

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 24 March 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

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

Public Document

**Prosecution's Response to Requête du conseil de permanence de prorogation du
délai d'appel et de communication du dossier du Bureau du Procureur**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

Duty Counsel for the Defence
Mr Jean Flamme

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

24 March 2006

Background

1. On 20 March 2006, Duty Counsel for the Defence filed the "Requête du conseil de permanence de prorogation du délai d'appel et de communication du dossier du Bureau du Procureur" ("Application"),¹ requesting the Pre-Trial Chamber
 - (i) to "[e]xtend by 30 days the time-limit to appeal against Pre-Trial Chamber I's Decision on the Prosecutor's Application for a Warrant of Arrest dated 10 February 2006" (First Request),² and
 - (ii) to "[p]rovide the accused and his counsel with access to the Prosecutor's entire case-file against the accused" (Second Request),³ detailing a number of filings he wants "in particular" to have access to (Third Request).⁴
2. On 22 March 2006, the Pre-Trial Chamber decided⁵ that it is not competent to entertain the Application in respect to the First Request.⁶ Furthermore, the Pre-Trial Chamber decided⁷ to grant the Prosecution until Friday, 24 March 2006, 16:00 hours to present its observations on the Application by Duty

¹ "Requête du conseil de permanence de prorogation du délai d'appel et de communication du dossier du Bureau du Procureur", 20 March 2006.

² See Application, at page 3.

³ See Application, at page 3.

⁴ These documents include the "Prosecution's Application dated 13 January 2006", the "Decision concerning Supporting Materials dated 20 January 2006", the "Documentation Appended to the Prosecution Application of 13 January 2006", the "Documentation entitled 'Prosecution's Submission of Further Information and Materials'", and the "Transcript of the Hearing of 2 February 2006."

⁵ Decision on the Application by the Duty Counsel for the Defence dated 20 March 2006 ("Decision"), 22 March 2006.

⁶ See Decision, at page 5. - The Prosecution notes that it is of the view that the law governing challenges to jurisdiction and admissibility in Article 19 of the Rome Statute provides for a mechanism for Duty Counsel for the Defence to make the challenges to the jurisdiction of the Court and to the admissibility of the case without having to appeal the Pre-Trial Chamber I's 10 February 2006 Decision.

⁷ See Decision, at page 5.

Counsel for the Defence “for access to all documents relating to the issuance of an arrest warrant” against Thomas LUBANGA DYILO.

Submissions on the Second Request

3. In respect of the Second Request, due to the way Duty Counsel for the Defence has combined and interlinked the Second Request and the Third Request, it is not entirely clear to the Prosecution whether Duty Counsel for the Defence is confusing the Court’s case record - the “Court’s case-file” against Thomas LUBANGA DYILO - and the Prosecution’s case-file. The filings Duty Counsel for the Defence requests “in particular” to get access to do form part of the Court’s case-file.⁸

4. The Prosecution submits that the Rome Statute and the Rules of Procedure and Evidence do not provide for the person subject to a warrant of arrest or Duty Counsel for the Defence to have access to the Prosecution’s *entire* case-file:
 - (i) The underlying principles of Article 67(1) of the Rome Statute provide for access to the Court’s case-file against Thomas LUBANGA DYILO only.

 - (ii) In addition, Thomas LUBANGA DYILO, depending on the stage of the proceedings, is or will be entitled to receive disclosure materials and/or further information. The scope of such disclosure obligations and duties to provide information is

⁸ See below, at para. 5.

defined - and limited - by the respective provisions.⁹ Whilst the Prosecution will fully comply with its respective duties, in no circumstance, however, do the Prosecution's disclosure obligations and/or duties to provide further information amount to a right of the Duty Counsel for Defence and/or Thomas LUBANGA DYILO to access the *entire* case-file of the Prosecution.

Observations of the Prosecution on the Application of Duty Counsel for the Defence to access all documents relating to the issuance of an arrest warrant against Thomas LUBANGA DYILO

5. To the extent that Duty Counsel for the Defence requests access to the filings as detailed in the Application,¹⁰ the Prosecution submits that all of the respective filings do form part of the Court's case-file against Thomas LUBANGA DYILO and are accessible to the Duty Counsel for the Defence. Where such filings are formatted and/or redacted, this has been done so by the Pre-Trial Chamber and the Prosecution¹¹ for reasons of protection of victims and witnesses pursuant to Articles 57(3)(c) and 68(1) of the Rome Statute. The reasons requiring formatting and redactions continue to apply, resulting in Duty Counsel for the Defence currently not being entitled to access the initial - not formatted - and/or unredacted filings.

⁹ Including, *inter alia*, and applicable at various stages of the proceedings, Articles 61(3) and 67(2) of the Rome Statute, and Rules 76, 77 and 121(3) of the Rules of Procedure and Evidence. - The Prosecution wishes to inform the Pre-Trial Chamber that Duty Counsel for the Defence by letter dated 23 March 2006 to the Prosecution has requested inspection of materials pursuant to Rule 77 of the Rules of Procedure and Evidence. Whilst the Prosecution will satisfy this request within the boundaries as detailed in Rule 77 of the Rules of Procedure and Evidence it is of the view that the Second Request is still pending decision before the Pre-Trial Chamber.

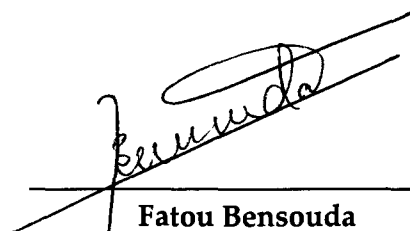
¹⁰ See Application, at page 3.

¹¹ Following respective requests by the Pre-Trial Chamber.

6. The filings currently accessible to Duty Counsel for the Defence as detailed in the Decision¹² do provide all relevant information for following-up the First Request. In particular, the formatted and/or redacted versions of the Prosecution's filings during the application process,¹³ the formatted version of the 10 February 2006 Decision of the Pre-Trial Chamber on the Prosecutor's Application for a Warrant of Arrest, and - specifically - the redacted transcripts of the Court hearing of 2 February 2006 contain all elements that could be of relevance to the possible appeal of the Duty Counsel for the Defence.

Relief sought

7. Accordingly, the Prosecution requests that the Pre-Trial Chamber
- (i) fully denies the Second Request, and
 - (ii) denies the Third Request to the extent that it goes beyond access to documents that are currently accessible to Duty Counsel for the Defence.



Fatou Bensouda
Deputy Prosecutor (Prosecutions)

Dated this 24th day of March 2006

At The Hague, The Netherlands

¹² See Decision, at pages 2 and 3.

¹³ In particular the formatted and redacted version of the Prosecution's Application for a Warrant of Arrest, Article 58, of 12 January 2006.