

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-01/06**
Date: **19 February 2013**

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 Document

Prosecution's Response to Thomas Lubanga's Request to File a Reply

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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REGISTRY

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Procedural History

1. On 14 March 2012, the Trial Chamber convicted Thomas Lubanga of three counts of war crimes.¹ 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.²
2. On 3 October 2012, the Prosecution filed a Notice of Appeal against the Sentencing Decision.³ On the same day, Thomas Lubanga filed Notices of Appeal against the Judgment⁴ and the Sentencing Decision⁵.
3. On 26 November 2012, the Appellant submitted a request to present additional evidence for the first time on appeal.⁶
4. On 3 December 2012, the Appellant filed documents in support of both his appeal against the Sentencing Decision⁷ and his appeal against the article 74 Judgment.⁸ On the same day, the Prosecution filed the document in support of its appeal against the Sentencing Decision.⁹
5. On 4 February 2013, the Prosecution filed its response to the Appellant’s appeals against conviction¹⁰ and sentence¹¹, including to his request to present additional evidence. On the same day, the Appellant filed his response to the Prosecution’s appeal against sentence.¹²

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901.

³ ICC-01/04-01/06-2933 OA4.

⁴ ICC-01/04-01/06-2934 OA5.

⁵ ICC-01/04-01/06-2935 OA6.

⁶ ICC-01/04-01/06-2942-Conf.

⁷ Sentencing Appeal Brief.

⁸ ICC-01/04-01/06-2948-Conf.

⁹ ICC-01/04-01/06-2950.

¹⁰ ICC-01/04-01/06-2969-Conf.

¹¹ ICC-01/04-01/06-2968-Conf.

¹² ICC-01/04-01/06-2967-Conf.

6. On 15 February 2013, the Appellant requested permission to file a reply to the Prosecution's responses to his appeals against conviction and sentence.¹³

Prosecution's Submission

7. Parties to appellate proceedings do not have an automatic right of reply. Rather, Regulation 60 of the Regulations of the Court stipulates that where the Appeals Chamber considers it "necessary in the interests of justice, it may order the appellant to file a reply" within a time-limit specified by the same Chamber.
8. In the context of interlocutory appeals, the Appeals Chamber has held that it will order a reply only where "the arguments that are raised in a response to a document in support of the appeal make further submissions by the appellant necessary for the proper disposal of the appeal".¹⁴ The same principle should be applicable to final appeals. It follows that an applicant must provide adequate and compelling reasons to justify filing additional written argument before the Appeals Chamber, particularly on issues that have been comprehensively addressed in lengthy written submissions, as is the case here.¹⁵
9. The Appellant seeks to file a reply to address: (a) one item of rebuttal evidence proffered by the Prosecution in response to his request to present additional evidence on appeal; (b) unspecified Prosecution arguments regarding the additional evidence; and (c) other unspecified arguments in the Prosecution's response to his appeals.
10. On the first point, the Appellant seeks to justify a reply on the basis that he is seeing the Prosecution's rebuttal evidence for the first time.¹⁶ Yet, this in and of itself cannot be sufficient justification; it will always be the case whenever a party

¹³ ICC-01/04-01/06-2979.

¹⁴ ICC-01/04-01/06-424, para.7.

¹⁵ The Appellant set out his arguments on appeal in two documents, one of 116 pages and the other of 31 pages, along with an additional 18-page request to present additional evidence on appeal: ICC-01/04-01/06-2948-Conf, ICC-01/04-01/06-2949 and ICC-01/04-01/06-2942-Conf, respectively.

¹⁶ ICC-01/04-01/06-2979, para.10.

submits rebuttal evidence in response to requests to present additional evidence on appeal that the opposing party will see the rebuttal evidence for the first time only once it is filed. If the Appellant is correct, the mere presentation of rebuttal evidence by the responding party would automatically give rise to a right to file a reply by the appellant. The critical consideration is whether the evidence in question requires additional submissions by the Appellant for a proper determination of the issues. In the Prosecution's view, this is not the case. First, the Prosecution has been surgical and has adduced only one document in rebuttal, and only in relation to a narrow issue (the reliability of election cards to prove identity in the DRC). Second, the Appellant's justification for his request fails to establish a true need for any reply: the Appellant states that he will argue that the rebuttal document has limited probative value because of its "general" nature,¹⁷ but the Chamber can surely assess the evidentiary value of the proposed evidence without the Appellant's responsive argument. The Prosecution however recognizes that it is ultimately for the Appeals Chamber to determine whether it would be assisted by further submissions by the Appellant.

11. Nor, in the Prosecution's view, can a reply be justified based on general claims that the Appellant intends to respond to "certain arguments" made by the Prosecution¹⁸ without indicating the arguments to which he wishes to reply. A vague and general intention to complete information or correct inaccuracies, without more, is an insufficient basis on which to conclude that a reply will be necessary or even helpful.

¹⁷ ICC-01/04-01/06-2979, para.11.

¹⁸ ICC-01/04-01/06-2979, paras.8 and 12.

Conclusion

12. For the reasons set out above, the Prosecution opposes the Appellant's request and submits that the proposed reply is not necessary for the fair adjudication of the appeal.



Fatou Bensouda
Prosecutor

Dated this 19th day of February 2013
At The Hague, The Netherlands