



Original: **English**

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

Date: **20 August 2015**

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW
CONCERNING REDUCTION OF SENTENCE**

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

THE PROSECUTOR

v. THOMAS LUBANGA DYILO

Public Redacted

Public redacted version of Prosecution's notice regarding potentially relevant information to Thomas Lubanga Dyilo's sentence review, 29 June 2015, ICC-01/04-01/06-3140-Conf-Exp

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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Introduction

1. The Office of the Prosecutor (“Prosecution”) has information that may implicate Thomas Lubanga Dyilo in witness interference from the ICC Detention Centre in the *Bosco Ntaganda* case. Based on this material, the Prosecution has sought to obtain additional information so that it may be able to conduct investigations into the situation. While this may be available in the coming weeks, it is unlikely that the Prosecution will be in possession of sufficient material upon which to make informed submissions (or not, depending on the outcome of its investigations) in its written submissions due on 10 July 2015 or even at the hearing scheduled to take place on 16 July 2015.¹

2. Because the issue of Lubanga’s criminal activity could be relevant to the Panel’s review of his sentence, the Prosecution hereby notifies the Panel that it *may* need to make further submissions (oral and/or written, and *ex parte* if necessary) on this matter after the scheduled written and oral submissions and seeks the Panel’s permission to do so, if necessary.

3. Subject to the Panel’s views,² the Prosecution stands ready to proceed with the current schedule, so long as it is able to make further submissions on Lubanga’s suspected involvement in witness interference, if need be, as and when such information may be available.

¹ See ICC-01/04-01/06-3137 (“Scheduling Order”), pp.3-4. “Three Judges of the Appeals Chamber appointed for the Review concerning Reduction of Sentence” is referred to as “the Panel”.

² Scheduling Order, p.3. See also Scheduling Order, p.4, where the Panel noted that the concerned parties and participants could inform it of any difficulties that may affect the scheduled date of the hearing.

Level of Confidentiality

4. The Prosecution, under regulation 23*bis*(1) of the Regulations of the Court, files this request on a strictly confidential and *ex parte* basis. The request contains information that is similarly classified before Trial Chamber VI, and is not currently available to Lubanga, among others. It should remain so.

Submissions

5. The Prosecution has grounds to believe that Thomas Lubanga may be involved in acts of witness interference in the case against Bosco Ntaganda. In particular, he may have used, and may still be using, his ability to communicate from the ICC Detention Centre to disseminate confidential information and interfere with Prosecution witnesses in the *Ntaganda* case. To assist the Panel with the information currently available on Lubanga's suspected witness interference, the Prosecution provides the reference to its filing in the *Ntaganda* case.³

6. Following the initial information available to it, the Prosecution applied to the Trial Chamber in *Ntaganda* for access to Lubanga's list of non-privileged contacts, call logs and visitors' logs.⁴ The Trial Chamber's decision is pending. If the request is granted, the Prosecution will then analyse the call logs. [REDACTED]. It is clear that the additional information sought by the Prosecution to make a more informed decision as to whether Lubanga is involved in witness interference in the *Ntaganda* case will not be available before 16 July 2015.

7. Notwithstanding the limited nature of the information available to the Prosecution at this stage, the Prosecution considers that if Lubanga is shown to be involved in witness interference, this may be relevant to the Panel's review of his sentence under article 110 of the Statute and rule 223 of the Rules of Procedure and Evidence. For example, such information could be relevant to assessing Lubanga's

³ See ICC-01/04-02/06-603-Conf-Exp. See also Annexes A-E to this filing.

⁴ ICC-01/04-02/06-603-Conf-Exp.

conduct while in detention under rule 223(a); the impact of any early release on the victims and their families;⁵ and more generally, may be relevant to the Panel's exercise of its discretion to grant or deny early release.

8. The Prosecution acknowledges that in light of the statutory requirements governing early release⁶ and the *ex parte* nature of this notice, the Panel may still wish to proceed with the current written submissions and hearing schedule. However, in these circumstances, the Prosecution wishes to reserve the right to make written and/or oral submissions (*ex parte* if necessary) on Lubanga's suspected criminal activity after the hearing—if need be—if and when such additional information were to become available.

Conclusion

9. Subject to the Panel's views, the Prosecution is available to proceed with the current written submissions and hearing schedule. However, the Prosecution wishes to reserve the right to make written and/or oral submissions (*ex parte* if necessary) — if need be— if and when additional information on Lubanga's suspected involvement in witness interference were to emerge, and seeks the Panel's permission to do so, if necessary.

⁵ See *e.g.*, rule 223(d). At this stage, the Prosecution refers only to some of the factors under rule 223 to illustrate how this information may be relevant. The Prosecution will make further detailed submissions if required.

⁶ Article 110(3) states “[w]hen the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.”



Fatou Bensouda, Prosecutor

Dated this 20th day of August 2015

At The Hague, The Netherlands

Word Count:1080⁷

⁷ It is hereby certified that this document contains the number of words specified and complies in all respects with the requirements of regulation 36 of the RoC. This statement (53 words), not itself included in the word count, follows the Appeals Chamber's recent direction to "all parties" appearing before it: ICC-01/11-01/11-565 OA6, para.32.