

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 3 July 2006

**THE APPEALS CHAMBER**

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

**Registrar:** Mr Bruno Cathala

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

**Public Document  
DECISION ON THOMAS LUBANGA DYILO'S BRIEF RELATIVE TO  
DISCONTINUANCE OF APPEAL**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor

Mrs Fatou Bensouda, Deputy Prosecutor

Mr Fabricio Guariglia, Senior Appeals Counsel

Mr Ekkehard Withopf, Senior Trial Lawyer

**Counsel for the Defence**

Mr Jean Flamme

**Legal Assistant**

Ms Véronique Pandanzyla

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo ("the Appellant") of 24 March 2006 (ICC-01/04-01/06-57-Corr-tEn) against the decision of Pre-Trial Chamber I of 10 February 2006 entitled "Decision on the Prosecutor's Application for a warrant of arrest, Article 58",

Having before it the filing of 12 June 2006 (ICC-01/04-01/06-146-tEN) entitled "Brief Relative to Discontinuance of Appeal" ("Appellant's Brief"),

*Renders the following*

## DECISION

- i) The Appellant's notice of discontinuance of the appeal subject to his retaining the right to challenge the admissibility of the case before the Court is invalid.
- ii) The Appellant is directed to comply with the Appeals Chamber's previous order pursuant to regulation 28 of the Regulations of the Court (ICC-01/04-01/06-129) within seven days of notification of this decision.

## PROCEDURAL HISTORY

1. On 30 May 2006 the Appeals Chamber rendered its "Decision on the Appellant's Application for an Extension of the Time Limit for the Filing of the Document in Support of the Appeal and Order Pursuant to Regulation 28 of the Regulations of the Court" (ICC-01/04-01/06-129) ("Decision of 30 May 2006") in which the Appeals Chamber denied the application for an extension of the time limit and directed the Appellant to, *inter alia*, provide additional details in support of his appeal by 13 June 2006.

2. On 12 June 2006 the Appellant's Brief was filed wherein he purported to discontinue the appeal "without however waiving his right to challenge the admissibility of this case before the Court in accordance with article 19 of the Statute" (Appellant's Brief, paragraph 13). The Appellant requested a formal acknowledgement from the Appeals Chamber "of his discontinuance, subject to his retaining the right to challenge the admissibility of the case before the ICC" (Appellant's Brief, page 4).

3. The Appellant also requested, in the alternative, that should the Appeals Chamber rule against discontinuance of his appeal subject to his retaining the right to challenge admissibility then he would require additional time to provide more detailed reasons for his appeal.
4. On 20 June 2006 the Prosecutor filed a response to the Appellant's Brief entitled "Prosecution Response to Thomas Lubanga Dyilo's Mémoire en Désistement d' Appel" (ICC-01/04-01/06-158) ("Prosecution Response").
5. The Prosecutor whilst commending the Appellant's decision to discontinue proceedings before the Appeals Chamber was however opposed to the Appellant's alternative request for an extension of the time limit. The Prosecutor argued in paragraph 8 of the Prosecution Response that "once an Appellant has discontinued his or her appeal, the appeal must be treated as no longer being before the Appeals Chamber, and consequently the Chamber is no longer seized with the underlying matters, its role being confined to taking note of the discontinuance."
6. The Prosecutor requested the Appeals Chamber to:
  - a) take note of the Discontinuance filed by the Appellant, and
  - b) reject the Appellant's alternative request for a further extension of time.

## DISCUSSION ON THE MERITS

### Discontinuance of the appeal

7. Rule 157 of the Rules of Procedure and Evidence provides as follows:

"Any party who has filed an appeal under rule 154 or who has obtained the leave of a Chamber to appeal a decision under rule 155 may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed."

8. The rule therefore confers a right on an Appellant to discontinue his/her appeal by lodging the notice envisaged therein with the Registrar. The Appellant need not provide reasons for discontinuing and may exercise this right at any time before judgement is delivered. A notice of discontinuance is neither subject to approval by nor

acknowledgement from the Court. If the Appellant is minded to discontinue the appeal he may do so by complying with the provisions of rule 157 of the Rules of Procedure and Evidence.

9. Discontinuance of an appeal subject to reservations is not foreseen in either the Statute or the Rules of Procedure and Evidence and that includes reservations relevant to the future conduct of the proceedings. As such the Appeals Chamber is not vested with discretion to sanction discontinuance of an appeal subject to conditions.

10. The Appeals Chamber finds that in the instant case the Appellant's Brief does not constitute a notice of discontinuance under rule 157 of the Rules of Procedure and Evidence.

Alternative request for the extension of the time limit

11. The Appeals Chamber notes that the Appellant's application for an extension of the time limit was made in the alternative "provided that the Appeals Chamber - *per impossibile* - ruled that the appellant could not discontinue his appeal without also waiving his right to challenge admissibility" (Appellant's Brief, paragraph 14).

12. The Appeals Chamber has not made any such ruling and therefore will not rule on the alternate request for an extension of time.

13. The Appeals Chamber also notes the provisions of regulation 29 of the Regulations of the Court, which provides as follows:

"1. In the event of non-compliance by a participant with the provisions of any regulation, or with an order of a Chamber made thereunder, the Chamber may issue any order that is deemed necessary in the interests of justice.


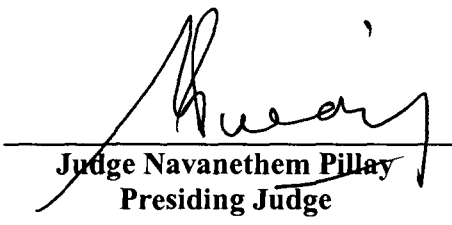
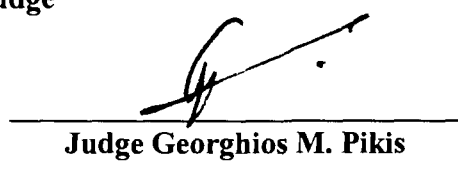
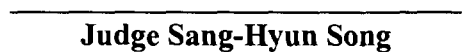

2. This provision is without prejudice to the inherent powers of the Chamber."

14. Noting that the Appellant has failed to respond appropriately to the previous order of the Appeals Chamber (Decision of 30 May 2006), in the circumstances of the present case, including the nature of the issues that arise for consideration for the first time, the Appeals Chamber considers it to be in the interests of justice to give the Appellant a further short period of time in which to comply with its previous order.

15. The Appeals Chamber therefore directs the Appellant as set out under the heading "Decision" above.

Judge Sang-Hyun Song is unavailable to sign the decision because he is absent from the seat of the Court on the day of signature.

Done in both English and French, the English version being authoritative.

 <b>Judge Philippe Kirsch</b>	 <b>Judge Navanethem Pillay</b> <b>Presiding Judge</b>	 <b>Judge Georgios M. Pikis</b>
 <b>Judge Sang-Hyun Song</b>	 <b>Judge Erkki Kourula</b>	

Dated this 3rd day of July 2006

At The Hague, The Netherlands