

**Cour
Pénale
Internationale****International
Criminal
Court**

Original: English

No.: ICC-01/04
Date: 13 July 2006**THE APPEALS CHAMBER****Before:** Judge Georghios M. Pikis, Presiding
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula**Registrar:** Mr Bruno Cathala**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO****Public Document****Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial
Chamber I's 31 March 2006 Decision Denying Leave to Appeal****The Office of the Prosecutor**Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Fabricio Guariglia, Senior Appeals Counsel
Mr Eckehard Withopf, Senior Trial Lawyer**Counsel for the Victims**

Mr Emmanuel Daoud

**Counsel for the Defence appointed by
the Court**

Mr Joseph Tshimanga

Convention on the Law of Treaties¹² establishing the principles for the interpretation of treaties.

7. Article 82 (1) (d) of the Statute reads:

Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence: (a) [...]; (b) [...]; (c) [...]; (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

8. Evidently, article 82 (1) (d) of the Statute has two components. The first concerns the prerequisites for the definition of an appealable issue and the second the criteria by reference to which the Pre-Trial Chamber may state such an issue for consideration by the Appeals Chamber.

(a) The first component

9. Only an “issue” may form the subject-matter of an appealable decision. An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. There may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. This conflict of opinion does not define an appealable subject. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination. The issue may be legal or factual or a mixed one.

10. Not every issue may constitute the subject of an appeal. It must be one apt to “significantly affect”, i.e. in a material way, either a) “the fair and expeditious conduct of the proceedings” or b) “the outcome of the trial”. The issue must be one likely to have repercussions on either of the above two elements of justice.

¹² 1155 United Nations Treaty Series 18232, signed on 23 May 1969 and entered into force on 27 January 1980.

