



Original: **French**

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

Date: **9 May 2007**

THE APPEALS CHAMBER

Before: Judge Georgios M. Pikis, Presiding Judge
Judge Philippe Kirsch
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 v. THOMAS LUBANGA DYILO

Public Document

Application for extension of time

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Duty Counsel for the Defence

Ms Patricia Annick Mongo

Counsel for the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

I. FACTS AND BACKGROUND

1. On 29 January 2007, Pre-Trial Chamber I rendered its *Decision on the Confirmation of Charges* (“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 fifteen 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, and committed Thomas Lubanga Dyilo to a Trial Chamber for trial on the charges as confirmed and transmitted the decision and the record of the proceedings in the case to the Presidency pursuant to rule 129 of the Rules.

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. Subsequently, on 5 February 2007, it sought, this time from Pre-Trial Chamber I, leave to appeal the Chamber’s Decision of 29 January 2007 on the confirmation of charges³ (“leave to appeal”).

4. 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, applied to the Trial Chamber and the Appeals Chamber to withdraw from the case;

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 the public redacted version of the request on 22 February 2007: ICC-01/04-01/06-836 + Anx

he also applied for a stay of all acts or proceedings that could be prejudicial to the Defence in order to enable the appointment of a new counsel.

6. By decision of 23 February 2007, the Appeals Chamber⁴ refused any stay in the proceedings. Nevertheless, it extended to 23 March 2007 the time limit for submitting the 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 entitled "Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute".⁶

7. However, by decision of 27 February 2007, Pre-Trial Chamber I granted Mr Jean Flamme's application 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 until 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 must 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 of 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 to enable the Defence to respond to the Prosecution application for leave to appeal, which was filed with Pre-Trial Chamber I on 5 February 2007.⁹ The decision made no

⁴ ICC-01/04-01/06-838

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

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 its “Appointment of Mr Emmanuel Altit as duty counsel pursuant to the Decision of Pre-Trial Chamber I of 19 April 2007”¹¹ with the Pre-Trial Chamber and its “Appointment of Ms Annick Mongo as duty counsel pursuant to the Decision of the Appeals Chamber of 3 April 2007” with the Appeals Chamber.¹²

II. AS TO THE LAW

11. According to regulation 24(1), “[t]he Prosecutor and the defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations and any order of the Chamber”.

12. Under regulation 35(2), participants have the opportunity to request that a time limit be extended or reduced by showing good cause.

13. *In specie casus*, the two documents to which Ms Mongo’s mandate is limited are the Appellant’s response to the “*Directions of the Appeals Chamber*” issued on 5 February 2007¹³ and the supplementation to the document filed by the Defence on 7 February 2007 entitled “Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute”.¹⁴

14. The Appeals Chamber set the time limit for the appointed duty counsel to file the documents to 11 May 2007.

15. Ms Mongo was notified of her appointment on Friday, 4 May 2007 at close of business. She took all necessary steps to make herself available for the Court. Thus,

¹⁰ ICC-01/04-01/06-870

¹¹ ICC-01/04-01/06-881

¹² ICC-01/04-01/06-882

¹³ ICC-01/04-01/06-805

¹⁴ ICC-01/04-01/06-810

she took the first flight to The Hague on Monday morning. When she arrived at the Court in the morning of Tuesday, 8 May 2007, she did everything possible to meet Mr Thomas Lubanga Dyilo, who indicated that he was not available to meet her and intended to do so the following day, Wednesday, 9 May 2007, which he did.

16. Since the time limit stipulated by the Court was to expire on 11 May 2007, she had less than two working days remaining to prepare and file the responses to the “*Directions of the Appeals Chamber*” and to the supplementation to the document filed by the Defence on 7 February 2007 entitled “Defence submissions on the scope of the right to appeal within the meaning of article 82(1)(b) of the Statute”.¹⁵

17. To carry out her mission successfully, and in accordance with the code of professional conduct, she must provide an in-depth and well researched response which meets the Court’s standard of quality.

18. Moreover, notwithstanding the fact that her appointment relates to specific issues, she must become acquainted with and analyse the documents provided by the Registry and the Defence assistants.

19. Unfortunately, this will be impossible within such a short period of time.

20. Ms Mongo is therefore seeking an extension to the time allowed.

21. Accordingly, Ms Patricia Annick Mongo is requesting additional time until 21 May 2007.

¹⁵ ICC-01/04-01/06-810

FOR THESE REASONS:

22. May it please the Appeals Chamber to grant duty counsel additional time until 21 May 2007 to file her written submissions.

[electronic signature]

Ms Patricia Annick Mongo

Dated this 9 May 2007

At The Hague