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No.: ICC-01/04-01/06
Date: 14 December 2012

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

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

Public

Prosecution's Request for an Extension of the Page Limit

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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Procedural Background

1. On 14 March 2012, Trial Chamber I (the “Trial Chamber”) issued its “Judgment pursuant to article 74 of the Statute” in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the “Judgment”), in which it found Thomas Lubanga guilty as a co-perpetrator of three counts of war crimes: enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities in the Ituri region of the Democratic Republic of the Congo (the “DRC”) from early September 2002 to 13 August 2003.¹
2. On 10 July 2012, the Trial Chamber rendered its “Decision on Sentence pursuant to article 76 of the Statute” in which the Majority imposed a joint sentence of 14 years’ imprisonment for Thomas Lubanga’s crimes (the “Sentencing Decision”).²
3. On 3 October 2012 the Appellant lodged its Notice of Appeal against the Judgment.³
4. On 26 November 2012 the Appellant submitted a « *Requête de la Défense aux fins de présentation d’éléments de preuve supplémentaires dans le cadre des appels à l’encontre du « Jugement rendu en application de l’Article 74 du Statut » et de la « Décision relative à la peine, rendue en application de l’article 76 du Statut »* »⁴ (“Appellant’s Request”).
5. On 29 November 2012, the Prosecution filed the « Prosecution’s Request for Instructions under Regulation 62 of the Regulations of the Court » in which it requested that the Appeals Chamber allow the Prosecution to respond to the Appellant’s application within 21 days and thereafter resolve the issue of admissibility of the proposed additional items of evidence before the Prosecution’s responsive brief is due on 4 February 2012.⁵

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901. The Sentencing Decision includes the dissenting opinion of Judge Odio Benito, pp.41-52.

³ ICC-01/04-01/06-2934-tENG

⁴ ICC-01/04-01/06-2942-Conf.

⁵ ICC-01/04-01/06-2947-Conf

Application for an extension of the Page Limit

6. Unless otherwise instructed by the Appeals Chamber, the Prosecution will be filing its response to the Appellant's application on 18 December 2012. Under Regulation 37(2), the Chamber may grant an extension of the page limit in exceptional circumstances. The Prosecution submits that exceptional circumstances exist in the present case, and requests that the Appeals Chamber grant an extension of 5 pages for its response to the Appellant's request to present additional evidence on appeal.
7. The Appellant's Request is the first request to present additional evidence before the Appeals Chamber under Regulation 62 in the context of an appeal against an article 74 decision. The Appellant seeks to present eight categories of additional evidence, in addition to which it seeks to call two witnesses to give live testimony. The Prosecution must not only provide the Appeals Chamber with a clear and comprehensive account of the factual circumstances relevant to this request for the eight categories of evidence and two proposed live witnesses, but must also include comprehensive legal submissions on the issue of admissibility of additional evidence on appeal in order to assist the Appeals Chamber on this issue. The novelty of the issue to this Court requires that the matter be addressed thoroughly.
8. The Prosecution submits that in this case the novelty of the issues, including submissions on the current jurisprudence and the need to provide a detailed factual analysis of the Appellant's Request, constitute exceptional circumstances and warrant a confined extension of the page limit by a further 5 pages.

Relief sought

9. For the reasons set out above, the Prosecution requests that the Chamber grant an extension of the page limit by 5 additional pages in response to the Appellant's Request to present additional evidence.



Fatou Bensouda
Prosecutor

Dated this 14th day of December 2012
At The Hague, The Netherlands