



Original: **English**

No.: ICC-01/04-01/06
Date: **31 January 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

Prosecution's Urgent Request for an Extension of the Page Limit

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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Procedural Background

1. On 14 March 2012, Trial Chamber I (the “Trial Chamber”) issued its “Judgment pursuant to article 74 of the Statute” in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the “Judgment”), in which it found Thomas Lubanga guilty as a co-perpetrator of three counts of war crimes: enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities in the Ituri region of the Democratic Republic of the Congo (the “DRC”) from early September 2002 to 13 August 2003.¹
2. On 10 July 2012, the Trial Chamber rendered its “Decision on Sentence pursuant to article 76 of the Statute” in which the Majority imposed a joint sentence of 14 years’ imprisonment for Thomas Lubanga’s crimes (the “Sentencing Decision”).²
3. On 3 October 2012 the Appellant lodged its Notices of Appeal against the Judgment and against the Sentencing Decision.³
4. On 26 November 2012 the Appellant submitted a « *Requête de la Défense aux fins de présentation d’éléments de preuve supplémentaires dans le cadre des appels à l’encontre du « Jugement rendu en application de l’Article 74 du Statut » et de la « Décision relative à la peine, rendue en application de l’article 76 du Statut »* »⁴ (“Appellant’s Request”).
5. On 27 November 2012, the Appellant requested an extension of 20 pages for his document in support of appeal against the Article 74 Judgment.⁵ The Prosecution opposed.⁶
6. On 28 November 2012, the Appeals Chamber granted the Appellant’s request and stated:

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901. The Sentencing Decision includes the dissenting opinion of Judge Odio Benito, pp.41-52.

³ ICC-01/04-01/06-2934 and ICC-01/04-01/06-2935.

⁴ ICC-01/04-01/06-2942-Red A5 A6 and 8 annexes.

⁵ ICC-01/04-01/06-2943 A5.

⁶ ICC-01/04-01/06-2945 A5.

« [...] in the specific circumstances of the case, namely in light of the fact that this is the first appeal directed against a decision under article 74 of the Statute, which might raise complex and novel issues, and the length of the Conviction Decision, there are "exceptional circumstances" in terms of regulation 37 (2) of the Regulations of the Court that justify the extension of the page limit for Mr Lubanga's document in support of the appeal. »⁷

7. On 29 November 2012, the Prosecution filed the « Prosecution's Request for Instructions under Regulation 62 of the Regulations of the Court » in which it requested that the Appeals Chamber allow the Prosecution to respond to the Appellant's application within 21 days and thereafter resolve the issue of admissibility of the proposed additional items of evidence before the Prosecution's responsive brief is due on 4 February 2012.⁸
8. On 3 December 2012, the Appellant filed his documents in support of appeal against the Article 74 Judgment and against the Sentencing Decision.⁹
9. On 21 December 2012, the Appeals Chamber issued its "Directions under regulation 62 of the Regulations of the Court" whereby it stated that the Prosecution may set out arguments to the Appellant's application to present additional evidence and refer to any evidence in response in its responses to the Appellant's documents in support of appeal against the Article 74 Judgment and the Sentencing Decision. The Appeals Chamber extended the page limit of the Prosecution's responses by 25 pages each.¹⁰

Application for an extension of the Page Limit

10. Under regulation 37(2), the Chamber may grant an extension of the page limit in exceptional circumstances. The Prosecution submits that exceptional circumstances exist in the present case, and requests that the Appeals Chamber

⁷ ICC-01/04-01/06-2946 A5, para.5.

⁸ ICC-01/04-01/06-2947-Conf

⁹ ICC-01/04-01/06-2948-Conf and ICC-01/04-01/06-2949.

¹⁰ ICC-01/04-01/06-2958 A5 A6.

grant an extension of 20 pages for its response to the Appellant's document in support of appeal against the Article 74 Judgment.

11. The Prosecution will address in this response: first, the Appellant's request for additional evidence, second, it will present evidence in rebuttal and third, it will address the Appellant's eight grounds of appeals. The Prosecution notes that the Appellant's Request is the first application to present additional evidence before the Appeals Chamber under Regulation 62 in the context of an appeal against an Article 74 Judgment. The Request was filed separately from the appeal brief and consists of 18 pages and 153 pages of annexes. The Appellant seeks to present eight categories of additional evidence, in addition to which it seeks to call two witnesses to give live testimony. The Prosecution must not only provide the Appeals Chamber with a clear and comprehensive account of the factual circumstances relevant to this request for the eight categories of evidence and two proposed live witnesses, but must also include comprehensive legal submissions on the issue of admissibility of additional evidence on appeal in order to assist the Appeals Chamber on this issue. The novelty of the issue to this Court requires that the matter be addressed thoroughly. It must also explain to the Chamber the relevance and weight of its rebuttal evidence and in particular how it affects the additional evidence adduced by the Appellant.
12. In addition, the Appellant's document in support of appeal against the Article 74 Judgment consists of 116 pages and challenges most of the factual findings made by the Trial Chamber as well as a number of legal ones. The Prosecution needs to comprehensively address those arguments in order to meaningfully assist the Appeals Chamber.
13. The Prosecution further notes that its submissions on the admissibility of the additional evidence will solely be included in its response to the Article 74 appeal, and not in its response to the Appellant's parallel Sentencing appeal.

Consequently, the Prosecution will not use the additional 25 pages already granted by the Appeals Chamber for its response to the Sentencing appeal.

14. In sum, the Prosecution submits that in light of the novelty of the issues, including submissions on the current jurisprudence and the need to provide a detailed factual analysis of the Appellant's request to present additional evidence, there are exceptional circumstances within the terms of regulation 37(2) which warrant a confined extension of the page limit by a further 20 pages.

Relief sought

15. For the reasons set out above, the Prosecution respectfully requests that the Chamber grant on expedited basis an extension of the page limit by 20 additional pages in response to the Appellant's document in support of appeal to the Article 74 Judgment.



Fatou Bensouda
Prosecutor

Dated this 31st day of January 2013
At The Hague, The Netherlands