

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 28 May 2012

TRIAL CHAMBER I

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

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

Public

Prosecution's Response to « Requête urgente de la Défense aux fins de prorogation de délais »

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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I. INTRODUCTION

1. In its 24 April 2012 "Order fixing the date for the sentencing hearing", Trial Chamber I ("Chamber") ordered the Prosecution and legal representatives of victims to file by 14 May 2012 written submissions on i) the relevant evidence presented during trial that may be applicable to sentence along with views as to sentence to be imposed on the convicted person, taking into consideration, *inter alia*, any specific aggravating and mitigating factors, and ii) time required for oral submissions to be made during the sentencing hearing scheduled for 13 June 2012¹.
2. In that order, the Chamber instructed the Defence to file its submissions on the sentence to be imposed and to inform the Court whether it will seek to present new evidence during the sentencing hearing by 1600 on 28 May 2012².
3. On 25 May 2012, the Defence filed its "Requête urgente de la Défense aux fins de prorogation de délais"³ ("Defence Application") seeking leave to extend the 28 May 2012 deadline by a further eleven days to 8 June 2012. On 25 May 2012, the Chamber instructed the parties to file any responses to the Defence Application by 1200 p.m. on 28 May 2012⁴.

II. SUBMISSIONS

4. The Defence claims that due to the Registry's delay in deciding whether additional resources could be provided to the Defence, it has been unable to

¹ ICC-01/04-01/06-2871, paragraph 5.

² *Ibid.*, paragraph 6.

³ ICC-01/04-01/06-2884.

⁴ Email communication from a Legal Officer to the Trial Division at 15:26 hrs.

conduct the necessary investigative activities in the field in order to determine whether it will seek leave to present new evidence at the sentencing hearing.

5. As a result, it had to cancel a mission to the field, scheduled for 13 to 17 May 2012⁵. However, it did manage to undertake the mission a few days later, from 17 to 22 May 2012⁶. The Defence does not explain why it waited until 25 May 2012 to file its “urgent” application for additional time.
6. The Prosecution does not object to the Defence being given an extension of the deadline, but submits that it has not shown good cause to justify an eleven day extension. In fact, the Defence has not even attempted to explain why an eleven-day extension is now warranted. Accordingly, the Prosecution submits that the deadline should be extended only to 4 June 2012, for the following reasons:
 - (i) Although the Defence had to postpone its mission, the delay was only a few days. No information is provided as to why this investigative mission did not enable the Defence to define its position on sentencing and, why, more importantly, a further eleven days is required.
 - (ii) The Prosecution further notes that its own sentencing submissions refer to evidence in the case and findings in the Article 74 Judgment - leave for presentation of new evidence is not being sought - and to the principles outlined in the Rome Statute and the Rules of Procedure and Evidence. Accordingly, there is no surprise to the Defence meriting an eleven day extension to the deadline.

⁵ ICC-01/04-01/06-2884, paragraph 7.

⁶ *Ibid.*, paragraph 10.

(iii) With the date for the hearing set for 13 June 2012, the period from 4 to 13 June will provide the Prosecution - and the participants - more time for it to prepare and respond to any Defence application to present new evidence. Any shortening of the time period may impact upon the efficacy of the Prosecution response and preparation.

7. The Prosecution therefore requests the Chamber to reject the Defence's application to move the deadline to 8 June. That said, the Prosecution does not object to it being varied to 4 June 2012.



Luis Moreno-Ocampo
Prosecutor

Dated this 28th day of May 2012
At The Hague, The Netherlands