

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 28 August 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 with *Ex Parte*, Confidential and Public Annexes

**Submission of the Document Containing the Charges pursuant to Article 61(3)(a) and
of the List of Evidence pursuant to Rule 121(3)**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

**Legal Representatives for the
Victims a/0001/06 to a/0003/06**

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Mr Jean Flamme

**Office of Public Counsel for the
Defence**

Ms Melinda Taylor

Background

1. On 20 March 2006, at the occasion of the first appearance of Thomas LUBANGA DYILO pursuant to Article 60(1) of the Rome Statute (Statute) and Rule 121(1) of the Rules of Procedure and Evidence (Rules), the Pre-Trial Chamber pursuant to Rule 121(1) set the date for the Confirmation Hearing for 27 June 2006.¹
2. On 22 May 2006, the Prosecution filed the "Prosecution's Request pursuant to Rule 121(7) for Postponement of the Date of the Confirmation Hearing",² requesting the Pre-Trial Chamber to re-schedule the date of the Confirmation Hearing once certain protective measures referred to in the "Submission to Inform the Pre-Trial Chamber Regarding Protective Measures"³ were fully implemented.
3. Following an *ex parte* Hearing before the Pre-Trial Chamber on 23 May 2006, the Single Judge of the Pre-Trial Chamber (Single Judge), on 24 May 2006, rendered the "Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure"⁴ (24 May 2006 Decision). In the 24 May 2006 Decision, the Single Judge decided to postpone the Confirmation Hearing until Thursday, 28 September 2006 and set a timetable (Timetable) for disclosure.

¹ See the (English) transcript of the Court Hearing of 20 March 2006, at page 8.

² Prosecution's Request pursuant to Rule 121(7) for Postponement of the Date of the Confirmation Hearing, *ex parte*, 22 May 2006.

³ Submission to Inform the Pre-Trial Chamber Regarding Protective Measures, *ex parte*, 12 May 2006, at para. 13.

⁴ Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure, public, 24 May 2006.

4. Pursuant to the Timetable, the Prosecution on 28 August 2006 “shall make available to the Defence and file in the record of the case against Thomas Lubanga Dyilo, pursuant to rule 121(3) of the Rules, a comprehensive document (“the Prosecution’s Charging Document and List of Evidence”) containing a detailed description of the charges together with the list of evidence which the Prosecution intends to present at the hearing. The Prosecution shall ensure that it is organised so that: (i) each item of evidence is linked to the factual statement it intends to prove; and (ii) each factual statement is linked to a specific element of the crime, a mode of liability or both.”⁵
5. On 4 August 2006, the Single Judge rendered the “Decision on the Requests of the Defence of 3 and 4 July 2006”⁶ (4 August 2006 Decision), and ordered the Prosecution to file a French version of the Document Containing the Charges and of the List of Evidence in accordance with the Timetable.

Document Containing the Charges

6. The Prosecution herewith files in the record of the case against Thomas LUBANGA DYILO the Document Containing the Charges pursuant to Article 61(3)(a) and Rule 121(3).
7. The Document Containing the Charges is submitted in an un-redacted version for the Pre-Trial Chamber and the Defence⁷ and in a redacted version for the Legal Representatives for the Victims a/0001/06 to a/0003/06 and the public.⁸ In

⁵ See 24 May 2006 Decision, at pages 7 and 8.

⁶ Decision on the Requests of the Defence of 3 and 4 July 2006, public, 4 August 2006.

⁷ Attached as confidential Annex 1.

⁸ Attached as Annex 2.

compliance with the 4 August 2006 Decision, the Prosecution files in addition French translations of both the un-redacted version⁹ and the redacted version.¹⁰

8. Pursuant to Articles 68(1) and 54(3)(f), the Prosecution redacted the version for the Legal Representatives for the Victims a/0001/06 to a/0003/06 and for the public for reasons of protection of victims and witnesses.

List of Evidence

9. The Prosecution herewith submits the List of Evidence, in the format as requested by the Single Judge.
10. The List of Evidence is submitted in an un-redacted version for the Pre-Trial Chamber¹¹ and in a redacted version for the Defence.¹² In compliance with the 4 August 2006 Decision, the Prosecution files in addition French translations of both the un-redacted version¹³ - for the Pre-Trial Chamber - and the redacted version¹⁴ - for the Defence.
11. The Prosecution redacted the version for the Defence pending decision of the Single Judge in respect of the Prosecution's Applications pursuant to Rules 81(2) and 81(4).

⁹ Attached as confidential Annex 3.

¹⁰ Attached as Annex 4. – In respect of the French translations of the un-redacted and redacted versions of both the Document Containing the Charges and the List of Evidence, the Prosecution emphasizes that these translations are translations of the Language Services Unit of the Office of the Prosecutor and thus translations of a Party to the proceedings. They are not "*Official Translations of the Court*" in terms of Regulation 72 of the Registry's Regulations.

¹¹ Attached as Confidential – *Ex Parte* – Prosecution Only Annex 5.

¹² Attached as confidential Annex 6.

¹³ Attached as Confidential – *Ex parte* – Prosecution Only Annex 7.

¹⁴ Attached as confidential Annex 8.

Further Observations

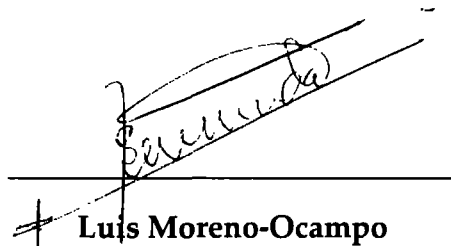
12. The Prosecution submits the following further observations:

- (i) The Prosecution in the Document Containing the Charges has, in line with its characterization in its Application for Warrant of Arrest, Article 58¹⁵ (Arrest Warrant Application) concluded that the crimes for which Thomas LUBANGA DYILO is criminally responsible, occurred - at a minimum - in the context of an armed conflict not of an international character. The evidence collected in the course of the investigation against Thomas LUBANGA DYILO shows that both the UPC and the FPLC were supported by foreign states, and it is the Prosecution's position at this time that the evidence of the involvement of those states does not suffice to enable the Prosecution to meet its burden of establishing an international armed conflict as the term is defined by international criminal jurisprudence.¹⁶ This conclusion is confined to the instant case against Thomas LUBANGA DYILO. The Prosecution continues to collect evidence in the Situation of the Democratic Republic of the Congo and may revise its assessment, following the Confirmation Hearing, based on further collection of evidence and further analysis.
- (ii) In the Document Containing the Charges, the Prosecution submits that Thomas LUBANGA DYILO is criminally responsible as a joint perpetrator pursuant to Article 25(3)(a). The Pre-Trial Chamber found,

¹⁵ Prosecutor's Application for Warrant of Arrest, Article 58, confidential, formatted and redacted version, at paras. 92 to 95.

¹⁶ See ICTY, *The Prosecutor vs. Duško Tadić*, Appeals Chamber, 15 July 1999, at paras. 68 to 171.

upon review of the Arrest Warrant Application - which relied on many of the same factual allegations as the Document Containing the Charges - that indirect co-perpetration was also potentially a viable theory of criminal responsibility.¹⁷ Based on the facts as detailed in the Document Containing the Charges, the Office of the Prosecutor believes that "common purpose" in terms of Article 25(3)(d) could properly be considered as a third applicable mode of criminal liability. The Prosecution requests that the Pre-Trial Chamber make findings that the legal requirements of these three modes of liability are either satisfied or not satisfied, based on its review of the materials submitted at the Confirmation Hearing. Such findings would promote efficiency by ensuring that in the event any of the three legal theories of criminal liability were later deemed infirm, through events not foreseen at this time, the Parties would not be obligated to return to the Pre-Trial Chamber to seek the confirmation of new charges based on the same evidentiary showing.



Luis Moreno-Ocampo
Prosecutor

Dated this 28th day of August 2006
At The Hague, The Netherlands

¹⁷ See "Decision on the Prosecutor's Application for Warrant of Arrest, Article 58", 10 February 2006, formatted and redacted version, public, at para. 96. The Prosecution notes that the Pre-Trial Chamber used the following language: "... the concept of indirect perpetration which, along with that of co-perpetration based on joint control of the crime ..."