

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 26 June 2006

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

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

Public Document
Prosecutor's Motion for Extensions of the Time and Page Limits

The Office of the Prosecutor	Counsel for the Defence
Mr Luis Moreno-Ocampo, Prosecutor Mrs Fatou Bensouda, Deputy Prosecutor Mr Fabricio Guariglia, Senior Appeals Counsel Mr Ekkehard Withopf, Senior Trial Lawyer	Mr Jean Flamme

Introduction

1. On 23 June 2006, the Single Judge acting in the Case of *The Prosecutor v. Thomas Lubanga Dyilo*, Silvia Steiner, issued her “Decision on the Prosecution Motion for Reconsideration and, in the Alternative, Leave to Appeal”.¹ In that Decision, the Single Judge has granted leave to appeal three issues: (a) the determination of the criteria to be met for granting applications for protection purposes for non-disclosure prior to the confirmation hearing of the identity of those witnesses on which the Prosecution intends to rely at the confirmation hearing; (b) the issue of the temporal scope of the ongoing investigation of Thomas Lubanga Dyilo and the consequent nature of those redactions granted under Rule 81 (2) of the Rules in order not to prejudice that investigation; and (c) the issue of the regime encompassed by the term *ex parte* in the context of applications under Rule 81 (2) and (4) of the Rules.²
2. Under Regulation 65 (4), the Prosecution should file its document in support of the appeal on 3 July 2006. The document should comply with the default page-limit of 20 pages, as established in Regulation 37. The Prosecution is herewith requesting a variation of both the applicable time and page limits.

Request for Extension of the Time Limit

3. In a hearing held on Friday 23 June 2006, the Single Judge announced that the Decision had been issued and that it was then filed with Registry.³ However, the Prosecution was notified of the Decision only in the evening hours of Friday (19:48). The e-mail containing the notification is attached to this filing.
4. The Prosecution could only properly commence its analysis of the Decision on Monday 26 June, with two days of the restrictive time-limit enshrined in Regulation 65 having already elapsed. It is now in the process of preparing the document in support of the appeal. The Prosecution considers that is in both the interests of fairness and a proper determination of the issues by the Appeals Chamber that the Prosecution be given a short extension of the time-limit until 6 July 2006, the date in which the filing would be due had the Decision been notified on the morning of Monday 26

¹ No. ICC-01/04-01/06-166. Hereinafter, the “Decision”.

² Decision, p. 26 (*dispositif*).

³ Transcript of hearing of 23 June 2006, ICC-01/04-01/06-T-9-EN at p. 45, lines 8-13.

June, rather than in the evening hours of Friday 23 June.⁴ The Prosecution notes that belated notification of court documents, including notification provided after office hours has been considered to constitute “good cause” for the purposes of granting extensions of time.⁵ The Prosecution further submits that it is in the interest of a proper determination of the issues at bar, which raise important procedural questions going to the fairness and efficiency of the Court’s proceedings, that the Prosecution has sufficient time to adequately brief the Appeals Chamber with a view to assisting it in reaching a decision.

5. The Prosecution accordingly requests the Appeals Chamber under Regulation 35 to extend the time-limit to file the document in support of the appeal until 6 July 2006.

Application for an extension of the Page-Limit

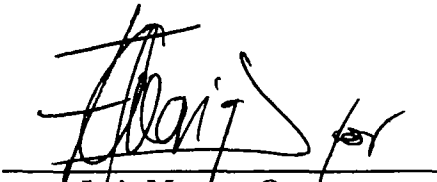
6. The Prosecution has already shared with the Appeals Chamber in the past its concerns about the inadequacy of the general page-limit enshrined in Regulation 37 for the purposes of a proper presentation of arguments before the Appeals Chamber, especially in light of the Court’s young age and the novelty of most of the issues being currently discussed in the Court’s judicial proceedings. In the instant appeal, the Prosecution must deal with three complex issues, involving multiple questions pertaining to, *inter alia*, the scope of the Prosecution’s authority to conduct investigations, the available spectrum of protective measures for victims and witnesses and the balance between the Court’s duties to protect persons and confidential information and the rights of the defence.
7. After careful consideration, the Prosecution has concluded that it would be possible to provide full arguments and authorities to the Appeals Chamber within 20 pages. It accordingly requests a modest extension of further 5 pages.

⁴ The Prosecution notes that belated notification of decisions is not infrequent: during the past 2 months 7 decisions were notified after office hours on Fridays in the DRC case alone. The Prosecution respectfully submits that participants should not be presumed to be present and/or to access office e-mails after office hours. The Prosecution further notes that it would be desirable if the Regulations of the Court dealt with the specific issue of notification after office hours of decisions and filings.

⁵ See, *inter alia*, *Prosecutor v. Tadic*, IT-94-1-A, Decision on Motion for extension of Time-Limit, 21 November 2000 (Appeals Chamber); *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Decision on Request for Extension of Time Limits, 28 August 2001 (Pre-Appeal Judge); *Prosecutor v. Blaskic*, IT-95-14-A, Decision on Prosecution’s Request for an Extension of Time and for Authorisation to Exceed the Page Limit for its response to the Appellant’s Fourth Rule 115 Motion, 29 May 2003 (Pre-Appeal Judge).

Conclusion

8. For the above referred reasons, the prosecution respectfully requests the Appeals Chamber to
- (a) grant the requested extension of time to file the Prosecution's document in support of the appeal on 6 July 2006;
 - (b) authorize an extension of the page-limit of five additional pages for the same document.



Luis Moreno-Ocampo
Prosecutor

Dated this 26th day of June 2006
At The Hague, The Netherlands