Cour Pénale Internationale



International Criminal Court

Original: English

No: ICC-01/04-01/06

Date: 25 September 2006

PRE-TRIAL CHAMBER I

Before:

Judge Sylvia Steiner, Single Judge

Registrar:

Mr Bruno Cathala

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

Public

Decision on Prosecution's Response to Thomas Lubanga Dyilo's 21 September 2006 Request for Leave to Appeal

The Office of the Prosecutor

Mr Luis Moreno Ocampo Ms Fatou Bensouda Mr Ekkehard Withopf Counsel for the Defence

Mr Jean Flamme Ms Véronique Pandanzyla

Legal Representatives of Victims a/0001/06

to a/0003/06

Mr Luc Walleyn Mr Franck Mulenda Office of Public Counsel for the Defence

Ms Melinda Taylor

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I, Judge Sylvia Steiner, judge at the International Criminal Court ("the Court");

NOTING the "Request for Leave to Appeal the First Decision on the Prosecution

Requests and Amended Requests for Redactions under Rule 81" ("the Defence

Request for Leave to Appeal"),¹ filed by the Defence on 21 September 2006;

NOTING the "Prosecution's Response to Thomas Lubanga Dyilo's 21 September

2006 Request for Leave to Appeal, Request for a Preliminary Ruling and Subsidiary

Request for an Extension of Time" ("the Prosecution Request"),2 filed by the

Prosecution on 22 September 2006;

NOTING article 82 (1) (d) of the Rome Statute ("the Statute"), rule 155 of the Rules of

Procedure and Evidence ("the Rules") and Regulations 33, 35 and 65 of the

Regulations of the Court ("the Regulations");

CONSIDERING that the chapeau of regulation 33 (1) of the Regulations refers to "the

calculation of time for the purposes of any proceedings before the Court"; that the

way in which paragraph (1) (a) of regulation 33 of the Regulations is drafted

indicates that it applies to all time-limits in any proceedings before the Court; that

the expression "days shall only be understood as 'full days'" in paragraph (1) (b) of

the Regulations applies to all time-limits in any proceedings before the Court; and

that paragraph (2) of regulation 33 of the Regulations of the Court applies to all time-

limits in any proceedings before the Court;

¹ ICC-01/04-01/06-456.

² ICC-01/04-01/06-459.

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CONSIDERING that the object and purpose of regulation 33 of the Regulations is to

establish a clear system to calculate all time-limits in any proceedings before the

Court; and that would be contrary to the said object and purpose to interpret the

second part of paragraph 33 (1) (b) of regulation 33 of the Regulations as establishing

two different sytems for calculating the time-limits in any proceedings before the

Court, one for responses and replies stricto sensu and another for any other time-limit

in any proceedings before the Court;

CONSIDERING therefore that, in the view of the single judge, the submission of the

Prosecution that the day of filing should not be taken into consideration only in

relation to responses and replies stricto sensu is (i) only supported by a restrictive

approach to the literal interpretation of the second part of paragraph (2) of regulation

33 of the Regulations, and (ii) contrary to both its systematic interpretaton in light of

the rest of regulation 33 of the Regulations and the teleological interpretation of

regulation 33 of the Regulations;

CONSIDERING further that, according to regulation 65 of the Regulations,

participants may file a response within three days of notification of an application for

leave to appeal under article 82 (1) (d) of the Statute and rule 155 of the Rules; that,

according to regulation 35 (2) of the Regulations, an extension of time can be granted

upon good cause being shown; and that the Prosecution Request has shown good

cause;

FOR THESE REASONS

REJECT the request of the Prosecution for the rejection in limine of the Defence

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Request for Leave to Appeal

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GIVE the Prosecution until 27 September 2006 at 16h00 to file a response to the Defence Request for Leave to Appeal.

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

Judge Sylvia Steiner
———Single Judge

Dated this Monday 25 September 2006

At The Hague

The Netherlands