

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **15 May 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**

Confidential and URGENT

Prosecution's Response to « *Requête urgente de la Défense sollicitant la comparution du témoin D-0041 devant la Chambre d'appel par vidéo-conférence* »

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

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Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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Mr. Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. On 15 May 2014, by way of an urgent filing, the Defence seeks authorisation for D-0041 to testify by video-conference before the Appeals Chamber during the appeals hearing on 19 May 2014.¹ It claims that D-0041 contacted the Defence team on 15 May 2014 and confirmed that he was always willing to testify before the Chamber. He indicated his availability to appear on 19 May 2014.²

2. Pursuant to an order from the Appeals Chamber,³ the Prosecution hereby files its urgent response to the Defence Request.

3. Despite the lateness of the notice provided by the Defence, the Prosecution does not oppose the Request. The live testimony of D-0041 was already scheduled to be heard on 19 May 2014.⁴

4. The Defence has informed the Prosecution that it is currently inquiring with D-0041 whether he agrees to meet with Prosecution counsel prior to his testimony. Due to the lateness of the Request, it is unclear if such a meeting will be logistically feasible, even if D-0041 consents to it. As a result, the Prosecution notifies the Appeals Chamber that it may not be able to provide the Chamber and the Defence with a complete list of documents that it intends to use during its cross-examination of D-0041. The list of documents may expand if and when the Prosecution has had an opportunity to meet with D-0041 and after the examination-in-chief.

5. Due to the lateness of the notice, the Prosecution is also not able to provide this list (which remains subject to revision) to the Defence and to the Appeals Chamber three working days before the scheduled hearing as ordered by the Appeals Chamber.⁵ It will do so as soon as possible and no later than 4 p.m. on 16 May 2014.

¹ ICC-01/04-01/06-3092-Conf ("Defence Request").

² Defence Request, para.8.

³ ICC-01/04-01/06-3094.

⁴ See ICC-01/04-01/06-3067, para.1; ICC-01/04-01/06-3068, p.3; ICC-01/04-01/06-3079, p.3; ICC-01/04-01/06-3083, pp.3-6.

⁵ ICC-01/04-01/06-3083, p.5.

6. If for any reason, D-0041 cannot attend the appeals hearing as scheduled on 19 May 2014, the hearing should not be further postponed. Moreover, if D-0041 does not testify, his statement and related documents should not be admitted *in lieu* of oral testimony, as the Prosecution has previously submitted in its filing of 14 May 2014.⁶

7. Pursuant to Regulation 23bis(2), the Prosecution files its response confidentially because the Defence Application was filed with the same classification.



Fatou Bensouda, Prosecutor

Dated this 15th day of May 2014

At The Hague, The Netherlands

⁶ See ICC-01/04-01/06-3091.