

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 May 2012

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

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

**Public**

**Order concerning the “Requête de la Défense aux fins de juger que seuls le Procureur et la Défense peuvent présenter des observations sur la peine à prononcer à l’encontre de M. Thomas Lubanga”**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo  
Ms Fatou Bensouda

**Counsel for the Defence**

Ms Catherine Mabilie  
Mr Jean-Marie Biju Duval

**Legal Representatives of the Victims**

Mr Luc Walley  
Mr Franck Mulenda  
Ms Carine Bapita Buyangandu  
Mr Joseph Keta Orwinyo  
Mr Paul Kabongo Tshibangu

**Legal Representatives of the 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**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

Trial Chamber I of the International Criminal Court (“Trial Chamber” or “Chamber”) in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Lubanga case”), issues the following Order concerning the “Requête de la Défense aux fins de juger que seuls le Procureur et la Défense peuvent présenter des observations sur la peine à prononcer à l’encontre de M. Thomas Lubanga”:

1. On 14 March 2012, the Chamber issued the Judgment pursuant to Article 74 of the Statute (“Judgment”).<sup>1</sup>
2. On 18 April 2012, the Chamber received the written submissions of the Office of the Prosecutor (“prosecution”)<sup>2</sup> and the legal representatives of victims<sup>3</sup> on the procedures to be adopted for sentencing under Article 76 of the Statute and the principles to be applied by the Chamber when it is considering the appropriate sentence to be imposed.
3. On 24 April 2012, the Chamber ordered the prosecution and the legal representatives of victims to file submissions by 16:00 on 14 May 2012 on the relevant evidence presented during trial that may be applicable to sentence along with their views as to the sentence to be imposed on the convicted person, taking into consideration, *inter alia*, any specific aggravating and mitigating factors.<sup>4</sup> The Chamber further ordered that the filings of the prosecution and the two teams of legal representatives were

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<sup>1</sup> Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842.

<sup>2</sup> Prosecution’s Submissions on the Procedure and Principles for Sentencing, 18 April 2012, ICC-01/04-01/06-2868.

<sup>3</sup> Observations sur la fixation de la peine et les réparations de la part des victimes a/0001/06, a/0003/06, a/0007/06 a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0149/08, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08 , a/0523/08, a/0610/08, a/0611/08, a/0053/09, a/0249/09, a/0292/09, a/0398/09, et a/1622/10, 18 April 2012, ICC-01/04-01/06-2864; Observations du groupe de victimes V02 concernant la fixation de la peine et des réparations, 18 April 2012, ICC-01/04-01/06-2869.

<sup>4</sup> Order fixing the date for the sentencing hearing, 24 April 2012, ICC-01/04-01/06-2871, paragraph 5.

not to exceed 20 pages each and, with regard to the legal representatives, that there should be a single filing for each team.<sup>5</sup>

4. Moreover, the parties and participants were instructed to inform the Chamber of the approximate time they will require during the sentencing hearing to make any oral submissions. The Chamber determined that the order of oral submissions on sentence will be as follows: the prosecution, the participating victims, and finally the defence. It was stipulated that the legal representatives for victims should endeavour not to repeat submissions made by the prosecution or the other team of legal representatives.<sup>6</sup>
5. By the same order of 24 April 2012, the Chamber instructed the defence to file submissions on the sentence to be imposed on Mr Lubanga by 16:00 on 28 May 2012, taking into account the submissions of the prosecution and the legal representatives on the sentencing principles to be applied by the Chamber as well as the specific issues addressed in the submissions to be filed on 14 May 2012.<sup>7</sup>
6. On 2 May 2012, the defence filed the "Requête de la Défense aux fins de juger que seuls le Procureur et la Défense peuvent présenter des observations sur la peine à prononcer à l'encontre de M. Thomas Lubanga"<sup>8</sup> in which the defence requests the Chamber to direct that only

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<sup>5</sup> ICC-01/04-01/06-2871, paragraph 5.

<sup>6</sup> ICC-01/04-01/06-2871, paragraphs 7 and 8.

<sup>7</sup> ICC-01/04-01/06-2871, paragraph 6.

<sup>8</sup> Requête de la Défense aux fins de juger que seuls le Procureur et la Défense peuvent présenter des observations sur la peine à prononcer à l'encontre de M. Thomas Lubanga, 2 May 2012, ICC-01/04-01/06-2873.

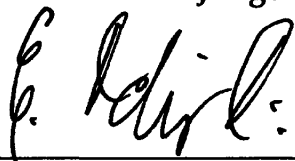
the Prosecutor and the defence may make submissions on the sentence to be imposed on the convicted person.<sup>9</sup>

7. The Chamber has already made a decision on this issue in the order of 24 April 2012. Therefore, the defence application is, in reality, a request to the Chamber to reconsider its existing ruling permitting the victims to participate in the sentencing proceedings, as indicated above, including during the hearing to be held on 13 June 2012.
8. The defence has failed to advance any arguments that are capable of meeting the test for reconsideration and the Chamber considers that the defence request is unwarranted and without any legal basis.
9. Consequently, the Chamber rejects the defence request *in limine*.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 9 May 2012

At The Hague, The Netherlands

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<sup>9</sup> ICC-01/04-01/06-2873 page 6.