

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 2 April 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge René Blattmann, Judge
Judge Elizabeth Odio Benito, Judge

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

Public Document

**Prosecution's submissions on the interpretation and application
of Article 76 of the Statute**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Detention Section

**Victims Participation and Reparations
Section**

Other

A. Background

1. In an agenda and scheduling order made on 5 March 2008, the Trial Chamber requested the parties and participants to file written submissions on the interpretation and application of Article 76 of the Statute, particularly referring to Article 64(3)(a) and Rules 132(2) and 134(1) of the Rules of Procedure and Evidence and Regulation of Court 54.¹

B. Submissions of the Prosecution on the application and interpretation of Article 76

2. Article 76 outlines the duties of a Trial Chamber with respect to the determination of an appropriate sentence in the event of the conviction of an accused. Article 76(1) provides, *inter alia*, that the Chamber shall take into account the evidence presented and submissions made *during the trial that are relevant to the sentence* (emphasis added). Additionally, the Chamber, may of its own motion, or shall, if requested by the Prosecutor or the accused, hold a *further* hearing to hear *additional* evidence or submissions relevant to sentence (emphasis added). Article 78 and Rule 145 of the Rules of Procedure and Evidence provide the statutory delineation of the relevant aggravating and mitigation factors and circumstances that the Court shall take into consideration when formulating an appropriate sentence.

3. It is submitted that the sentencing procedure established by Article 76 envisions the prospect that the parties have presented evidence and made

¹ ICC-01/04-01/06-1209 at para.3

submissions relevant to an appropriate sentence during the course of the trial proper. Additionally, Article 76, related articles and subordinate texts do not specifically prohibit the tendering of evidence or making of submissions relevant to sentence during the trial.

4. It is the Prosecution's position that the desirable achievement of an expedient and efficient trial process, embodied in Article 64(2) and Rule 132(2) of the Rules of Procedure and Evidence, supports this interpretation of Article 76; namely, that a party may, in appropriate circumstances, present relevant sentencing evidence during the trial proceeding proper. Such circumstances would most likely occur, for instance, when a trial witness is vested with both evidence relevant to the issue of guilt or innocence and evidence relevant to a sentencing factor or circumstance. The economic use of Court resources would warrant the presentation of relevant 'sentence-evidence' through such a witness, together with the substantive evidence, instead of re-calling the witness at a sentencing hearing following conviction.

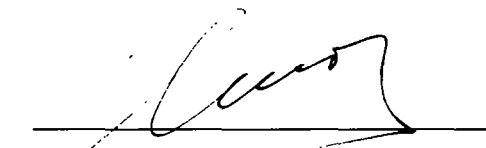
5. The right of a party to present sentencing evidence at trial, however, is not absolute. The Trial Chamber retains discretion to require a party to hold sentencing evidence in abeyance for a post-conviction hearing if such evidence, for instance, risked unnecessarily delaying the trial or infringing on a fair trial right.² For example, the Chamber may wish to delay the reception of highly prejudicial or

² Article 64(2)

particularly complex evidence relevant only to sentencing factors until a later sentencing hearing. This authority ensures that the trial will remain focussed and progress fairly and expeditiously.

C. Conclusion

6. It is submitted that Article 76 ought to be interpreted and applied as to permit the presentation of evidence and submissions relevant to sentence during the trial proceedings, subject to the supervisory power of the Trial Chamber to require such evidence to be held until a later sentencing hearing.



Luis Moreno-Ocampo
Prosecutor

Dated this 2nd day of April 2008

At The Hague, The Netherlands