



Original: **French**

No.: ICC-01/04-01/06
Date: 15 February 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 Document

Application by the Defence for Leave to File a Reply to the “Prosecution’s Response to Thomas Lubanga’s Appeal against Trial Chamber I’s Judgment pursuant to Article 74” and to the “Prosecution’s Response to the ‘*Mémoire de la Défense de M. Thomas Lubanga relatif à l’appel à l’encontre de la “Décision relative à la peine, rendue en application de l’article 76 du Statut” rendu par la Chambre de première instance I le 10 juillet 2012”*, filed on 4 February 2013

Source: Defence Team for Mr Thomas Lubanga Dyilo

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

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**Unrepresented Applicants for
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PROCEDURAL HISTORY

1. On 26 November 2012, on the basis of regulation 62 of the Regulations of the Court, the Defence filed an application for leave to present additional evidence in the appeals against the “Judgment pursuant to Article 74 of the Statute” and the “Decision on Sentence pursuant to Article 76 of the Statute”.¹
2. On 3 December 2012, the Defence for Mr Thomas Lubanga submitted its document in support of its appeal against the “Judgment pursuant to Article 74 of the Statute”² and the document in support of its appeal against the “Decision on Sentence pursuant to Article 76 of the Statute”,³ in accordance with regulation 58 of the Regulations of the Court.
3. In an order of 21 December 2012, the Appeals Chamber directed the Prosecution and the legal representatives of victims to respond to the Defence’s application for leave to present additional evidence in their responses to the documents in support of the appeals filed by the Defence on 3 December 2012.⁴
4. On 4 February 2013, the Prosecution filed its consolidated response to the document in support of the Defence’s appeal against the Judgment and the Defence’s application to present additional evidence.⁵ In this Response, the Prosecution asked to be allowed to adduce one item of rebuttal evidence (“Response”).⁶
5. That day, the Prosecution filed the “Prosecution’s Response to the ‘*Mémoire de la Défense de M. Thomas Lubanga relatif à l’appel à l’encontre de la “Décision relative à la*

¹ ICC-01/04-01/06-2942-Conf-tENG.

² ICC-01/04-01/06-2948-Red-tENG

³ ICC-01/04-01/06-2949-tENG.

⁴ ICC-01/04-01/06-2958.

⁵ ICC-01/04-01/06-2969-Conf.

⁶ ICC-01/04-01/06-2969-Conf, para. 70 and confidential Annex 2.

peine, rendue en application de l'article 76 du Statut" rendu par la Chambre de première instance I le 10 juillet 2012".⁷

6. On the basis of regulation 60 of the Regulations of the Court, the Defence requests leave to file a reply to the "Prosecution's Response to Thomas Lubanga's Appeal against Trial Chamber I's Judgment pursuant to Article 74" and to the "Prosecution's Response to the 'Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre de la "Décision relative à la peine, rendue en application de l'article 76 du Statut" rendu par la Chambre de première instance I le 10 juillet 2012".

SUBMISSIONS

7. Regulation 60 provides that the Appeals Chamber may order an appellant to file a reply whenever it considers it necessary in the interests of justice.⁸ Any reply filed in accordance with that provision shall not exceed 50 pages.

- The filings to which the Defence wishes to reply

8. In the interests of justice, the Defence wishes to have the opportunity to respond for the first time to the Prosecution's request to introduce an item of evidence, and to reply briefly to some of the Prosecution's arguments submitted in response to the Defence Appeals in respect of which the Defence has not had an opportunity to submit arguments.
9. The information that will be submitted by the Defence is likely to be of assistance to the Appeals Chamber for the following reasons:

⁷ ICC-01/04-01/06-2968-Conf.

⁸ The various Chambers of the Court have, on several occasions, ruled that the filing of a reply pursuant to regulation 24(5) is appropriate and justified when the issue raised in the initial application is of importance or may have an impact on the ongoing proceedings. See, for example, ICC-01/04-01/07-1004-tENG; ICC-01/04-01/06-236; ICC-01/04-01/06-17; ICC-01/04-01/07-600.

a. The Prosecution's application to introduce an item of rebuttal evidence

10. In an annex to its response, the Prosecution disclosed to the Defence for the first time a document dated 30 January 2013 obtained from the Congolese authorities further to a request for cooperation that had been sent to them.
11. The Defence considers that the Prosecution's claims about this document are baseless, in particular because the general nature of the information it contains renders it of very low probative value. The Defence would like to have the opportunity to make its position on this issue known in a reply before the Appeals Chamber.

b. Some of the arguments submitted by the Prosecution in response to the Defence's grounds of appeal

12. The Defence considers it necessary to reply to some of the arguments submitted by the Prosecution in its Responses in order to ensure that, when the Appeals Chamber deliberates, all of the factual and procedural information relevant to the case is available to it.
13. The Defence therefore wishes to reply to the Prosecution's arguments in order to complete certain information and to correct certain inaccuracies that it has noted in the Prosecution's Response.
14. The Defence stresses that it does not intend to repeat arguments that it has already made in the documents in support of its appeals or in its application to present additional evidence.
15. Given the importance and the complexity of the issues that the Appeals Chamber will have to examine and the impact of the conclusions it will reach in respect of the convicted person, the Defence submits that it is in the interests of justice to grant leave to the Appellant to file a brief reply.

- The form of the reply that would be filed

16. The Defence wishes to inform the Appeals Chamber that, should the Chamber grant this application, the Defence will be able to confine its reply to the Prosecution's responses referred to in the title to a single document of no more than 20 pages.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER

TO GRANT this Application;

and

TO GRANT the Defence LEAVE to file a reply to the "Prosecution's Response to Thomas Lubanga's Appeal against Trial Chamber I's Judgment pursuant to Article 74" and to the "Prosecution's Response to the '*Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre de la "Décision relative à la peine, rendue en application de l'article 76 du Statut"* rendu par la Chambre de première instance I le 10 juillet 2012"', filed on 4 February 2013.

[signed]

Catherine Mabile, Lead Counsel

Dated this 15 February 2013

At The Hague