

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 17 August 2011

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko
Judge Sanji Mmasenono Monageng

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

Confidential

Urgent Request for Directions

Source: The Government of the Kingdom of the Netherlands

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

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Ms Fatou Bensouda

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Mr Franck Mulenda
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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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Ms Paolina Massidda

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States' Representatives

The Kingdom of the Netherlands

Amicus Curiae

Democratic Republic of the Congo

REGISTRY

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Mr Anders Backman

**Victims Participation and Reparations
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Other

Mr Ghislain Mabanga Monga Mabanga

1. On 4 July 2011, Trial Chamber I issued its "Decision on the request by DRC-D01-WWWW-0019 for special protective measures relating to his asylum application" (the "Decision").¹
2. On 13 July 2011, the Netherlands requested the Trial Chamber to grant leave to appeal the Decision pursuant to Article 82(1)(d) of the Statute.² The Netherlands submitted that:

"the Decision has broad implications for the relationship between the Netherlands and the Court and, consequently, for the functioning of the Court in the Netherlands. [...] Consequently, it is of great importance for the Netherlands to be able to argue the matter before the Appeals Chamber in order for the Court to reconsider its position."³

3. On 10 August 2011, the Registry of the Court notified the Netherlands of the Trial Chamber's "Decision on two requests for leave to appeal the "Decision on the request by DRC-D01-WWWW-0019 for special protective measures relating to his asylum application"" (the "Decision on Request for Leave to Appeal").⁴ While noting that the application of the Netherlands does not satisfy the criteria for leave to appeal under Article 82(1)(d) of the Statute, as well as the application of the Government of the Democratic Republic of the Congo, the Trial Chamber decided that "both applications for leave to appeal are granted" on an exceptional basis under Article 64(6)(f) of the Statute.⁵

4. In the Decision on Request for Leave to Appeal, the Trial Chamber stated that:

"leave to appeal should be granted on an interlocutory basis under Article 64(6)(f) when it is arguable that a decision of a Chamber has placed a State Party in the position of having to resolve apparently conflicting obligations to the ICC, on the one hand, and to individuals

¹ ICC-01/04-01/06-2766-Conf

² ICC-01/04-01/06-2768-Conf

³ *Ibid.*, paras. 10 and 18

⁴ ICC-01/04-01/06-2779-Conf

⁵ *Ibid.*, para. 24

in the custody of the Court who raise fundamental human rights concerns that require determination by the State Party, on the other.”⁶

5. The Netherlands notes the unprecedented nature of the Decision on Request for Leave to Appeal and the absence of guiding provisions in the legal framework on leave to appeal under Article 64(6)(f) of the Statute.
6. In light of the foregoing, the Netherlands respectfully requests the Appeals Chamber for urgent directions as to the procedure to follow, including the applicable time limits, concerning the appeal which the Netherlands intends to file against the Decision. The Netherlands notes that a similar request for directions has been submitted by it to the Appeals Chamber regarding the same issue in the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.⁷
7. In the event the Appeals Chamber would hold that the time limit has already begun to run, the Netherlands requests an extension of 21 days from the date of the decision of the Appeals Chamber on the present request under Regulation 35 of the Regulations of the Court in order to enable the Dutch authorities to prepare a submission in consultation with the relevant Government Offices. This in light of the exceptional basis of the proceedings and the complexity of the issue.

⁶ *Ibid.*, para. 23

⁷ ICC-01/04-01/07-3077

i.a. ✓


E. Dijkstra
Legal Adviser of the Ministry of Foreign Affairs
on behalf of
the Government of the Kingdom of the Netherlands

Dated this 17 August 2011

At The Hague, the Netherlands

