

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **11 May 2007**

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 v. THOMAS LUBANGA DYILO***

Public

Observations of the Defence confirming the document titled “Defence submissions on the scope of the right to appeal within the meaning of article 82-1-b of the Statute” of 7 February 2007

Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Duty Counsel for the Defence

Ms Patricia Annick Mongo

Legal Representatives of the Victims

Mr Luc Walley and Mr Franck Mulenda
Ms Carine Bapita Buyangandu

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

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11 May 2007

Official Court Translation

1. On 29 January 2007, Pre-Trial Chamber I rendered its *Decision on the confirmation of charges* (the Decision).¹ The decision confirmed that there is sufficient evidence to establish substantial grounds to believe that Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charges of enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) and 25(3)(a) of the Statute, from 2 June to 13 August 2003, committed Thomas Lubanga Dyilo to a Trial Chamber for trial on the charges as confirmed, and transmitted to the Presidency the decision and the record of the proceedings in the instant case to the Presidency pursuant to rule 129 of the *Rules of Procedure and Evidence*.

2. On 30 January 2007, the Defence filed an appeal under article 82(1)(b) of the Statute against Pre-Trial Chamber I's Decision of 29 January 2007 on the confirmation of charges.²

3. On 5 February 2007, the Defence again applied to Pre-Trial Chamber I, this time for leave to appeal its decision of 29 January 2007 on the confirmation of charges (Leave to Appeal).³

4. On that same day, the Prosecutor also filed an application for leave to appeal the Decision of 29 January 2007 with Pre-Trial Chamber I.

5. In a letter dated 20 February 2007, Counsel for the Defence, Mr Flamme, sought leave from the Trial Chamber and the Appeals Chamber to withdraw from the case. He further applied for a stay of all acts or proceedings that could be prejudicial to the Defence in order to allow for new counsel to be appointed.

6. By decision of 23 February 2007, the Appeals Chamber⁴ denied any stay of proceedings. However, it extended until 23 March 2007 the time limit for submitting the

¹ ICC-01/04-01/06-796-Conf.

² "Defence Appeal against the Pre-Trial Chamber's *Décision sur la confirmation des charges* of 29 January 2007"; ICC-01/04-01/06-797.

³ ICC-01/04-01/06-807-Conf: Request for leave to appeal the Pre-Trial Chamber's 29 January 2007 *Décision sur la confirmation des charges*. The Defence filed a public redacted version of this application on 22 February 2007: ICC-01/04-01/06-836+Anx.

⁴ ICC-01/04-01/06-838.

Appellant's response to the *Directions of the Appeals Chamber* issued on 5 February 2007⁵ and the time limit for submitting the supplementation to the document filed by the Defence on 7 February 2007 and titled "Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute".⁶

7. Meanwhile, by decision rendered on 27 February 2007, Pre-Trial Chamber I granted Mr Jean Flamme's application for leave to withdraw.⁷

8. By decision rendered on 3 April 2007,⁸ the Appeals Chamber decided to further extend the time limits granted in the decision of 23 February 2007 up to 4 May 2007, adding that in the event of failure to comply with the stipulated time limit owing to the non-representation of the Appellant by counsel, the Registrar would have to appoint a duty counsel taking into account the wishes expressed by the Appellant. The Appeals Chamber further added that the authority of the duty counsel would be confined to representing the Appellant for the purposes of submitting the two documents in question. The time limit for the submission of the documents by the appointed duty counsel was therefore extended to 11 May 2007.

9. By decision rendered on 19 April 2007, Pre-Trial Chamber I also ordered the Registry or its representatives to appoint a duty counsel to represent Mr Lubanga in order for the Defence to respond to the Prosecution application for leave to appeal filed with Pre-Trial Chamber I on 5 February 2007.⁹ The decision made no mention of a time limit, but confined the authority of the duty counsel exclusively to the preparation of a response to the Prosecution application.¹⁰

10. On 4 May 2007, the Registry filed the *Désignation de Maître Emmanuel Altit comme conseil de permanence conformément à la décision de la Chambre Préliminaire I du 19 avril 2007*¹¹ with the Pre-Trial Chamber, and the *Appointment of Ms Annick Mongo as Duty*

⁵ ICC-01/04-01/06-805.

⁶ ICC-01/04-01/06-810.

⁷ ICC-01/04-01/06-833-Conf.

⁸ ICC-01/04-01/06-857.

⁹ ICC-01/04-01/06-806.

¹⁰ ICC-01/04-01/06-870.

¹¹ ICC-01/04-01/06-881.

Counsel pursuant to the Appeals Chamber's Decision of 3 April 2007 with the Appeals Chamber.¹²

11. On 8 May 2007, Ms Annick Mongo was sworn in as duty counsel for Mr Thomas Lubanga Dyilo in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.¹³

12. On 9 May 2007, Ms Annick Mongo filed an application for extension of time limit with the Appeals Chamber, requesting that the time limit the Appeals Chamber had fixed for 11 May 2007 be extended to 21 May 2007 under regulation 35(2) of the *Regulations of the Court* on the grounds that Ms Mongo had not been able to meet with Mr Lubanga Dyilo at the detention centre until 9 May 2007, therefore allowing her no more than two working days to prepare and submit the responses to the *Directions of the Appeals Chamber* and the supplementation to the document filed by the Defence on 7 February 2007 and titled "Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute".¹⁴

13. The Appeals Chamber is yet to respond to this application as of today 11 May 2007, which is the final date for the submission of the documents in question.

14. With a view to protecting the interests of the defence of Mr Thomas Lubanga Dyilo, and Ms. Mongo, not having had the advantage of an extension of the time limit, which might have enabled her, within the ambit of counsel's remit and in accordance with the *Code of Ethics*, to undertake in-depth and well-researched preparation in keeping with the Court's standards of quality as contemplated in its application for extension of time, and in light of the complexity of the issue of the interpretation of article 82(1)(b) of the Statute, and the Court, not having extended the time limit for thorough and quality work to be carried out, the Defence is obliged to confirm the arguments already set out in the document titled "Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute" filed on 7 February 2007.¹⁵

¹² ICC-01/04-01/06-882.

¹³ ICC-01/04-01/06-889.

¹⁴ ICC-01/04-01/06-892.

¹⁵ ICC-01/04-01/06-810.

15. Given that the Defence has not made supplemental observations, the Prosecution should not have the opportunity to respond to this submission.

[signed] _____
Ms. Patricia Annick Mongo

Dated this 11 May 2007

At The Hague