

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **30 June 2015**

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW  
CONCERNING REDUCTION OF SENTENCE**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

***IN THE CASE OF***

***THE PROSECUTOR***

***v. THOMAS LUBANGA DYILO***

**Confidential, *EX PARTE* only available to the Office of the Prosecutor and the  
Registrar**

**Prosecution's further notice regarding potentially relevant information to Thomas  
Lubanga Dyilo's sentence review**

**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, Prosecutor  
Mr James Stewart  
Mr Fabricio Guariglia

**Counsel for the Defence****Legal Representatives of Victims****Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for  
Participation/Reparation****The Office of Public Counsel for Victims****The Office of Public Counsel for the  
Defence****States Representatives****Amicus Curiae****REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section****Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section****Victims Participation and Reparations  
Section Other**

## Submissions

1. On 29 June 2015, the Office of the Prosecutor ("Prosecution") notified the Panel that information from the *Bosco Ntaganda* case may implicate Thomas Lubanga Dyilo in witness interference, and may be relevant to the Panel's review of his sentence.<sup>1</sup> The Prosecution based its notice on a request it had previously filed in the *Ntaganda* case asking for access to Lubanga's list of non-privileged contacts, call logs and visitors' logs.<sup>2</sup> Although at the time of filing its notice this request for access was still pending decision,<sup>3</sup> the *Ntaganda* Trial Chamber has since rendered two confidential *ex parte* decisions on the issue. The Prosecution therefore brings these decisions to the Panel's attention.

2. In the First *Ntaganda* decision issued on 29 June 2015,<sup>4</sup> the Trial Chamber granted the Prosecution's request to access Lubanga's list of non-privileged contacts, call logs and visitation logs. Accordingly, the Chamber directed the Registry to make the material available to the Prosecution and Lubanga's Defence team by 2 July 2015. By way of the Second *Ntaganda* decision—also issued on 29 June 2015—<sup>5</sup>, the Chamber *inter alia* ordered the immediate active monitoring of all of Mr Lubanga's non-privileged telephone calls.

3. Following the First *Ntaganda* Decision, the Prosecution will have access to certain initial information—in advance of its scheduled written and oral submissions before the Panel—that may relate to Lubanga's suspected involvement in witness

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<sup>1</sup> See ICC-01/04-01/06-3140-Conf-Exp ("Prosecution's notice regarding potentially relevant information to Thomas Lubanga Dyilo's sentence review"), filed on 29 June 2015 ("Prosecution's notice" or "notice"). See also ICC-01/04-01/06-3137 ("Scheduling Order"), pp.3-4. "Three Judges of the Appeals Chamber appointed for the Review concerning Reduction of Sentence" is referred to as "the Panel".

<sup>2</sup> ICC-01/04-02/06-603-Conf-Exp ("Request for Access").

<sup>3</sup> See Prosecution's notice, para.6.

<sup>4</sup> ICC-01/04-02/06-684-Conf-Exp ("Decision on Prosecution request for access to Mr Lubanga's list of non-privileged contacts, call logs and visitation logs") ("First *Ntaganda* Decision").

<sup>5</sup> ICC-01/04-02/06-683-Conf-Exp ("Order imposing interim restrictions on detainees' contacts with certain individuals and related measures") ("Second *Ntaganda* Decision"). At the time of filing, a confidential redacted version of this Decision was notified to the Lubanga Defence.

interference. Depending on what the material contains, the Prosecution may be able to make preliminary submissions, on 10 July and 16 July 2015, on Lubanga's suspected actions. However, as the Prosecution's notice states,<sup>6</sup> the reports of Lubanga's monitoring and the Prosecution's further requests to access the content of Lubanga's recorded phone calls over certain periods may yield additional relevant material.<sup>7</sup> Therefore the Prosecution wishes to reserve the right to make further written and/or oral submissions (*ex parte* if necessary) if and when additional information on Lubanga's suspected involvement in witness interference were to emerge, and seeks the Panel's permission to do so, if necessary.

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<sup>6</sup> Prosecution's notice, paras.6-9.

<sup>7</sup> See also Second *Ntaganda* Decision, para.17 and disposition.

The *Ntaganda* Chamber has directed the Prosecution to make further submissions on "the ongoing necessity of the measures taken" by 16 July 2005, and the Lubanga Defence may make its observations by 24 July 2015.

### Level of Confidentiality

4. The Prosecution, under regulation 23*bis*(1) and (2) of the Regulations of the Court, files this request on a strictly confidential and *ex parte* basis. The request contains information that is similarly classified before Trial Chamber VI, and is not currently available to Lubanga, among others.<sup>8</sup> If and when the classification of this material changes before the *Ntaganda* Trial Chamber, the Prosecution does not object to the Panel adopting a similar classification.



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Fatou Bensouda, Prosecutor

Dated this 30<sup>th</sup> day of June 2015

At The Hague, The Netherlands

Word Count:842<sup>9</sup>

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<sup>8</sup> The Prosecution will file a redacted version of its request to access Lubanga's list of non-privileged contacts, call logs and visitation logs (ICC-01/04-02/06-603-Conf-Exp) within two days of the notification of the Second *Ntaganda* Decision and notify the Lubanga Defence. Likewise, the Registry has been directed to make available redacted versions of the Prosecution's request for further restrictions (ICC-01/04-02/06-635-Conf-Exp) and the Second Registry report (ICC-01/04-02/06-603-Conf-Exp) to the Lubanga Defence. *See* Second *Ntaganda* Decision, disposition.

<sup>9</sup> It is hereby certified that this document contains the number of words specified and complies in all respects with the requirements of regulation 36 of the RoC. This statement (53 words), not itself included in the word count, follows the Appeals Chamber's recent direction to "all parties" appearing before it: ICC-01/11-01/11-565 OA6, para.32.