



Original : English

No.: ICC-01/04-01/06
Date: 16 October 2006

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

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

Public Document

Response to Appeals Chamber's Request and Directions

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Mr. Fabricio Guariglia, Senior Appeals
Counsel
Mr. Ekkehard Withopf, Senior Trial
Attorney

Counsel for the Defence

Mr. Jean Flamme
Ms. Veronique Pandanzyla

1. Introduction:

1. On 13 October 2006, the Honourable Appeals Chamber issued a request and directions,¹ in which the Appeals Chamber noted the necessity of expediting the resolution of the Defence appeal against the Pre-Trial Chamber's decision on its challenge to jurisdiction, and therefore invited the Defence and the Prosecution to consider whether it is appropriate to abridge the time limits set out in the Regulations of the Court.

2. Submissions:

2. The Defence appreciates the efforts of the Appeals Chamber to expedite the resolution of this issue. Nonetheless, in light of the compressed period for preparation prior to the confirmation hearing, the Defence is extremely overloaded with the daily task of reviewing evidence. It also recently filed its Appeal Brief on the Second Rule 81 decision, has a pending deadline for its response to victims' applications, and has requested leave to reply to the response of the Victims and the Prosecution on the defence request for interim release. It is also difficult for the defence to anticipate what further issues may arise in the coming week as a result of potential prosecution filings, or new victims' applications, for example.
3. The right to challenge jurisdiction is a fundamental right, as recognised by the fact that the Defence has an automatic entitlement to appeal such decisions. The Defence also observes firstly, that it has a right to adequate time and facilities to prepare its case, and secondly, that the proximity of this appeal to the date of the confirmation hearing can in no way be attributed to any negligence on the part of the Defence. The Defence is therefore of the position that it would be abrogating its duty to provide effective representation to Thomas Lubanga Dyilo if it were to volunteer to waive its ability to utilise the full time period set out in the Regulations of the Court.
4. Nonetheless, the Defence suggests as an alternative procedure that the parties endeavour to file their respective briefs at the earliest point practicable. Thus, unless the Appeals Chamber orders otherwise, the Defence will undertake to file its appeal brief by Monday, 23 October 2006 on the understanding that it retains the right to file its brief at a later date (within the original time limit) if unforeseen events hinder its ability to file earlier.

¹ ICC-01/04-01/06-569

3. Relief Sought

5. The Defence respectfully requests the Appeals Chamber:

- not to order the Defence to file its appeal brief within in an abridged time limit; and
- to invite the Prosecution to consider adopting a similar approach.



Jean Flamme, Counsel for the Defence

Dated this 16th day of October, 2006

At The Hague, The Netherlands