



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 third notice regarding potentially relevant information to Thomas Lubanga Dyilo's sentence review, 14 August 2015, ICC-01/04-01/06-3160-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. To assist the Panel in its review of Mr Thomas Lubanga's sentence, the Prosecution hereby notifies the Panel of additional information regarding Mr Lubanga's alleged participation in a scheme of witness interference in the case against Bosco Ntaganda.

Level of Confidentiality

2. The Prosecution, under regulation 23*bis*(1) of the Regulations of the Court, files this request on confidential and *ex parte* basis. The request contains information that is similarly classified before Trial Chamber VI [REDACTED], and is not currently available to Mr Lubanga.¹

Submissions

3. The Prosecution has grounds to believe that Mr Lubanga may be involved in acts of witness interference in the *Ntaganda* case. In particular, he may have used his ability to communicate from the ICC Detention Centre to disseminate confidential information and interfere with Prosecution witnesses in the *Ntaganda* case.

4. The Prosecution requested additional material to conduct investigations into Mr Lubanga's involvement in this situation. In particular, on 20 May 2015 the Prosecution requested Mr Lubanga's call logs and list of non-privileged contacts from January to May 2015.² On 29 June 2015, Trial Chamber VI granted the Prosecution's request³ and, in addition, it ordered active monitoring of his non-privileged calls at the Detention Centre.⁴ The Trial Chamber also removed a number of names from Mr Lubanga's, and other detainees', lists of non-privileged telephone numbers, among them [REDACTED].⁵ On 2 July 2015, the Registry transmitted the

¹ The Prosecution is filing a confidential redacted version of this filing available to Mr Lubanga.

² ICC-01/04-02/06-603-Conf-Exp.

³ ICC-01/04-02/06-684-Conf-Exp.

⁴ ICC-01/04-02/06-683-Conf-Exp-Red2, para.13.

⁵ ICC-01/04-02/06-683-Conf-Exp-Red2, para.11.

requested material to the Prosecution.⁶ The Prosecution provided the Panel with its assessment of the material in its Observations on Sentence Review filed on 10 August 2015.⁷

5. Due to the relevance of this information to the Panel's review concerning reduction of sentence of Mr Lubanga, the Prosecution has kept the Panel apprised of the actions taken and information obtained regarding Mr Lubanga's suspected witness interference.⁸

6. To continue assisting the Panel with the information currently available, the Prosecution provides the reference to the Second Registry Report,⁹ and Annex 3 appended to the report, which were provided in redacted form to the Prosecution on 16 July 2015.¹⁰ The report analyses different conversations of Mr Ntaganda from December 2013 to December 2014. Annex 3 provides – in a heavily redacted form – extracts of conversations of 14 December 2013. The information contained therein indicates that Mr Lubanga has been acting as an intermediary between Mr Ntaganda and [REDACTED], transmitting information regarding *Ntaganda's* case to both of them.

7. This information is relevant to the Panel's review of Mr Lubanga's reduction of sentence. Mr Lubanga already has access to the Second Registry Report¹¹ and, [REDACTED].¹²

8. Because the preliminary conclusions of the Registry raise serious concerns and the information received in the annex was highly redacted, [REDACTED],¹³ [REDACTED]. [REDACTED].¹⁴

⁶ ICC-01/04-02/06-694-Conf-Exp with three annexes.

⁷ ICC-01/04-01/06-3150-Conf-Exp, paras.14-15 ("Prosecution's Observations on Lubanga's Sentence Review").

⁸ ICC-01/04-01/06-3141-Conf-Exp; ICC-01/04-01/06-3140-Conf-Exp.

⁹ ICC-01/04-02/06-607-Conf-Exp-Red2 ("Second Registry Report"), see in particular paragraphs 9 and 16.

¹⁰ ICC-01/04-02/06-607-Conf-Exp-Anx3-Red ("Annex 3"), see in particular, pp.1-2, 5 and 7.

¹¹ ICC-01/04-02/06-683-Conf-Exp, paras.15-16.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

Conclusion

9. The Prosecution stands ready to proceed with the hearing on 21 August 2015. However, and because the issue of Mr Lubanga's potential criminal activity could be relevant to the Panel's review of his sentence, the Prosecution reiterates its previous notification that it may need to make further submissions (oral and/or written, and *ex parte* if necessary) on this matter after the scheduled hearing and seeks the Panel's permission to do so, if necessary.

10. In addition, since the Legal Representatives do not have access to this and previous filings on this topic,¹⁵ the Prosecution advises the Appeals Chamber that it does not propose to refer to the content of these filings during the hearing, but only to their existence, to avoid the necessity of going into an *ex parte* session Prosecution and Defence only during the hearing.



Fatou Bensouda, Prosecutor

Dated this 20th day of August 2015

At The Hague, The Netherlands

Word Count:1,019¹⁶

¹⁵ ICC-01/04-01/06-3141-Conf-Exp; ICC-01/04-01/06-3140-Conf-Exp. The Prosecution will file a public redacted version of its observations (ICC-01/04-01/06-3150-Conf-Exp) also available to the Legal Representatives once the Registry files its public redacted version.

¹⁶ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para.32.