Chamber gives the appellant and the Prosecutor time to respond to the observations contained in the Annex, as set out in paragraph (ii) of the present decision.

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



Judge Sang-Hyun Song
Presiding Judge

Dated this 22nd day of April 2008

At The Hague, The Netherlands

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