

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 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

Public

**Prosecution's Further Submissions Regarding the Conduct of the Hearing Before
the Appeals Chamber**

Source: Office of the Prosecutor

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

Court to:

The Office of the Prosecutor

Ms Fatou Bensouda

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Legal Representatives of Victims

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Mr Franck Mulenda

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Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

REGISTRY

Registrar

Mr Herman von Hebel

1. Pursuant to a scheduling order issued by the Appeals Chamber on 25 March 2014,¹ on 31 March 2014 the Prosecution filed submissions regarding the conduct of the hearing then scheduled to take place on 14 and 15 April 2014.² The Appeals Chamber has since issued a further order re-scheduling the hearing for 19 and 20 May 2014 and giving instructions in relation to the conduct of that hearing.³
2. To further assist the Appeals Chamber on the procedures to be followed in the hearing, the Prosecution wishes to make two additional submissions on the conduct of the hearing, one relating to the Appeals Chamber's questions on the second day of the hearing⁴ and the other relating to the Appeals Chamber's ruling that Mr Lubanga may address the Appeals Chamber at the closure of the hearing for a maximum of 30 minutes.⁵
3. On the first issue, if the Appeals Chamber intends to ask questions of the parties that go beyond the scope of matters set out in paragraph 2(c) and (d) (i) – (iii) of its 25 March 2014 scheduling order, the Prosecution respectfully requests that it provide these questions to the parties at least one week in advance of the hearing. In particular, if the Appeals Chamber has questions relating to any issues arising from the Appeal and/or Response briefs filed by the parties,⁶ by providing the parties with such questions beforehand, the parties will be able to most efficiently prepare for and make submissions about these issues at the hearing, so as to best assist the Appeals Chamber to decide on the appeals. Such a practice, which has been adopted by the Appeals Chambers of the ICTY and ICTR for many years,⁷ has proved extremely helpful for both the Appeals Chamber and the parties.

¹ ICC-01/04-01/06-3068 OA4 OA5 OA6.

² ICC-01/04-01/06-3074 OA4 OA5 OA6.

³ ICC-01/04-01/06-3083 OA4 OA5 OA6; see also previous order in which the Appeals Chamber informed the parties that the initially scheduled dates of 14 and 15 April 2014 for the hearing had been vacated and that an order would be issued shortly setting a new date: ICC-01/04-01/06-3079 OA4 OA5 OA6.

⁴ ICC-01/04-01/06-3083 OA4 OA5 OA6, Decision, item (3)(c)(iv).

⁵ ICC-01/04-01/06-3068 OA4 OA5 OA6, para.2(f).

⁶ Defence Appeal Against Conviction: ICC-01/04-01/06-2948-Conf-tENG and ICC-01/04-01/06-2948-Red; Prosecution Response to Defence Appeal Against Conviction: ICC-01/04-01/06-2969-Conf and ICC-01/04-01/06-2969-Red; Defence Appeal Against Sentencing Decision: ICC-01/04-01/06-2949-tENG; Prosecution Response to Defence Appeal Against Sentencing Decision: ICC-01/04-01/06-2968-Conf and ICC-01/04-01/06-2968-Red; Prosecution Appeal Against Sentencing Decision: ICC-01/04-01/06-2950; Defence Response to Prosecution Appeal Against Sentencing Decision: ICC-01/04-01/06-2967.

⁷ See e.g. *Prosecutor v. Vujadin Popović et al*, IT-05-88-A, Order for the Preparation of the Appeal Hearing, 6 November 2013; *Prosecutor v. Vlastimir Perović et al*, IT-05-87/1-A, Addendum to the Scheduling Order for

4. In relation to the content of Mr Lubanga's personal address at the closure of the appeals phase, the Prosecution respectfully suggests that the Appeals Chamber adopt an approach similar to that taken by the Trial Chamber at the end of his trial. The Trial Chamber allowed the accused to make an unsworn oral statement at the end of his trial, but ruled that Mr Lubanga should not raise any "significant consequential matters".⁸ In a similar vein, the Prosecution submits that Mr Lubanga's personal address at the closure of the appeals hearing should not stray into areas that would ordinarily fall within the role of his Defence Counsel during the hearing, namely submissions on his conviction, his sentence and the issues on appeal. In the event that he were to do so, the Prosecution respectfully requests that it be allowed the opportunity to respond on any such matters he raises, to the extent they have not been fully responded to already during the course of the hearing.⁹

Fatou Bensouda, Prosecutor

Dated this 2nd day of May 2014

At The Hague, The Netherlands

Appeal Hearing, 12 April 2013; *Prosecutor v. Nikola Šainovi et al*, IT-05-87-A, Order for the Preparation of the Appeal Hearing, 20 February 2013; *Prosecutor v. Mom ilo Periši*, IT-04-81-A, Addendum to the Scheduling Order for Appeal Hearing, 15 October 2012; *Prosecutor v. Ante Gotovina and Mladen Marka*, IT-06-90-A, Addendum to the Scheduling Order for Appeal Hearing, 24 April 2012; *Prosecutor v. Milan Luki and Sredoje Luki*, IT-98-32/1-A, Order for the Preparation of the Appeal Hearing, 6 September 2011.

⁸ ICC-01/04-01/06-T-356-ENG, p.2, lns.11-21. For the unsworn statement of Mr Lubanga, see ICC-01/04-01/06-T-357-ENG, p.48 ln.16 – p.49 ln.19. See also the statement of Mr Lubanga at the end of the sentencing hearing (ICC-01/04-01/06-T-360-Red2-ENG, p.65, ln.13 – p.69, ln.21) and the comment of the Presiding Judge that some of the issues raised by Mr Lubanga went beyond the scope of a statement to be made at a sentencing hearing (ICC-01/04-01/06-T-360-Red2-ENG, p.69, ln.22 – p.70, ln.9).

⁹ ICC-01/04-01/06-T-356-ENG, p.2, lns.17-19.