

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/06 A4 A 5 A 6

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 THE CONGO

IN THE CASE OF THE PROSECUTOR v. THOMAS LUBANGA DYILO

URGENT

Public document

Further order on matters relevant to the hearing before the Appeals Chamber

Order to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence
Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of Victims V01
Mr Luc Walley
Mr Franck Mulenda

Legal Representatives of Victims V02
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

REGISTRY

Registrar
Mr Herman von Hebel

HK

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against Trial Chamber I's decision entitled "Judgment pursuant to Article 74 of the Statute" of 14 March 2012 (ICC-01/04-01/06-2842), and

In the appeals of Mr Thomas Lubanga Dyilo and the Prosecutor against Trial Chamber I's "Decision on Sentence pursuant to Article 76 of the Statute" of 10 July 2012 (ICC-01/04-01/06-2901),

Noting the "Scheduling order for a hearing before the Appeals Chamber" of 21 March 2014 (ICC-01/04-01/06-3067), in which the Appeals Chamber called a hearing, in order to *inter alia* hear the testimony of witnesses D-0040 and D-0041, and the "Further order regarding the conduct of the hearing of the Appeals Chamber" of 25 March 2014 (ICC-01/04-01/06-3068), in which the Appeals Chamber *inter alia* set out the issues that the parties and participants may address in their submissions and observations;

Noting the "Scheduling order and decision in relation to the conduct of the hearing before the Appeals Chamber" of 30 April 2014 (ICC-01/04-01/06-3083), in which the Appeals Chamber *inter alia* established the procedures and timeframes for the questioning of the witnesses, and the timeframes for the submissions and observations by the parties and participants;

Noting the "*Requête de la Défense aux fins d'admission en preuve des éléments relatifs à D-0041*" of 12 May 2014 (ICC-01/04-01/06-3088-Conf), in which Mr Thomas Lubanga Dyilo (i) informs the Appeals Chamber that he withdraws his request for the testimony of witness D-0041 to be heard and (ii) requests that the Appeals Chamber admit as additional evidence certain materials related to this witness; as well as the "Prosecution's Response to « *Requête de la Défense aux fins d'admission en preuve des éléments relatifs à D-0041* »" of 14 May 2014 (ICC-01/04-01/06-3091-Conf);

Noting the "*Requête urgente de la Défense sollicitant la comparution du témoin D-0041 devant la Chambre d'appel par video-conference*" of 15 May 2014



(ICC-01/04-01/06-3092-Conf), wherein Mr Thomas Lubanga Dyilo requests to rescind his request for the withdrawal of witness D-0041 and that the Appeals Chamber hear the witness as originally planned, and the “Prosecution’s Response to « *Requête urgente de la Défense sollicitant la comparution du témoin D-0041 devant la Chambre d’appel par vidéo-conférence* »” of 15 May 2014 (ICC-01/04-01/06-3094-Conf), wherein the Prosecutor states that she does not oppose the request, but may not be able to comply with the previously announced deadline for the notification of materials that she intends to use with the witness;

Noting the “Transmission par la Défense de la liste des éléments qu’elle entend utiliser dans le cadre de l’audition du témoin D-0041” of 15 May 2014 (ICC-01/04-01/06-3093);

Pursuant to articles 64 and 83 of the Statute, rules 140, 149 and 79 (4) of the Rules of Procedure and Evidence and regulation 54 of the Regulations of the Court,

Issues the following

ORDER

- (1) The hearing before the Appeals Chamber scheduled for Monday, **19 May 2014** and Tuesday, **20 May 2014** shall take place in accordance with the procedures and timeframes established in the “Scheduling order and decision in relation to the conduct of the hearing before the Appeals Chamber” of 30 April 2014.
- (2) Mr Lubanga shall, by 16h00 on Friday, 16 May 2014, disclose to the Prosecutor and file confidentially in the record of the case any written statement that he has previously obtained from witness D-0040.
- (3) The parties and participants must bring any issues arising in relation to the hearing scheduled for 19 and 20 May 2014 to the attention of the Appeals Chamber in written submissions to be filed as soon as such issues are known, and, at the latest, by 9h30 on Monday, 19 May 2014, in which case advance courtesy copies shall be sent to the Appeals Chamber and the parties and participants.



- (4) By reference to paragraph (2) (d) of the “Scheduling order and decision in relation to the conduct of the hearing before the Appeals Chamber” of 30 April 2014, the Prosecutor shall notify, in accordance with the aforementioned order, the list of materials she intends to use during the examination of witness D-0041 by 16h00 on Friday, 16 May 2014; and, for any additional documents known only subsequent to this deadline, at the latest in accordance with the time line established in paragraph (3) of this order.
- (5) The Appeals Chamber informs the parties that no documents that are the subject of an application for admission as additional evidence before the Appeals Chamber pursuant to regulation 62 of the Regulations of the Court will be admitted into evidence at the hearing. For any documents that are not the subject of a current application and for which the parties intend to request their admission as such, the parties shall make a written filing in accordance with regulation 62 of the Regulations of the Court to be filed at the latest by 16h00, on Friday, 23 May 2014.
- (6) The Registrar is instructed to facilitate the taking of photographs at the beginning of the hearing on 19 May 2014.

Done in both English and French, the English version being authoritative.



Judge Erkki Kourula
Presiding Judge

Dated this 15th day of May 2014

At The Hague, The Netherlands