



Original : English

No.: ICC-01/04-01/06  
Date: 16 November 2006

**THE APPEALS CHAMBER**

**Before:** Judge Erkki Kourula, Presiding Judge  
Judge Philippe Kirsch  
Judge Georgios M. Pikis  
Judge Navi Pillay  
Judge Sang-Hyun Song

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO  
IN THE CASE OF  
THE PROSECUTOR  
v. THOMAS LUBANGA DYILO**

**Public Document**

**Defence Request for an Order Regarding Non-Compliance with the Time Limits**

**The Office of the Prosecutor**

Mr. Luis Moreno-Ocampo, Prosecutor  
Mrs Fatou Bensouda, Deputy Prosecutor  
Mr. Fabricio Guariglia, Senior Appeals  
Counsel

**Legal Representatives for Victims**

a/0001/06 to a/003/06  
Mr. Luc Walleyen  
Mr. Frank Mulenda

**Counsel for the Defence**

Mr. Jean Flamme  
Ms. Veronique Pandanzyla

## **Introduction:**

1. On 18 October 2006, the Pre-Trial Chamber issued the ‘Decision on the Application for the interim release of Thomas Lubanga Dyilo’,<sup>1</sup> in which it denied the Defence’s request for interim release. The Defence subsequently filed within seven days of notification of this decision, in compliance with Regulation 64(5) of the Regulations of the Court,<sup>2</sup> its appeal against this decision.<sup>3</sup>
2. In response, the Prosecution, again in compliance with Regulation 64(5) of the RoC,<sup>4</sup> filed its response to the Defence appeal on 1 November 2006.<sup>5</sup>
3. Subsequently, and without any previous request to vary the time limits on appeal, the Representatives of the Victims filed their Response to the Defence Motion on 16 November 2006.<sup>6</sup> In line with the Regulations of the Registry<sup>7</sup>, as the date of filing of the notification and the date of filing are not taken into consideration for the calculation of time limits for filing responses, this document was therefore filed twenty days after the appeal filed by the Defence.
4. The Defence submits that the Representatives of the Victims have therefore failed to comply with the specific time limits as set forth in the Regulations of the Court. They have also failed to request a variation of the time limits. Consequently, the Defence respectfully requests that the Appeals Chamber issue an order on this non-compliance and as a consequence refuse to accept this filing by the Representatives of the Victims.

## **Submissions:**

5. The time limits set forth in the RoC serve a specific purpose. They allow each of the parties to know exactly when is the last moment that any document can be filed before any of the Chambers of the Court. They promote certainty in the court proceedings and allow the procedure to progress in an efficient manner.

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<sup>1</sup> ICC-01/04-01/06-586

<sup>2</sup> Hereafter RoC

<sup>3</sup> See Defence Appeal Against the "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", 26 October 2006 ICC-01/04-01/06-618

<sup>4</sup> The full text of this Regulation reads as follows: “5. For appeals filed under article 82, paragraph 1 (b), the document in support of the appeal shall be filed by the appellant within seven days of notification of the relevant decision. The response shall be filed within five days of notification of the document in support of the appeal.” Article 82(1)(b) states as follows “1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence: [...] (b) A decision granting or denying release of the person being investigated or prosecuted”

<sup>5</sup> See Prosecution's Response to Defence Appeal Against the 'Décision sur la demande de mise en liberté provisoire Thomas Lubanga Dyilo', 1 November 2006, ICC-01/04-01/06-637

<sup>6</sup> See ‘Réponse des victims a/0001/06, a/0002/06 et a/0003/06 à l’appel de la Défense concernant la Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo, 16 November 2006, ICC-01-04-01-06-704

<sup>7</sup> Regulation 33 states in part “the day of notification of a document or the day of filing a response or a reply by a participant to that document not being taken into consideration for the calculation of the time period available to file a document.”

6. According to Regulation 24(3) of the RoC, victims or their legal representatives may file a response to any document when they are permitted to participate in the proceedings, subject to any order of the Chamber. The Regulation continues to state that the aforementioned response may not be filed in relation to any document which is in itself a response or reply.<sup>8</sup> Therefore, as indeed the title of the purported filing by the Victims' Representatives makes clear, it must be in response to the Defence appeal.
7. The procedure for filing appeals in relation to the Defence appeal is clearly set out by Regulation 64(5) where it states that 'the response shall be filed within five days of notification of the document in support of appeal'. This is five days and not twenty.
8. The Defence also wishes to highlight in this context the importance of the time limits in relation to appeals against decisions on interim release. The Defence is permitted the automatic right of appeal of these decisions because they decide upon the liberty of an individual. The procedure requires the party which appeals the decision and any party which files a response to the appeal, to do so quickly in relation to the general time limits set forth in relation to other motions. The Defence submits that the Victims Representatives tardiness should not slow down the quick resolution of a question over a fundamental right, namely the right to liberty.
9. There procedure for varying time limits is clearly set out in Regulation 35 of the RoC, which states that any application to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter. The application must set out the grounds on which the variation is sought.
10. The Victims' Representatives did not file a request for an extension of time prior to the effluxion of the time limit nor does their Response explain or justify why they were unable to comply with the time limit. The Defence further notes that the Appeals Chamber has not varied the applicable time limit for this particular appeal.
11. The Defence observes the fact that this response was filed on a day when the Defence was in the middle of preparing to cross-examine Kristine Peduto, the only Prosecution witness at the confirmation hearing. If this document was accepted by the Appeals Chamber, the Defence would have ascertain whether it had a right to reply, and, and if granted, reply to the document in the very midst of the Defence phase of the confirmation hearing. It is therefore apparent that the Victims' Representatives failure

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<sup>8</sup> See Regulation 24(4).

to comply with the time limit is prejudicial to the preparation of the Defence and to the prolonged detention of Thomas Lubanga Dyilo.

12. Finally, the Defence observes that the response refers to several items of evidence which were not part of the appeal record, despite the fact that they have not sought leave to admit additional evidence before the Appeals Chamber in accordance with Regulation 62 of the RoC.

**Relief sought :**

13. The Defence therefore respectfully requests the Honourable Appeals Chamber to;

- Order that the filing of the Victims Representatives does not comply with the Regulations of the Court; and
- Reject the aforementioned Response



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Jean Flamme, Counsel for the Defence

Dated this 16th day of November, 2006

At The Hague, The Netherlands