

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 May 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 Redacted Document

**Prosecution's Reasons for its Request for Non-Disclosure of Information in
Document "OTP/DRC/COD-190/JCCD-pt"**

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 Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

The Trust Fund for Victims

**The Office of Public Counsel for
Victims**

REGISTRY

Registrar

Mr Herman von Hebel

Procedural History

1. On 14 March 2012, the Trial Chamber convicted the Appellant of three counts of war crimes.¹ On 10 July 2012, the Trial Chamber rendered a decision on sentence.² Both parties filed notices of appeal.³
2. On 26 November 2012, the Appellant submitted a request to present additional evidence for the first time on appeal.⁴ On 3 December 2012, the Appellant filed documents in support of both his appeal against conviction⁵ and sentence⁶.
3. On 4 February 2013, the Prosecution filed its response to the Appellant's appeals against conviction⁷ and sentence⁸, and addressed his proffered new evidence including as rebuttal a letter from the DRC authorities on its procedures for obtaining election cards and whether they qualify as official identity documents.
4. On 27 February 2013, the Appellant requested that the Appeals Chamber order the Prosecution to disclose a request for assistance 'OTP/DRC/COD-190/JCCD-pt' ("RFA") sent by the Prosecution to the DRC authorities on 23 January 2013, with any other related documents.⁹
5. On 1 March 2013, the Appeals Chamber ordered the Prosecution to respond to the Appellant's disclosure request.¹⁰ On 12 March 2013, the Prosecution submitted its response.¹¹
6. On 11 April 2017, the Appeals Chamber ordered the Prosecution to disclose the RFA with redactions to information that in the Prosecution's view cannot be

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901.

³ ICC-01/04-01/06-2933 OA4; ICC-01/04-01/06-2934 OA5; ICC-01/04-01/06-2935 OA6.

⁴ ICC-01/04-01/06-2942-Conf.

⁵ ICC-01/04-01/06-2948-Conf.

⁶ Sentencing Appeal Brief.

⁷ ICC-01/04-01/06-2969-Conf.

⁸ ICC-01/04-01/06-2968-Conf.

⁹ ICC-01/04-01/06-2988, para.6.

¹⁰ ICC-01/04-01/06-2991.

¹¹ ICC-01/04-01/06-2998.

disclosed to Mr Lubanga and to communicate the proposed redacted version of the RFA to the Appeals Chamber.¹²

7. On 17 April 2013, the Prosecution disclosed document 'OTP/DRC/COD-190/JCCD-pt' to Mr Lubanga Dyilo in redacted form and communicated the proposed redacted version to the Appeals Chamber.¹³
8. On 25 April 2013, the Appeals Chamber ordered the Prosecution to provide reasons for its proposed redactions to the RFA in a filing that, to the extent possible, is available to Thomas Lubanga.¹⁴

Confidential, *ex parte* filing

9. The Prosecution submits the present filing on a confidential, *ex parte* Prosecution only basis pursuant to Rule 81(2) of the Rules of Procedure and Evidence (Rules). It simultaneously files a public redacted version.

Prosecution's Submissions

10. The Prosecution requests the non-disclosure of information in the RFA pursuant to Rule 81(2) on the grounds that disclosure may prejudice its ongoing investigations.
11. The Prosecution's RFA contains a number of specific requests to the DRC that are relevant to its investigation into new evidence that Thomas Lubanga seeks to introduce for the first time on appeal. These requests are set out in points 4 and 5 of the RFA. Point 4 contains [REDACTED] requests specifically related to the evidence presented by Thomas Lubanga while point 5 contains questions pertaining to the process to obtain election cards and the manner in which they are treated as identity documents in the DRC.

¹² ICC-01/04-01/06-3017.

¹³ ICC-01/04-01/06-3019.

¹⁴ ICC-01/04-01/06-3022.

12. The DRC's letter in response to the Prosecution's RFA *does not respond to all of these questions*. Indeed, the RFA addresses only one of the [REDACTED] requests for information contained in Point 4 of the RFA (the verification of the two election cards issued in 2011) and it addresses all of the questions in Point 5 (the process in the DRC for obtaining election cards, including whether an applicant is required to provide proof of identity and date of birth or whether an oral declaration is sufficient, and whether election cards are considered to be civil status documents in the DRC proving identity and date of birth).
13. Critically, the [REDACTED] remaining requests in Point 4 of the RFA are still pending. [REDACTED].
14. The Prosecution has also redacted the email address of the focal point within the DRC authorities and the email address and telephone number of the international cooperation adviser at the ICC. The names of these individuals and their titles have not been redacted. The Prosecution submits that their contact details are irrelevant to known issues in the case and limited redactions are necessary to protect the integrity of their work and further and ongoing investigations.
15. The requested redactions are limited to the information that is strictly necessary to preserve the Prosecution's ongoing investigations and there are no other means available to safeguard the continued investigation.¹⁵



Fatou Bensouda
Prosecutor

Dated this 2nd day of May 2013
At The Hague, The Netherlands

¹⁵ ICC-01/04-01/07-476, paras.61, 97-99.