

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original. English

No.: ICC-01/04
Date 16 March 2006

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**Under Seal
EX PARTE, only available to the Prosecutor**

**ORDER ON THE REGISTRAR'S REQUEST TO TRANSFER CERTAIN PARTS OF
THE CASE RECORD TO THE SITUATION RECORD**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor

The Appeals Chamber of the International Criminal Court,

At the request of the Registrar of 9 March 2006 (ICC-01/04-01/06-25-US-Exp) for an order to transfer certain parts of the record of the case against Mr Thomas Lubanga Dyilo into the record of the situation in the Democratic Republic of the Congo ("DRC"),

Issues the following

ORDER

The Registrar is hereby ordered to transfer the below listed documents from the record of the case against Mr Thomas Lubanga Dyilo and to incorporate them into the record of the situation in the DRC with an appropriate reference number

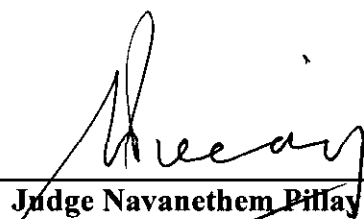
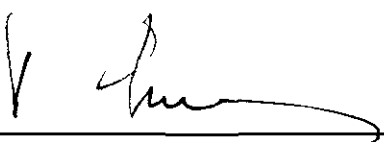
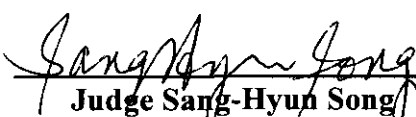
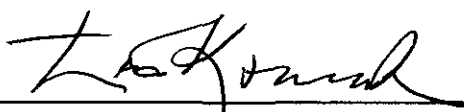
- 1 ICC-01/04-01/06-3-US-Exp,
- 2 ICC-01/04-01/06-5-US-Exp,
- 3 ICC-01/04-01/06-6-US-Exp,
- 4 ICC-01/04-01/06-20-US-Exp,
5. ICC-01/04-01/06-25-US-Exp

REASONS

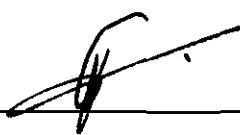
- 1 On 10 February 2006 Pre-trial Chamber I rendered the "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58" (ICC-01/04-01/06-1-US-Exp) The Prosecutor appealed this decision on 14 February 2006 (ICC/01/04-01/06-3-US-Exp)

- 2 On 24 February 2006 Pre-Trial Chamber I issued a corrected version of the “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” (ICC-01/04-01/06-1-US-Exp-Corr) and rendered the “Decision concerning Pre-Trial Chamber I’s Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo” (ICC-01/04-01/06-8-US-Exp)
- 3 In that decision the Registrar was requested to remove, *inter alia*, Pre-Trial Chamber I’s decision entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” (ICC-01/04-01/06-1-US-Exp-Corr) from the record of the case against Mr Thomas Lubanga Dyilo and to incorporate it into the record of the situation in the DRC
- 4 The Appeals Chamber notes that the “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” (ICC-01/04-01/06-1-US-Exp) has also been transferred to the record of the situation in the DRC.
- 5 The Prosecutor’s appeal (ICC-01/04-01/06-3-US-Exp) was filed before the transfer of (ICC-01/04-01/06-1-US-Exp) and (ICC-01/04-01/06-1-US-Exp-Corr) to the record of the situation in the DRC.
- 6 For these reasons the Appeals Chamber orders that the documents relating to the appeal should be transferred from the record of the case against Mr Thomas Lubanga Dyilo into the record of the situation in the DRC

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


Judge Navanethem Pillay
Presiding Judge
Judge Philippe Kirsch
Judge Sang-Hyun Song
Judge Erkki Kourula

Judge Georghios M. Pikis appends a separate dissenting opinion to the order of the Appeals Chamber


Judge Georghios M. Pikis

Dated this 16th day of March 2006

At The Hague, The Netherlands

Situation in the Democratic Republic of the Congo “Order on the Registrar’s Request to Transfer Certain Parts of the Case Record to the Situation Record” (ICC-01/04)

Dissenting opinion of Judge Pikis

1 By an application¹ filed before the Appeals Chamber in the cause of a pending appeal, the Registrar seeks an order of the Appeals Chamber for the adjustment of the record of the proceedings in a manner reflecting the immediate background to this appeal. As only a part of the decision² of Pre-Trial Chamber I is the subject of the appeal³, approval is sought for the re-allocation of documents in a manner conforming to a decision⁴ of the same Chamber directing the distribution of the relevant material into two records.

2 The application is founded on the provisions of the Rules of Procedure and Evidence, notably rules 121 (10), 137 and 149, none of which confers in terms or by necessary implication a right to the Registrar to invoke the jurisdiction of the Appeals Chamber in relation to the matter for which an order is sought or in connection with any other matter.

3 Rule 121 (10) entrusts the Registrar to “[] create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber []” with due regard to the sustenance of the confidentiality of specified categories of documents. Rule 137 imposes in substance a corresponding duty upon the Registrar respecting trial proceedings requiring him “[] to make, and preserve, a full and accurate record [.]”

¹ *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v Thomas Lubanga Dyilo* “Registrar’s Request for an Order of Transfer of Certain Parts of the Case Record to the Situation Record (ICC-01/04-01/06-25-US-Exp) 9 March 2006

² *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Thomas Lubanga Dyilo* “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” (ICC-01/04-188-US-Exp) 10 February 2006, rectified by Pre-Trial Chamber I as *Situation in the Democratic Republic of the Congo* “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” (ICC-01/04-188-US-Exp-Corr) 10 February 2006

³ *Situation in the Democratic Republic of the Congo* “Prosecutor’s Appeal against Pre-Trial Chambers I’s 10 February 2006 ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58’” (ICC-01/04-01/06-3-US-Exp) 14 February 2006

⁴ *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Thomas Lubanga Dyilo* “Decision concerning Pre-Trial Chamber I’s Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo” (ICC-01/04-01/06-8-US-Exp) 24 February 2006

Article 64 (10)⁵ of the Rome Statute (“Statute”) to which rule 137 alludes, requires the Registrar to maintain and preserve the record of trial proceedings, the aforesaid rule regulates the exercise of this duty Rule 149 imposes, by necessary implication, similar obligations upon the Registrar for the maintenance and the preservation of the record of appeal proceedings, subject to such modifications as may be warranted by the nature of the appellate process

4 Ensuring that a complete record of judicial proceedings is made (article 64 (10)) is the responsibility of the Trial Chamber, a factor incidental to the judicial process, while its preservation and sequentially its production in the case of an appeal is the responsibility of the Registrar Rules 151 (1) and 156 (1) make this abundantly clear Further, it must be clarified that at issue in this application is neither the completeness of the record of the pre-trial proceedings nor the record of the appeal proceedings We are required, in effect, to instruct the Registrar how to distribute documents between two records following a decision of Pre-Trial Chamber I directing their re-allocation

5 In essence, the rules relied upon by the Registrar particularise the exercise of the duties of the Registrar for the maintenance of the records of the Court in different proceedings in line with his overall responsibility of record-keeping provided for in rule 15 (1) of the Rules of Procedure and Evidence “The Registrar shall keep a database containing all the particulars of each case brought before the Court [...]”

6 The responsibility to maintain and preserve the records of judicial proceedings forms part of the administrative duties cast upon the Registry by article 43 (1) of the Statute It refers to the non-judicial aspects of the administration of the Court to be exercised under the authority of the President of the International Criminal Court (paragraph 2 of the same article) The Statute bestows no power on the Appeals Chamber to review judicially the correctness or propriety of the exercise of the administrative functions of the Registrar The discharge of the administrative responsibilities of the Registry is designed to service the Court as laid down in article 43 (1) of the Statute And any derogation therefrom may be remedied by the issuance of appropriate directions by those the Registry is trusted to serve, the Court, and that includes every Division of it.

⁵ Article 64 (10) reads as follows “The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar ”

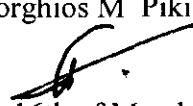
7 No one can invoke the jurisdiction of a Chamber for the issuance of any order other than a person or a legal entity having a right to do so. Such legitimization is a sine qua non for recourse to the court. This conclusion seals the fate of the application before the Appeals Chamber rendering it liable to be dismissed as nonjusticiable.

8. The fact that Pre-Trial Chamber I has made an order separating the previously unified record of the proceedings before it for the reasons stated in its decision does not provide ground for the application of the Registrar nor does it confer jurisdiction upon the Appeals Chamber to deal with it. It may be added that the relevant decision of the Pre-Trial Chamber is not a subject of appeal in these proceedings.

9 I am not oblivious to the fact that for practical reasons it matters little whether directions are given by the Appeals Division or Chamber to the Registrar in a judicial or extra-judicial capacity as an overseer of the discharge of administrative functions. But, I cannot overlook that the question posed before the Appeals Chamber has wider implications affecting the right of a person or a legal entity to invoke the jurisdiction of the court where none is given them by law. To that question my answer is in the negative.

10 Therefore, I dissent from the decision of the majority of the Appeals Chamber concluding that I would, for my part, dismiss the application as ill-founded.

Judge Georgios M. Pikis



Dated this 16th of March 2006

At The Hague, The Netherlands