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No. ICC-01/04-01/06 A4 A 5 A 6

Date: 30 April 2014

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

**Scheduling order and decision in relation to the conduct of the hearing before
the Appeals Chamber**

Order and Decision 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 Fabricio Guariglia

Counsel for the Defence
Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of Victims V01
Mr Luc Walley
Mr Franck Mulenda

Legal Representatives of Victims V02
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against Trial Chamber I's decision entitled "Judgment pursuant to Article 74 of the Statute" of 14 March 2012 (ICC-01/04-01/06-2842), and

In the appeals of Mr Thomas Lubanga Dyilo and the Prosecutor against Trial Chamber I's "Decision on Sentence pursuant to Article 76 of the Statute" of 10 July 2012 (ICC-01/04-01/06-2901),

Issues the following

DECISION

- (1) The hearing before the Appeals Chamber is rescheduled for **Monday, 19 May 2014** and **Tuesday, 20 May 2014**.
- (2) With respect to the hearing of witnesses D-0040 and D-0041, which shall take place on **Monday, 19 May 2014**, beginning at **9:30**:
 - a. Without prejudice to article 68 (3) of the Statute, the request of the Legal Representatives of Victims V02 for leave to question witnesses D-0040 and D-0041 pursuant to rule 91 (2) of the Rules of Procedure and Evidence is rejected.
 - b. The request of the Prosecutor to communicate with the witnesses prior to their testimony, provided that their consent thereto is obtained, is granted.
 - c. Having regard to regulation 64 (1) of the Regulations of the Registry, the questioning of witnesses D-0040 and D-0041 via video-link technology will take place, without prejudice as to the admissibility of their testimonies, in the following order and within the following time frames:
 - i. First Session (9:30 until 11:00)
 1. 9:30 until 9:40: Introductory statement and opening of the hearing by the Presiding Judge;
 2. 9:40 until 10:40: Questioning by counsel for Mr Thomas Lubanga Dyilo (60 minutes);



3. 10:40 until 11:00: Questioning by the Prosecutor (20 minutes).
- ii. Break (11:00 until 11:30)
- iii. Second Session (11:30 until 13:00)
 1. 11:30 until 12:10: Continuation of questioning by the Prosecutor (40 minutes);
 2. 12:10 until 12:40: Questioning by the Appeals Chamber (30 minutes);
 3. 12:40 until 12:55: Re-examination by counsel for Mr Thomas Lubanga Dyilo (15 minutes).
- iv. Break (13:00 until 14:30)
- v. Third Session (14:30 until 16:00)
 1. 14:30 until 14:40: Opening of the hearing by the Presiding Judge;
 2. 14:40 until 15:40: Questioning by counsel for Mr Thomas Lubanga Dyilo (60 minutes);
 3. 15:40 until 16:00: Questioning by the Prosecutor (20 minutes).
- vi. Break (16:00 until 16:30)
- vii. Fourth Session (16:30 until 18:00)
 1. 16:30 until 17:10: Continuation of questioning by the Prosecutor (40 minutes);
 2. 17:10 until 17:40: Questioning by the Appeals Chamber (30 minutes);
 3. 17:40-17:55: Re-examination by counsel for Mr Thomas Lubanga Dyilo (15 minutes).
- d. The procedure for the notification of material that the parties intend to use during the questioning of the witnesses is as follows:
 - i. Seven working days before the scheduled hearing, Mr Thomas Lubanga Dyilo shall notify the list of material he intends to use during the examination of the witnesses and provide an electronic copy of that material to the Prosecutor and the Appeals Chamber;



- ii. Three working days before the scheduled hearing, the Prosecutor shall notify the list of materials she intends to use during the examination of the witnesses and provide an electronic copy of that material to Mr Thomas Lubanga Dyilo and the Appeals Chamber;
 - iii. At least one working day before the scheduled hearing, by latest 12 noon, the parties shall submit to the Appeals Chamber in written form, any objections related to the use of material during the witnesses' testimony; and
 - iv. In conformity with regulation 52 (2) of the Regulations of the Registry, at least three working days before the scheduled hearing, the parties shall provide the material they intend to use at the hearing to the courtroom officer, in electronic version whenever possible.
 - v. The Registrar is instructed to inform the Appeals Chamber and the parties, without delay, if the above-mentioned deadline needs to be adjusted to accommodate the travel schedule of the relevant Registry staff to the field for the purposes of arranging the hearing of the witnesses via video-link technology.
- e. Regarding the conduct of questioning by the parties and participants:
- i. For the examination by counsel for Mr Thomas Lubanga Dyilo, leading questions should not be used for contentious topics and counsel should confine questioning to the issues for which Mr Thomas Lubanga Dyilo has sought to admit the evidence of the witnesses on appeal;
 - ii. Should an issue affecting the personal interests of the participating victims arise during the examination of the witnesses, the Legal Representatives of Victims V01 and



V02 may orally request authorisation to question the witness in relation to a specific part of his prior testimony;

iii. The Prosecutor may examine the witnesses on matters related to their testimony and its reliability, as well as on the credibility of the witnesses and other relevant matters; and

iv. Mr Thomas Lubanga Dyilo's re-examination of the witnesses shall be limited to matters arising out of the examination by the Prosecutor or the examination of the Legal Representatives of Victims V01 and V02, if any. If counsel for Mr Thomas Lubanga Dyilo wishes to raise new issues, she shall make an application to that effect.

(3) On Tuesday, **20 May 2014**, at **9:30** the Presiding Judge will give a short introductory statement and thereafter open the hearing of submissions and observations by the parties and participants, which shall be delivered in accordance with the following timetable:

a. First Session (9:30 until 11:30)

i. 9:40 until 10:25: Counsel for Mr Thomas Lubanga Dyilo (maximum 45 minutes);

ii. 10:25 until 11:10: The Prosecutor (maximum 45 minutes);

iii. 11:10 until 11:30: Legal Representatives of Victims V01 (maximum 20 minutes).

b. 11:30 until 14:00: Break

c. Second Session (14:00 until 16:00)

i. 14:00 until 14:20: Legal Representatives of Victims V02 (maximum 20 minutes);

ii. 14:20 until 14:30: The Prosecutor in response to the Legal Representatives of Victims V01 and V02 (maximum 10 minutes);

iii. 14:30 until 14:50: Counsel for Mr Thomas Lubanga Dyilo in response to the Legal Representatives of Victims V01

and V02 and in response to the Prosecutor (maximum 20 minutes);

iv. 14:50 until 15:30: Questions by the Appeals Chamber (maximum 40 minutes);

v. 15:30 until 16:00: Mr Lubanga may address the Appeals Chamber (maximum 30 minutes).

(4) Thereafter, the Presiding Judge will close the hearing.

REASONS

I. BACKGROUND

1. On 14 March 2012, Trial Chamber I (hereinafter: "Trial Chamber") rendered the "Judgment pursuant to Article 74 of the Statute"¹ (hereinafter: "Conviction Decision"), and, on 10 July 2012, the "Decision on Sentence pursuant to Article 76 of the Statute"² (hereinafter: "Sentencing Decision"). On 3 October 2012, Mr Thomas Lubanga Dyilo (hereinafter: "Mr Lubanga") filed appeals against both the Conviction Decision and the Sentencing Decision.³ Also on 3 October 2012, the Prosecutor filed an appeal against the Sentencing Decision.⁴

2. On 26 November 2012, Mr Lubanga filed the "Defence application 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'",⁵ in which he requests, *inter alia*, that the Appeals Chamber hear the testimony of witnesses D-0040 and D-0041.

3. On 21 March 2014, the Appeals Chamber issued the "Scheduling order for a hearing before the Appeals Chamber",⁶ in which it informed the parties and participants that a hearing would be held on 14 and 15 April 2014 for the purposes of

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901.

³ "Notice of Appeal lodged by the Defence for Mr Thomas Lubanga against Trial Chamber I's Judgment pursuant to Article 74 of the Statute of 14 March 2012", ICC-01/04-01/06-2934-tENG (A 5); "Notice of Appeal lodged by the Defence for Mr Thomas Lubanga against Trial Chamber I's Decision on sentence pursuant to Article 76 of the Statute of 10 July 2012", ICC-01/04-01/06-2935-tENG (A 6).

⁴ "Prosecution's Notice of Appeal against Trial Chamber I's 'Decision on Sentence pursuant to Article 76 of the Statute'", ICC-01/04-01/06-2933 (A 4).

⁵ ICC-01/04-01/06-2942-Conf-tENG (A 5 A 6).

⁶ ICC-01/04-01/06-3067 (A 4 A 5 A 6).

hearing: 1) the testimony of witnesses D-0040 and D-0041 and 2) submissions and observations by the parties and participants.⁷

4. On 25 March 2014, the Appeals Chamber issued the "Further order regarding the conduct of the hearing of the Appeals Chamber".⁸ In respect of the evidentiary portion of the hearing, the Appeals Chamber instructed the parties to provide, by 28 March 2014 for Mr Lubanga and 31 March 2014 for the Prosecutor, estimates as to the amount of time needed for the questioning of each witness and to make written submissions relevant to the conduct of the hearing of the two witnesses, including on the procedure for the use of material during questioning, the timing of advance notification of any such material and the procedure for any objections thereto.⁹ The Legal Representatives of Victims V01 and V02 were directed, if they wished to question the witnesses, to request authorisation pursuant to rule 91 of the Rules of Procedure and Evidence by 28 March 2014, with the parties' response thereto by 31 March 2014.¹⁰

5. Regarding the hearing of the submissions and observations by the parties and participants, the Appeals Chamber informed the parties and participants of the order and timeframe within which it was considering to invite them to address it and informed them that they could also address this proposed order and timeframe in their written submissions relevant to the evidentiary portion of the hearing.¹¹ Further, the Appeals Chamber informed the parties of the issues that they may address in their oral submissions at the hearing and informed the Legal Representatives of Victims V01 and V02 of those issues that they may address in their observations.¹² Finally, the Appeals Chamber informed Mr Lubanga that he may address the Appeals Chamber at the closure of the hearing.¹³

⁷ ICC-01/04-01/06-3067 (A 4 A 5 A 6), p.3.

⁸ ICC-01/04-01/06-3068 (A 4 A 5 A 6).

⁹ ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 1 (a)-(c).

¹⁰ ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 1 (d).

¹¹ ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 2 (a)-(b).

¹² ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 2 (c)-(e).

¹³ ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 2 (f).

6. On 28 March 2014, the Legal Representatives of Victims V01 filed the « Réponse à l'Ordonnance du 25 mars 2014 », ¹⁴ submitting that they do not wish to question the witnesses. ¹⁵ However, they indicated that, should an issue related to victims be addressed during the examination of the witnesses, they wish to retain the possibility, if necessary, to orally request authorisation to ask questions about relevant statements. ¹⁶

7. Also on 28 March 2014, the Legal Representatives of Victims V02 filed the « Observations de l'équipe V02 de représentants légaux de victimes conformément à l'ordonnance ICC-01/04-01/06-3068 de la Chambre d'appel », ¹⁷ in which they request leave to question the two witnesses for a period of twenty minutes, attaching the proposed topics for the questions in a confidential annex. On 31 March 2014, Mr Lubanga responded to the observations of the Legal Representatives of Victims V02, ¹⁸ objecting to the request for leave to question the witnesses on the basis that the request does not indicate how the personal interests of the victims are affected by the witnesses' anticipated testimony or by the questions proposed by the legal representatives. ¹⁹

8. Also on 28 March 2014, Mr Lubanga filed the « Observations de la Défense conformément à l'ordonnance de la Chambre d'appel ICC-01/04-01/06-3068 datée du 25 mars 2014 ». ²⁰ Mr Lubanga submits that he will require approximately one and a half hours to examine witness D-0040 and approximately one hour for witness D-0041. ²¹ Regarding the procedure to be followed, Mr Lubanga submits that the procedures followed during the trial should be followed, ²² specifically that: 1) seven days prior the appearance of the witnesses, Mr Lubanga should notify the list of evidence he intends to use during his examination of the witnesses to the Prosecutor

¹⁴ ICC-01/04-01/06-3071 (A 4 A 5 A 6).

¹⁵ ICC-01/04-01/06-3071 (A 4 A 5 A 6), para. 3.

¹⁶ ICC-01/04-01/06-3071 (A 4 A 5 A 6), para. 3.

¹⁷ ICC-01/04-01/06-3072 (A 4 A 5 A 6) with one confidential annex ICC-01/04-01/06-3072-Conf-Anx.

¹⁸ « Réponse de la Défense aux observations de l'équipe V02 datées du 28 mars 2014 », ICC-01/04-01/06-3073 (A 4 A 5 A 6).

¹⁹ ICC-01/04-01/06-3073 (A 4 A 5 A 6), paras 4-9.

²⁰ ICC-01/04-01/06-3070 (A 4 A 5 A 6).

²¹ ICC-01/04-01/06-3070 (A 4 A 5 A 6), para. 2.

²² ICC-01/04-01/06-3070 (A 4 A 5 A 6), paras 3-4, referring to ICC-01/04-01/06-2192-Conf, para. 64; ICC-01/04-01/06-T-119-CONF-FRA-CT, p. 1; ICC-01/04-01/06-1235-tFRA.

and the Appeals Chamber; 2) three days before the scheduled hearing of the witnesses, the Prosecutor should communicate the list of evidence she intends to use during her examination to Mr Lubanga and the Appeals Chamber; and 3) in advance of the hearing, the parties should submit to the Appeals Chamber any objections related to the use of evidence during the witnesses' testimony.²³ Finally, Mr Lubanga submits that, in conformity with regulation 52 (2) of the Regulations of the Registry, "participants shall provide to the courtroom officer, in electronic version whenever possible, the evidence they intend to use at the hearing at least three full working days before the scheduled hearing".²⁴

9. Mr Lubanga made no submissions in relation to the proposed order and timeframe for hearing the submissions and observations of the parties and participants.

10. On 31 March 2014, the Prosecutor filed the "Prosecution's submissions regarding the conduct of the hearing before the Appeals Chamber".²⁵ For the hearing of witnesses D-0040 and D-0041, the Prosecutor submits, in line with Mr Lubanga's submissions, that the Appeals Chamber should adopt the procedures followed at trial.²⁶ The Prosecutor submits that the evidence intended to be used in questioning the witnesses should also be provided in electronic format to the other party, via the Registry, at the same time as the list of evidence is provided.²⁷ Regarding the notification of documents to be used in her examination, the Prosecutor submits that she should also be allowed to add documents "as a result of the examination-in-chief" because "cross-examination is to some extent reactionary".²⁸ Finally, the Prosecutor submits that objections to the admissibility of a document the other party intends to use should be made "in writing and prior to the commencement of the hearing".²⁹

11. In addition to the procedures identified by Mr Lubanga set out above, the Prosecutor submits that: 1) "[d]uring examination-in-chief, leading questions should

²³ ICC-01/04-01/06-3070 (A 4 A 5 A 6), para. 3.

²⁴ ICC-01/04-01/06-3070 (A 4 A 5 A 6), para. 3.

²⁵ ICC-01/04-01/06-3074 (A 4 A 5 A 6).

²⁶ ICC-01/04-01/06-3074 (A 4 A 5 A 6), paras 2, 8-9.

²⁷ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 8.

²⁸ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 8, referring to ICC-01/04-01/06-1140, para. 34.

²⁹ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 9.

not be used for contentious areas”³⁰ and Mr Lubanga should confine his questioning to the issues for which he has “sought to admit the evidence of these witnesses on appeal”;³¹ 2) the Legal Representatives of Victims V01 and V02, if leave is granted, should next question the witnesses, the scope of which “should be limited to issues that were raised during examination-in-chief and that affect the [v]ictims’ personal interests”;³² 3) thereafter, the Prosecutor should “cross-examine [the witnesses] on matters related to their testimony and its reliability, as well as on the credibility of the witnesses and other relevant matters”;³³ 4) finally, Mr Lubanga should then re-examine the witnesses, “limited to matters arising out of cross-examination” or the examination of the Legal Representatives of Victims V01 and V02.³⁴ Regarding re-examination, the Prosecutor submits that, if Mr Lubanga wishes to raise new issues, he should make an application to that effect and that “[d]uring re-examination, leading questions should be avoided”.³⁵

12. The Prosecutor submits that the Appeals Chamber may ask questions “whenever the Judges consider it appropriate”, ensuring that Mr Lubanga’s rights are respected and that the “parties generally have the opportunity to explore any new issues to the extent that is necessary”.³⁶

13. Regarding communication with the witnesses, the Prosecutor submits that she should be allowed to speak to witnesses D-0040 and D-0041 before they testify, “provided that they agree”.³⁷ In this respect, the Prosecutor states that “the Defence

³⁰ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 3, referring to ICC-01/04-01/06-T-104-ENG, p. 37, lines 9-11.

³¹ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 3.

³² ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 4, referring to article 68 (3) of the Statute; ICC-01/04-01/06-T-104-ENG, p. 37, lines 12-13; ICC-01/04-01/06-3068 (A 4 A 5 A 6), para. 2(e).

³³ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 5, referring to rule 140 (2) (b) of the Rules of Procedure and Evidence; ICC-01/04-01/06-1140; ICC-01/04-01/06-T-104-ENG, p. 35, lines 22-23, p. 36, lines 15-22, p. 37, lines 1-5, 14-15.

³⁴ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 6, referring to ICC-01/04-01/06-T-104-ENG, p. 36, lines 4-9, p. 37, lines 16-20.

³⁵ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 6, referring to ICC-01/04-01/06-T-104-ENG, p. 36, lines 2-4, p. 37, lines 18-20.

³⁶ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 7, referring to ICC-01/04-01/06-T-104-ENG, p. 37, line 25- p. 38, line 3.

³⁷ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 10.

has informed the Prosecution that it is in the process of asking the witnesses for such consent”.³⁸

14. In relation to the proposed order or timeframe for hearing the submissions and observations of the parties and participants, the Prosecutor states that she “does not object to the order” or the “time allocated to the Prosecution to make submissions”.³⁹

15. On 1 April 2014, the Registrar filed the “Registry report to the Appeals Chamber in compliance with ICC-01/04-01/06-3067”,⁴⁰ in which he informed the Appeals Chamber that, for various logistical reasons, the “scheduled dates of 14 and 15 April are not attainable” for the purpose of hearing the two witnesses but that, given the witnesses are available, such a hearing should be feasible at a later date.⁴¹

16. On 10 April 2014, the Appeals Chamber issued the “Order postponing the hearing before the Appeals Chamber”⁴² (hereinafter: “Postponement Order”) in which it informed the parties that the scheduled dates of 14 and 15 April 2014 for the hearing had been vacated and that an order would be issued shortly setting a new date.⁴³

II. DETERMINATION BY THE APPEALS CHAMBER

A. The hearing of witnesses D-0040 and D-0041

17. The Appeals Chamber decides to adopt procedures similar to those used during the trial proceedings, as proposed by the Prosecutor and Mr Lubanga. In this respect, the Appeals Chamber has considered the relevant Trial Chamber decisions, including those referred to by the parties in their submissions.

³⁸ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 10.

³⁹ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 11.

⁴⁰ ICC-01/04-01/06-3075 (A 4 A 5 A 6) (hereinafter: “Registry Report”). This document was registered on 2 April 2014.

⁴¹ ICC-01/04-01/06-3075 (A 4 A 5 A 6), paras 6-7.

⁴² ICC-01/04-01/06-3079 (A 4 A 5 A 6).

⁴³ ICC-01/04-01/06-3079 (A 4 A 5 A 6), p. 3.

1. Communication with the witnesses by the parties

18. The Appeals Chamber notes that both counsel for Mr Lubanga and the Prosecutor have indicated that they intend to communicate with the witnesses prior to the commencement of their testimony.⁴⁴

19. With respect to communication between the parties and the witnesses, the Appeals Chamber notes that these proposed communications have been announced in filings that have been notified to both parties and no objections have been raised.⁴⁵ Further, the Appeals Chamber notes that Trial Chamber I issued decisions in the course of the trial, authorising the Prosecutor to contact defence witnesses prior to their testimony.⁴⁶ Thus, the Appeals Chamber considers that the request of the Prosecutor is in conformity with prior practice in this case. Therefore, the Appeals Chamber permits the parties to proceed in this respect as they have proposed.

2. Procedure for notification of materials to be used during questioning

20. The Appeals Chamber decides, as requested by the parties, to apply the deadlines relevant to the notification of materials that were in place during the trial proceedings, as specified in paragraph (2) (d) above.

21. The Appeals Chamber notes that regulation 52 (2) of the Regulations of the Registry, requires the parties to provide, three working days in advance of the scheduled hearing, the evidence they intend to use at the hearing to the courtroom officer, in electronic version whenever possible. The Appeals Chamber is mindful of the logistical issues specific to the hearing of witnesses via video-link technology and the preference, for technological reasons, that any such material be provided to the courtroom officer prior to the departure of the relevant Registrar staff member to the field. In this respect, the Registrar is instructed to inform the Appeals Chamber and the parties, without delay, if the above-mentioned deadline needs to be adjusted to

⁴⁴ See Registry Report, para. 3; *supra* para. 13.

⁴⁵ "Registry report to the Appeals Chamber in compliance with ICC-01/04-01/06-3067", dated 1 April 2014 and registered 2 April 2014, ICC-01/04-01/06-3075, para. 3; ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 10.

⁴⁶ See "Decision on the prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witnesses", 3 June 2008, ICC-01/04-01/06-1372; "Decision on whether the prosecution may contact defence witnesses", 20 January 2010, ICC-01/04-01/06-2192-Conf; *see also* Oral Decision of 25 October 2010, ICC-01/04-01/06-T-232-ENG, p. 4, line 13 et seq. Specifically for dual-status victims, *see* "Decision on certain practicalities regarding individuals who have the dual status of witness and victim", 5 June 2008, ICC-01/04-01/06-1379.

accommodate the travel schedule of the relevant Registry staff to the field for the purposes of arranging the hearing of the witnesses via video-link technology.

22. The Appeals Chamber also instructs the parties to submit in written form any objections related to the use of evidence during the witnesses' testimony at least one working day before the hearing by 12:00 noon at the latest.

23. Finally, the Appeals Chamber also notes the Prosecutor's submission that she should also be allowed to add documents as a result of the examination by counsel for Mr Lubanga because "cross-examination is to some extent reactionary".⁴⁷ The Appeals Chamber notes that this submission is in line with the practice used at trial.⁴⁸ The Appeals Chamber does not consider it appropriate to approve such a request in the abstract and therefore will only decide on a request to add a document that was not notified if such a situation arises and on the basis of the document in question and the specific reasons as to why it was not submitted earlier. In addition, the Appeals Chamber reminds the Prosecutor of the logistical difficulties that can arise with respect to video-link technology when documents are not provided to the courtroom officer prior to the departure of the relevant Registry staff to the field and encourages the Prosecutor to have due regard to these logistical considerations when preparing for the examination of the witnesses.

3. Estimated time for the examination of the witnesses

24. The Appeals Chamber notes the parties have each requested one and a half hours for the examination of witness D-0040 and one hour for the examination of witness D-0041. The Appeals Chamber notes in this respect that the parties have not provided any justification for the amount of time requested. In light of the expected subject matter of the witnesses' testimony and the grounds of appeal for which Mr Lubanga seeks to have their testimonies admitted as additional evidence, the Appeals Chamber is not persuaded that the amount of time requested is justified. The Appeals Chamber considers that one hour for the examination by counsel for Mr Lubanga and the examination by the Prosecutor is sufficient for both witnesses. Therefore, counsel for Mr Lubanga and the Prosecutor are each granted one hour for their respective examinations of each witness.

⁴⁷ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 8.

⁴⁸ See ICC-01/04-01/06-1140, para. 34.

4. Request for leave to question the witnesses by Legal Representatives of Victims V02

25. The Legal Representatives of Victims V02 have requested leave to question the witnesses and provided the proposed questions to the Appeals Chamber. The Appeals Chamber does not consider that the request identifies any personal interest of the victims and, upon review, considers that the proposed questions do not relate to their personal interests. The request by the Legal Representatives of Victims V02 for leave to question the witnesses is therefore rejected.

26. Notwithstanding this, in conformity with article 68 (3) of the Statute, should an issue related to the personal interests of the victims be addressed during the examination of the witnesses, the Legal Representatives of Victims V01 and V02 may orally request authorisation to ask questions about the relevant statements, the scope of which are to be limited to issues that were raised in examination.

B. The hearing of the submissions and observations of the parties and participants

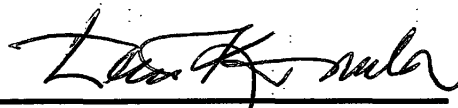
27. The Appeals Chamber notes that Mr Lubanga made no submissions in relation to the order or timeframe relevant to the hearing of the submissions and observations of the parties and participants that was set out in the “Further order regarding the conduct of the hearing of the Appeals Chamber”⁴⁹. It further notes that the Prosecutor submits that she “does not object to the order” or the “time allocated to the Prosecution to make submissions”.⁵⁰

28. The Appeals Chamber therefore decides to proceed according to the order and timeframe as set out in that order. In conformity with regulation 64 (1) of the Regulations of the Registry, the Appeals Chamber informs the parties and participants that the hearing of the submissions and observations will be conducted during two sessions of two hours each, with a break of two and a half hours between the two sessions.

⁴⁹ ICC-01/04-01/06-3068 (A 4 A 5 A 6), p. 4.

⁵⁰ ICC-01/04-01/06-3074 (A 4 A 5 A 6), para. 11.

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



Judge Erkki/Kourula
Presiding Judge

Dated this 30th day of April 2014

At The Hague, The Netherlands