

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : **English**

No.: **ICC-01/04-01/06**
Date: **13 November 2006**

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis, Presiding
Judge Philippe Kirsch
Judge Navanethem 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

Prosecution's Request for an Extension of the Page Limit

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
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Mr Ekkehard Withopf, Senior Trial Lawyer
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**Legal Representatives for Victims a/0001/06
to a/0003/06**

Mr Luc Walley
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Counsel for the Defence

Mr Jean Flamme
Ms Véronique Pandanzyla

Office of Public Counsel for the Defence

Ms Melinda Taylor

Other Participant

Democratic Republic of the Congo

Procedural History

1. Thomas Lubanga Dyilo (“the Appellant”) was surrendered and transferred to the Court on 17 March 2006, pursuant to a warrant of arrest issued by Pre-Trial Chamber I on 10 February 2006.¹ The Appellant was served with a copy of the warrant of arrest on 16 March 2006, and was thus informed of the charges against him at that time.² The Appellant made his initial appearance before the Court on 20 March 2006.³
2. On 23 May 2006, the Appellant filed an “Application for Release”.⁴
3. On 3 October 2006, Pre-Trial Chamber I issued the “Decision on the Defence Challenge to Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute”.⁵
4. The Appellant lodged an appeal against the Decision on 9 October 2006,⁶ and filed its substantive “Defence Appeal Against the Decision on the Defence Challenge to Jurisdiction of 3 October 2006” on 26 October 2006.⁷

Procedural issue – the non-compliance of the Appeal Brief with the Regulations

5. The Prosecution notes that the Appeal Brief fails to comply with the Regulations of the Court: it is 26 pages, in violation of Regulation 37(1); none of the exceptions in Regulation 38 apply; and to the knowledge of the Prosecution the Appellant has not applied for, and the Appeals Chamber has not granted, an extension of the page limit under Regulation 37(2). The Prosecution notes that this not the first time that the Appellant has violated the Regulations applicable to his filings. The Appellant’s initial application for release before the Pre-Trial Chamber was 25 pages, single spaced. In response, the Prosecution noted the non-compliance⁸ for the express purpose of “ensur[e] that future Defence filings are ... complying with the applicable Regulations”.⁹

¹ Decision on the Prosecutor’s Application for a warrant of arrest, article 58, ICC-01/04-01/06-8-US-Corr Anx I (“Decision on Arrest Warrant”).

² See Prosecution’s Response to Application for Release, ICC-01/04-01/06-149-Conf, 13 June 2006, paras. 19(iii), 20 and 22, and authorities cited therein.

³ Order Scheduling the First Appearance of Mr Thomas Lubanga Dyilo, ICC-01/04-01/06-38, 17 March 2006.

⁴ ICC-01/04-01/06-121-tEN. On 17 July 2006, in response to an order from the Pre-Trial Chamber, the Appellant “recharacterise[d] the scope of its application as a challenge to jurisdiction” (Submissions Further to the Order of 13 July 2006, ICC-01/04-01/06-197-tEN, p. 3, para. 8).

⁵ ICC-01/04-01/06-512 (“the Decision” or “the impugned Decision”).

⁶ ICC-01/04-01/06-532.

⁷ ICC-01/04-01/06-619-Conf (“Appeal Brief”).

⁸ It was not until 17 July 2006 that the Appellant recharacterised his initial application as a challenge to jurisdiction, to which a longer page limit would have applied.

⁹ Prosecution Response, para. 4 and footnote 11.

6. Since that time, the Appellant has filed at least two further documents that did not comply with the Regulations,¹⁰ in addition to the present Brief. The Prosecution submits that the Regulations regarding page limits and formatting serve to ensure that parties present their cases in a concise and focused manner, that all participants have an equal opportunity to address the Court, and that any exceptions or extensions are duly justified. The Prosecution notes that the Chamber is vested with authority to decide, if appropriate, the rejection of a document filed in non-compliance with the Regulations, although the Prosecution is not seeking this particular measure at this stage.¹¹

Application for Extension of the Page Limit

7. Under Regulation 37(2), the Chamber may grant an extension of the page limit in exceptional circumstances. The Prosecution submits that exceptional circumstances exist in the present case, and respectfully requests that the Appeals Chamber grant an extension of 5 pages for filing its response to the Appeal Brief.
8. Firstly and as previously noted by the Prosecution,¹² the importance of the issues involved in this appeal, including the capacity of the Court to exercise personal jurisdiction over an individual and the relationship between the Court and national laws, require that they be comprehensively addressed by the parties. Furthermore, the Appeal Brief to which the Prosecution must respond makes lengthy and detailed arguments which are legally complex and, in the case of the second ground of appeal, factually intensive. In this sense, the Prosecution submits that the interests of fairness require that the Prosecution be in a position to address all issues raised in the Appellant's document in support of the appeal, and that it should not be hampered to do this by the fact that the Appellant has exceeded the applicable page limit.
9. While the Prosecution is endeavouring to be concise in its response, it is unable to fully address all of the issues raised, including providing a clear and comprehensive account of the factual circumstances in order to assist the Appeals Chamber, within 20 pages.

¹⁰ Observations of the Defence relation to the system of disclosure in view of the Confirmation Hearing, ICC-01/04-01/06-92, 2 May 2006, (24 pages and single-spaced); and Defence Appeal Brief in Relation to First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81, ICC-01/04-01/06-546, 10 October 2006 (21 pages plus a further 1 page confidential annex).

¹¹ The Prosecution expressly reserves its right to request such measures in future cases of non-compliance.

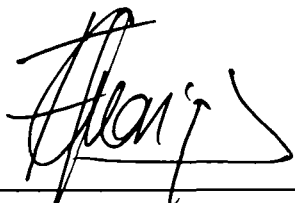
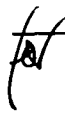
¹² Prosecution's Response to Appeals Chamber's Request and Directions, ICC-01/04-01/06-576, 16 October 2006, para. 5.

10. The Prosecution submits that in this case the complexity of the issues, the factually intensive nature of certain submissions of the Appellant, as well as the length of the Appeal Brief to which the Prosecution is responding, constitute exceptional circumstances and warrant a confined extension of the page limit by a further 5 pages.

Conclusion

11. For the abovementioned reasons, the Prosecution respectfully requests that the Appeals Chamber:

- note the Appeal Brief's non-compliance with Regulation 37(1); and
- grant the Prosecution an extension of 5 pages for its Response to the Appeal Brief.

Luis Moreno-Ocampo
Prosecutor

Dated this 13th day of November 2006

At The Hague, The Netherlands