

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 April 2011

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 on the timetable for closing submissions

Decision/Order/Judgment 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 Jean Chrysostome Mulamba Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massida

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, pursuant to Article 64 of the Rome Statute ("Statute"), Rule 141 of the Rules of Procedure and Evidence ("Rules") and Regulations 55 and 54 of the Regulations of the Court ("Regulations"), delivers the following Order on the timetable for closing submissions:

1. On 1 April 2011, the timetable for closing submissions in the case was addressed by the Chamber on a preliminary basis.¹
2. Taking into account the observations of the Office of the Prosecutor² ("prosecution") and defence counsel³ for Mr Lubanga, the Chamber issues the following time-table. In light of the legal and factual developments since the commencement of the trial, which led, *inter alia*, to the most recent defence application for a stay of the proceedings based on an abuse of the process by the prosecution, the Chamber is of the view that it is necessary for the Prosecutor to file his written closing statement first. The accused is entitled to know, once the evidence has closed, the legal and factual basis on which the Prosecutor maintains he is guilty. In this particular case, the lack of clearly identified bases could, potentially, result in the defence responding to evidence that is no longer relied on. In the circumstances, the logic underlying Rule 141(2) of the Rules that

¹ Transcript of hearing on 1 April 2011, ICC-01/04-01/06-T-342-ENG ET WT, page 62, line 21 to page 65, line 12.

² Transcript of hearing on 1 April 2011, ICC-01/04-01/06-T-342-ENG ET WT, page 65, line 12 to page 66, line 4.

³ Transcript of hearing on 1 April 2011, ICC-01/04-01/06-T-342-ENG ET WT, page 66, line 12 to page 68, line 9.

establishes the right of the defence to examine witnesses last also applies to these final written submissions. The defence is therefore entitled to file its closing submissions once the arguments of the prosecution and the legal representatives have been submitted.

3. The page limit for each filing has been extended pursuant to Regulation 37 of the Regulations and the deadlines are set out hereafter:
 - a) The prosecution is to file its closing submissions in the case not later than 16.00 on 1 June 2011 in a document not exceeding 250 pages, with an accompanying annex not exceeding 25 pages (for the purposes described by counsel on 8 April 2011).⁴ The Registry has indicated provisionally that the draft translation of the Prosecution final submissions will be available by 23 June 2011. The prosecution is instructed to liaise with the translation unit to assist the Registry with the draft translation.
 - b) The legal representatives of victims team V01 and team V02 as well as the Office of Public Counsel for victims ("OPCV") are also to file their closing submissions in the case no later than 16.00 on 1 June 2011. The page limit is extended up to 50 pages for each team and for the OPCV. There is to be a single filing for each team.

⁴ Transcript of hearing on 8 April 2011, ICC-01/04-01/06-T-347-CONF-ENG ET, page 4, lines 5 – 17 and page 7, line 18 to page 8, line 16. Any explanation contained in the annex for ease of reference cannot replace appropriate submissions that must be included in the closing brief itself (see Regulation 36(2)(b) of the Regulations).

- c) The defence is to file its final submissions in the case no later than 16.00 on 15 July 2011 in a filing not exceeding 300 pages and any accompanying annex should not exceed 25 pages. Although the defence requested the same overall number of pages as the prosecution and the legal representatives in order to respond to the filings of each team,⁵ the Chamber considers that 300 pages will be sufficient to enable the accused to address the closing arguments of the prosecution and the legal representatives, some of which are likely to be repetitive.
- d) The prosecution may file a reply of up to 50 pages by 16.00 on 1 August 2011.
- e) The defence may file a final reply of up to 50 pages by 16.00 on 15 August 2011.
4. The final submissions shall address all the relevant legal and factual issues arising in the case. These should include, *inter alia*:
- i) Whether there was an armed conflict in Ituri, Democratic Republic of Congo, between 1 September 2002 and 13 August 2003?
 - ii) If there was an armed conflict for the purposes of i) above, is there a nexus between the armed conflict and the alleged crimes?
 - iii) Was the armed conflict of an international character or not of an international character, for the purposes of Article 8 of the Statute?

⁵ Transcript of hearing on 8 April 2011, ICC-01/04-01/06-T-347-CONF-ENG ET, page 7, lines 6 – 11.

- iv) If the Chamber concludes that it was not of an international character, what factors should be taken into account if the Chamber considers modifying the legal characterisation of the facts (under Regulation 55) for the period of early September 2002 to 2 June 2003?
- v) What does the prosecution need to establish in this case under Article 25(3)(a) of the Statute?
- vi) What is the meaning of the terms “conscripting” or “enlisting” children under the age of fifteen years into the national armed forces, into armed forces or armed groups or “using them to actively participate in hostilities”, for the purposes of Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) and the corresponding Elements of the Crimes?
- vii) What does the prosecution need to establish under Article 30 of the Statute, bearing in mind Article 8(2)(b)(xxvi)(3) and Article 8(2)(e)(vii)(3) of the Elements of Crimes?

5. For the documents that have been admitted into evidence without having been introduced during the examination of a witness (*viz.* the bar table documents), as set out by the Chamber during the hearing on 1 April 2011 in their final submissions the parties and participants are to identify the documents, or parts thereof, that are relied on, and to provide a sufficient explanation of relevance.⁶

6. Similarly, the parts of the oral evidence relied on by the parties and participants and the documents relied on during the examination of witnesses must be clearly identified. There is a duty on the parties and

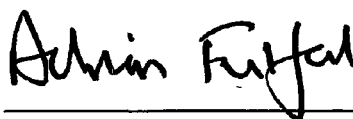
⁶ Transcript of hearing on 1 April 2011, ICC-01/04-01/06-T-342-ENG ET WT, page 64, lines 6 – 19. As stated above, an annex containing a list of documents that were relied on and their relevance to the case, as was suggested by the prosecution, cannot replace proper submissions.

participants to indicate the principal facts arising out of the oral evidence that are relied on, and to provide a sufficient explanation of relevance.⁷

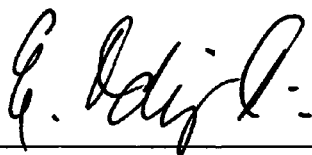
7. The Chamber will hear public oral closing statements on Thursday 25 August 2011 and Friday 26 August 2011 (Rule 141 of the Rules). The prosecution and the defence may make oral closing statements of up to 2 hours each. The two legal representatives' teams and the OPCV may make oral submissions of up to 40 minutes each. The order of public oral closing statements will be: the prosecution, the participating victims and finally the defence.
8. The parties and participants should be prepared to entertain questions from the Bench when their closing statements are delivered. It follows that for each team at least one counsel should be present in court with a detailed knowledge of the facts and issues in the case, having been present in court throughout the majority of proceedings (regardless of which counsel present the final closing statement).

⁷ Transcript of hearing on 1 April 2011, ICC-01/04-01/06-T-342-ENG ET WT, page 64, line 20 to page 65, line 3.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 12 April 2011

At The Hague, The Netherlands