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No.: ICC-01/04-01/06
Date: 6 December 2006

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Navi Pillay
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

Defence Response to the Appeals Chamber Order of 4 December 2006

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Ekkehard Withopf, Senior Trial
Lawyer

Counsel for the Defence

Mr. Jean Flamme
Ms. Véronique Pandanzyla
Mr. Geoff Roberts

**Counsel for the Victims a/0001/06 to
a/003/06**

Mr. Luc Walley, Mr. Frank Mulenda

1. On 26 October 2006, the Defence filed its appeal against the decision of the Pre-Trial Chamber denying the Defence request for interim release of Thomas Lubanga Dyilo.¹ The Prosecution filed its response to the Defence appeal on 1 November 2006.²
2. The representatives of the victims filed their response to the Defence Motion on 16 November 2006.³
3. In response to this filing, the Defence filed on the same day, the 'Defence Request for an Order Regarding Non-Compliance with the Time Limits',⁴ in which it requested the Appeals Chamber to order that the filing of the Victims Representatives does not comply with the Regulations of the Court, and further requested the Appeals Chamber to reject it.⁵
4. The Honourable Appeals Chamber subsequently ordered the Defence to file by 29 November 2006, 'submissions on the right of victims a/0001/06 to a/0003/06 to participate in the appeal, the need, if any, of an application to that end and an order of the Appeals Chamber validating it, and the modalities for such participation.'
5. The Defence filed its response to this Order on 29 November 2006.⁶
6. The Appeals Chamber subsequently ordered that the Defence may file a response to the application to participate in the present proceedings, which was made in the victims' response, by 6 December 2006.⁷ The Defence hereby files its response

Submissions

7. The Defence firstly refers to the submissions made in the Defence Request and Defence Response. The Defence submits that its prior observations on the modalities of participation and the need for an application by the victims' representatives contained within the Defence Response sufficiently respond to the application of the

¹ Defence Appeal Against 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', 26 October 2006, ICC-01/04-01/06-594

² Prosecution's Response to Defence Appeal Against the 'Décision sur la demande de mise en liberté provisoire Thomas Lubanga Dyilo', 1 November 2006, ICC-01/04-01/06-637

³ 'Réponse des victims a/0001/06, a/0002/06 et a/0003/06 à l'appel de la Défense concernant la Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo, 16 November 2006, ICC-01-04-01-06-704 (Victims' Interim Release Response) The Defence refers to 'legal representatives', 'victims' representatives', 'victims' and 'legal representatives of the victims' interchangeably in this filing.

⁴ Defence Request for an Order Regarding Non - Compliance with the Time Limits, 16 November 2006, ICC-01/04-01/06-708 (Defence Request)

⁵ Defence Request, at page 4

⁶ Defence Response to the Appeals Chamber Order of 24 November 2006, 29 November 2006, ICC-01/04-01/06-734 (Defence Response)

⁷ See Order of the Appeals Chamber, 4 December 2006, ICC-01/04-01/06-751

legal representatives. The Defence therefore incorporates these arguments by reference.

8. The Defence also notes that the legal representatives failed to file an application to participate before filing their response to the Defence appeal, which was filed twenty days after the Defence appeal rather than within the deadline of five days imposed by Regulation 64(5) of the Regulations of the Court. Participation at this stage would simply prolongate the Appeals Chamber's adjudication of the issue, and thus prejudice the right of Thomas Lubanga Dyilo to a speedy decision. The Defence further emphasises that in general, the scope of participation regarding requests for release should be restricted to making observations on the 'conditions imposed by the Chamber on the person granted interim release and not on the issue of whether interim release itself should be granted'.⁸
9. Moreover, in order to to be permitted to participate in proceedings regarding the conditions of release, the victims must also prove to the Chamber that the decision could place them at risk.⁹ In light of the fact that Thomas Lubanga Dyilo has not requested to be released to the DRC, and has not been informed of the identities of the victims, the application by the victims' representatives fails to show how this requirement is fulfilled in the present case and as such should be rejected by the Appeals Chamber. In this regard, the Defence also observes that the FLPC was decommissioned and intergrated into the national army in 2004.
10. In relation to one issue which was not addressed in the Defence Response, the Defence opposes the application to participate in 'any hearing that may be held by the Appeals Chamber and to present their views and concerns, with the prior permission of the Chamber'.¹⁰

Relief Sought

11. The Defence therefore respectfully requests that the Appeals Chamber deny the application for participation in proceedings before the Appeals Chamber filed by the victims' representatives on 29 November 2006.

⁸ See Defence Response, at paragraph 41

⁹ See Defence Response, at paragraph 23

¹⁰ See Response of Victims a/0001/06, a/0002/06 and a/0003/06 to the Defence Request of 16 November 2006, 29 November 2006, ICC-01/04-01/06-739



Jean Flamme, Defence Counsel for Thomas Lubanga Dyilo

Dated this 6th day of December, 2006

At The Hague