



Original: **French**

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

Date: **12 March 2013**

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***

Public Document

**Defence's Response to the "Prosecution's request to strike Thomas Lubanga's
Reply, or alternatively, for leave to respond to its new argument", filed on
6 March 2013**

Source: Defence Team for Mr Thomas Lubanga Dyilo

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr Fabricio Guariglia

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

PROCEDURAL HISTORY

1. On 6 March 2013, the Prosecution filed a request for the Defence to be ordered to file its Reply again so that it complies with the Appeals Chamber's previous rulings on the calculation of page limits.¹
2. The Prosecution also asked the Appeals Chamber for leave to respond to the submissions at paragraphs 11 to 13 of the Defence's Reply because, according to the Prosecution, they contain a new factual argument that the Defence had not raised in the documents in support of its appeals filed on 3 December 2012.
3. The Defence submits that the Prosecution's Request is meritless for the following reasons.

SUBMISSIONS

1 – Calculating page limits

4. The Defence understands from the orders issued by the Appeals Chamber in this case on 22 July 2008 and 30 July 2010 that only the pages containing the Parties' submissions are to be counted in calculating the page limit.²
5. The Defence filing in reply totals 22 pages, including a cover page and a notification page. The Defence's submissions thus take up 20 pages, as authorized by the Appeals Chamber in its order of 21 February 2013.³
6. In total, the Defence submissions, including the headings and footnotes, amount to 5,938 words, which is less than the authorized limit of 6,000 words.⁴
7. The Reply filed by the Defence on 28 February 2013 therefore complies with the Appeals Chamber's order of 21 February 2013 and with the regulations on

¹ ICC-01/04-01/06-2992.

² ICC-01/04-01/06-1445, para. 6, and ICC-01/04-01/06-2543, para. 10.

³ ICC-01/04-01/06-2982.

⁴ Regulation 36 of the Regulations of the Court (300 words x 20 pages = 6,000 words).

the format of documents filed before the Court and the calculation of page limits.

8. Moreover, it should be stressed that, in July 2008, the Prosecution itself submitted to the Appeals Chamber a 22-page document in support of an appeal.⁵ Following an order declaring the Prosecution's first filing inadmissible because its "Document in Support of the Appeal does not comply with regulation 36(3), fifth sentence, of the Regulations of the Court",⁶ the Prosecution filed a second document in support of its appeal consisting of 22 pages, including a title page and a notification page.⁷

2 – The new nature of the arguments submitted by the Defence at paragraphs 11 to 13 of its Reply

9. The Prosecution claims that, at paragraphs 11 to 13 of the Defence's Reply, the Defence alleges the deliberate non-disclosure of other documents, and other circumstances that had not been cited in the documents in support of its appeals.
10. That claim is baseless.
11. Regarding the Defence submission contained in paragraph 11 of its Reply, the Defence only refers to Annex 3 of the document in support of the appeal against the judgment⁸ without adding any new information. The Prosecution has been aware of the existence of this annex since 3 December 2012.
12. Regarding the example in relation to Witness P-0581, the Defence merely responded to the submission that the Prosecution made for the first time in its Response to the document in support of the Defence's appeal.

⁵ ICC-01/04-01/06-1446-Anx1.

⁶ ICC-01/04-01/06-1445, para. 6.

⁷ ICC-01/04-01/06-1446-Anx1.

⁸ ICC-01/04-01/06-2948-Anx3.

13. The Defence did not refer to the lists in relation to Witness P-0581 in the documents in support of its appeals. It was the Prosecution that introduced that new information in response to a Defence submission.⁹
14. The Defence presented the information referred to at paragraph 12 in reply to demonstrate that the example given by the Prosecution does not hold water.
15. It follows that the Prosecution cannot reproach the Defence for having replied to a submission that it itself made for the first time in a response.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER

TO DISMISS the Prosecution's Request filed on 6 March 2013.

[signed]

Catherine Mabilie, Lead Counsel

Dated this 12 March 2013

At The Hague

⁹ ICC-01/04-01/06-2968, para. 52.