

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 6 February 2014

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 CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public

Prosecution's motion to strike sections of the Defence's reply and request, in the alternative, to file additional submissions

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
Section**

Other

Submissions

1. On 3 February 2014, Mr Thomas Lubanga (“the Appellant”) responded to the Victims’ Observations¹ and Prosecution’s Response² to his request for additional evidence and new ground of appeal (“Reply”).³ The Prosecution requests that the Appellant’s submissions replying to the Prosecution’s Response be summarily dismissed due to lack of judicial authorisation and legal basis. The Appeals Chamber granted leave to the Prosecution and to the Appellant to respond to the Victims’ Observations filed on 24 January 2014, but it did not grant leave to the Appellant to reply to the Prosecution’s Response filed on 17 January 2014.⁴ Moreover, Regulation 62 of the Regulations of the Court (“RoC”) does not expressly foresee the possibility of filing a reply, and Regulation 61(7) refers to Regulation 60, which requires leave from the Appeals Chamber to reply if it considers it “necessary in the interests of justice”. Despite this lack of judicial and legal support, the Appellant devotes most of the Reply to contest the Prosecution’s submissions.⁵ On these grounds, those sections of the Appellant’s Reply should be rejected.

2. However, if the Appeals Chamber decides to entertain the Reply, the Prosecution seeks leave to provide additional and concise submissions to address certain arguments raised by the Appellant. In particular, that (1) the documents could contradict the evidence of P-0299, and that the Prosecution should have disclosed them pursuant to Article 67(2) at that time;⁶ that (2) the Prosecution should have

¹ ICC-01/04-01/06-3059-Conf A5 A6 (Victims’ 01 Observations) and ICC-01/04-01/06-3060-Conf A5 A6 (Victims’ 02 Observations).

² ICC-01/04-01/06-3058-Conf A5 A6.

³ ICC-01/04-01/06-3063 A5 A6.

⁴ ICC-01/04-01/06-3057 A5 A6, para.14: « Finally, the Appeals Chamber directs the Legal Representatives of Victims V01 and Victims V02 to set out the victims’ views and concerns in respect of their personal interests affected by the issues raised in the abovementioned filings in observations, not to exceed 10 pages, by 24 January 2014. Mr Lubanga and the Prosecutor may each respond thereto in a consolidated filing not to exceed 10 pages. »

⁵ Reply, paras.5-8, 18-24. The Appellant expressly indicates that he is responding to both the Victims’ Observations and the Prosecution’s Response. See Reply, para.2.

⁶ Reply, para.22.

disclosed the documents during the testimony of D-0040 because the witness could have authenticated them and confirm their content;⁷ and that (3) the documents were essential for the Appellant to exercise his defence.⁸

3. The Prosecution wishes to further clarify why at the time of the testimony of P-0299 and D-0040 the two documents were not disclosed. The Prosecution will also explain how the documents do not contradict P-0299's evidence and do not fall within Article 67(2), and how the documents were not essential for the Appellant to prepare his defence. The Prosecution's submissions may assist the Appeals Chamber in its determination of the Appellant's request for additional evidence and new ground of appeal.

Relief Sought

4. For all the above-stated reasons, the Prosecution requests that the Appellant's Reply be rejected in part or, in the alternative, be granted leave to provide further submissions.



Fatou Bensouda, Prosecutor

Dated this 6 February 2014

At The Hague, The Netherlands

⁷ Reply, para.23.

⁸ Reply, para.20.