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No.: ICC-01/04-01/06
Date: 23 November 2011

TRIAL CHAMBER I

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

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

Public

**Prosecution's Response to the Defence "Observations supplémentaires de la
Défense à la suite de l' audience tenue le 15 novembre 2011"**

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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**Victims Participation and Reparations
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Other

Submissions

1. At the Status Conference on 15 November 2011, the Trial Chamber sought the views of the parties and participants on two discrete issues: i) the appropriateness of issuing the Decision pursuant to Article 74 of the Rome Statute (Statute) in the English language before the version in French; and ii) the timing and scheduling of an appeal pursuant to Rule 150 of the Rules of Procedure and Evidence (Rules).¹
2. In respect of the first issue, the Prosecution submitted that it would be in the interests of judicial efficiency for the English version of the Article 74 Decision to be issued as soon as it ready, with the French translation following later, and that once the English version of the Decision was issued, it should be considered notified and authoritative.²
3. In respect of the second issue, the Prosecution submitted that the Statute does not specifically envision the timing of an appeal pursuant to Rule 150 to commence only upon the issuance of the decision in the Accused's preferred working language of the Court. However, in the interests of fairness, if the Decision found the Accused guilty, the Prosecution did not object to allowing the time for an appeal by the Accused to commence upon issuance of the French translation of the English-language decision. Additionally, the Prosecution accepted that in the event of an acquittal, the timing of an appeal would commence upon issuance of the decision in English.³
4. Lastly, the Prosecution argued that in the event of a conviction, the Trial Chamber could proceed with sentencing without waiting for the French version of the Article 74 Decision. Similarly, in the event of an acquittal, the

¹ T.358, pages 1 to 2.

² T.358, page 2.

³ T.358, page 3 and 4.

Trial Chamber could release the Accused upon issuance of the English language decision.⁴

5. In its “Observations supplémentaires de la Défense à la suite de l’ audience tenue le 15 novembre 2011” (Supplementary Observations), the Defence appears to concur with the above position on all points, save on one technical issue: that is, when the Article 74 Decision is to be considered formally notified. It argues that the Article 74 Decision is *only* to be considered notified (i.e pursuant to Regulation 31 of the Regulations of the Court) once the French version is issued (i.e in the language the Accused fully understands).⁵ The Defence further submits the timing of any appeal should commence from that point.⁶
6. As mentioned above, the Prosecution does not object, in the interests of fairness, for the time for filing a Defence appeal (should the Accused be convicted) in this instance to commence once the French version of the Article 74 Decision is issued. The Prosecution disagrees, however, that the Accused is entitled as a matter of law to be notified in a language he fully understands. To the contrary, once a decision is issued in a working language of the Court⁷ - and in this case it appears that the Decision will be first issued in English⁸ - it is ordinarily to be considered notified. Indeed, this has been the practice of the Trial Chamber throughout this trial; a decision is considered notified once it is issued in a working language of the Court.
7. That said, the Prosecution submits that the Chamber has the power to issue an order delaying notification of the Article 74 Decision under Regulation 31(2) of the Regulations of the Court (explaining that notification occurs on

⁴ T.358, page 8, 12 and 13.

⁵ Paragraph 2 of the Supplementary Observations.

⁶ Paragraph 3 of the Supplementary Observations.

⁷ See ICC-01/04-01/06-1125, paragraph 14, 21 January 2008.

⁸ T.358, page 1 and 2.

the day a decision is sent by the Chamber to the Registry “unless otherwise [...] ordered by the Chamber”). Given the language of Regulation 31, the Prosecution submits that the Chamber has the discretion to order that formal notification to the Defence be delayed until the day a French translation of the decision is sent to the Registry.

8. The Prosecution’s position that the Chamber should exercise its discretion to “otherwise [...] order[]” notification to the Defence to occur on the day of the French decision, however, is strictly limited to the Article 74 Decision, and only in the event that the Decision convicts the Accused in whole or in part. The Prosecution further submits that an order delaying notification for purposes of triggering the time limits for filing an appeal is not to further delay the consideration of sentence in the event of conviction.
9. In fact, in accepting that the Trial Chamber can move to the sentencing phase in the event of a conviction *before* the French version of the Article 74 Decision is notified, the Defence implicitly accepts that the Article 74 Decision is final once it is issued in English.

10. Lastly, the Prosecution submits that notwithstanding the requirement in Article 74(5) that “the decision or a summary thereof shall be delivered in open court”, in the interests of victims and the affected communities in the DRC, any written summary prepared by the Chamber should be made simultaneously available in both English and French at the time the English language version of the Decision is issued.



Luis Moreno-Ocampo
Prosecutor

Dated this 23rd day of November 2011
At The Hague, The Netherlands