



Original: **English**

No.: **ICC-01/04-01/06 OA18**

Date: **28 July 2010**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko
Judge Sanji Mmasenono Monageng

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

Public Document

**Prosecution's Response to the Defence Observations and Request for an Extension
of the Word Limit or Authorization to Re-file its Document in Support of Appeal**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabile

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 15 July 2010, Trial Chamber I granted the Prosecution's request for leave to appeal the Chamber's decision from 8 July 2010 staying all proceedings in the *Lubanga* case.¹
2. On 19 July 2010, the Prosecution applied for an extension of the page limit to 40 pages for its document in support of the appeal.² The Prosecution explained the need for the additional pages:

"The factual context will include the sequence of events leading to the disclosure order, the risks involved for the person whose identity was ordered disclosed and the VWU's analysis of the need for and degree of protection that had to be provided. It will include an explanation why the defence wanted the information and objected to deferred disclosure. It will also include information regarding the resource person known to the Chamber and the parties and brought out before and during the trial itself but not cited in the stay order. The legal context will include arguments based on judicial precedent and statutory provisions that relate to the Court's protection scheme, the Prosecutor's particular responsibilities and obligations, and the remedies and sanctions available to the Chamber."³

3. On 22 July 2010, the Appeals Chamber granted the request. It stated:

"The Appeals Chamber notes that the Prosecutor has identified in the Request a considerable number of questions which, in his view, are relevant to the determination of this appeal. [...] [T]he number and complexity of the questions identified by the Prosecutor as potentially relevant, together with the extraordinary nature of a stay of proceedings constitute 'exceptional circumstances' [...]."⁴

4. On 26 July 2010, the Prosecution filed its "Document in Support of Appeal against Trial Chamber I's decision of 8 July 2010 to stay the proceedings for abuse of process".⁵ The document contains 34 pages plus two cover pages.
5. On 28 July 2010, the Defence filed the "Observations de la Défence relatives à l'irrecevabilité du «Prosecution's Document in Support of Appeal against Trial

¹ ICC-01/04-01/06-2517-Red..

² ICC-01/04-01/06-2523.

³ ICC-01/04-01/06-2523, para. 4.

⁴ ICC-01/04-01/06-2532, para. 6.

⁵ ICC-01/04-01/06-2538-Conf ("Prosecution's Document in Support of Appeal").

Chamber I's decision of 8 July to stay the proceedings for abuse of process », daté du 26 juillet 2010".⁶ It notes that the Document filed by Prosecution exceeded the word limit provided for in the Regulations of the Court by 1,800 words⁷ and requests the Appeals Chamber to reject the Document.

6. The Prosecution now realizes, with the benefit of the Defence Observations, that its Document, though within the number of pages authorized by the Chamber, inadvertently exceeded the word limit of 300 words per page as provided in Regulations 36(3) of the Regulations of the Court. The Prosecution hereby requests, pursuant to Regulation 37(2), that the Chamber allow the filing of the Document notwithstanding the excess number of words, or alternatively grant the Prosecution leave to file, on an urgent basis, a reduced Document.
7. As the Appeals Chamber acknowledged in its initial order granting leave to file a brief of up to 40 pages, the appeal relates to a number of complex questions. The Document thus contains a detailed factual statement that is necessary to fully appreciate the context of the decision and the arguments advanced by the Prosecution. It includes extensive excerpts from several days' transcripts and a critical email exchange. Those excerpts could have been referenced without being quoted in the Document itself.
8. The choice to include these excerpts in the Document was made to facilitate the Chamber's ability to read the chronological statement of events without having to revert to an Annex or Appendix or to locate the transcripts in a court database. Had the Prosecution included them only in an Appendix, according to Regulation 36(2)(b), the word count in the Document would have been substantially shorter, but the price would have been a greater burden on the Chamber's ability to understand the events.

⁶ ICC-01/04-01/06-2539 ("Defence Observations").

⁷ Defence Observations, para. 7.

9. The Prosecution is aware that this is an extraordinary request. This Chamber has previously ruled that “[t]he non-compliance of the Document in Support of the Appeal with regulation 36(3) [...] cannot be corrected by retroactively granting an extension of the page limit,” and that “[a]n application for an extension of the page limit envisaged by the Regulations of the Court and its approval by a Chamber are prerequisites for the submission of an extended document.”⁸ Under that rationale, the Prosecution’s request is out of time. However, because of inadvertence of its failure to conduct a word count, “the extraordinary nature of a stay of proceedings”⁹ ordered by the Trial Chamber, and the extraordinary importance of this appeal, the Prosecution submits that it would be well within the discretion of the Chamber to accept the Document as filed, and that a complete document and fully articulated argument will facilitate the Chamber’s ultimate ability to adjudicate the case.
10. If the Appeals Chamber does not grant an additional extension of the page limit, then the Prosecution requests the Appeals Chamber to authorize it to re-file a Document in Support of Appeal with a word count that meets the requirements of Regulation 37(2) by 29 July 2010.



Luis Moreno-Ocampo,
Prosecutor

Dated this 28th day of July 2010
At The Hague, The Netherlands

⁸ ICC-01/04-01/06-1445 OA13, para. 8.

⁹ ICC-01/04-01/06-2532, para. 6.