



Original : French

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

Date: 17 July 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
*v. Thomas Lubanga Dyilo***

Public Document

Submissions Further to the Order of 13 July 2006

The Office of the Prosecutor

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

Counsel for the Defence

Mr Jean Flamme

Legal Assistant

Ms Véronique Pandanzyla

1. Background

1. The Defence filed its application for release on 23 May 2006.

Pre-Trial Chamber I issued an order on 29 May 2006, requesting a number of further details from the Defence.

The Defence responded to the order in its submissions on 31 May 2006, whilst also making a number of additional observations on issues of disclosure and solitary detention.

Pre-Trial Chamber I issued a second order on 2 June 2006 requesting that the Registrar present his observations on the conditions of Mr Thomas Lubanga Dyilo's detention.

The Registrar presented his observations on 5 June 2006.

The Prosecutor responded to the application for release in his submissions of 13 June 2006.

2. The Defence filed an application for leave to reply to the Prosecutor's response of 19 June 2006, pursuant to regulation 24 (5).

By order of 29 June 2006, the Chamber granted the Defence the requested right to reply, within 10 days from the date of notification of that decision.

3. The Defence filed its "Findings in Respect of the Reply to the Prosecutor's Response to the Request for Release" on 10 July 2006.
4. In its order of 13 July 2006, the Pre-Trial Chamber noted that the Defence has resorted to a variety of procedural remedies and it asked that they be clarified.

2. The Law

2.1 Application for release of 23 May 2006

5. This application is defined as a "request for compensation", as provided for by article 85 (1) of the Statute.

The applicant refers to the application of 23 May 2006 and to the Defence submissions of 10 July 2006 as to the nature of the requested compensation, which must necessarily consist of release, subject to any subsequent application of the provisions of rule 173. The Defence has argued that the original application for release does not constitute a challenge to jurisdiction as such and it has made submissions on the subject of the Pre-Trial Chamber's jurisdiction over this matter.

2.2 Scope of the application as set out in the submissions of 10 July 2006

6. It is correct to observe, as does the Court, that in this broader scope, the applicant is resorting to another procedural remedy.
7. The Defence wishes to make a correction to its application as formulated in paragraph 11 of its submissions of 10 July 2006 and its disposition, in so far as it requested the Court to declare the proceedings "inadmissible".

In so doing, the Defence, referred instead to the criminal procedure in continental legal systems, where the grounds for inadmissibility are not necessarily exhaustively enumerated in the law.

It is however correct that the reasons invoked in the application of 23 May 2006 and the submissions of 10 July 2006, do not pertain to the restrictive conditions in fact provided for in article 17 of the Rome Statute for submitting a challenge to admissibility.

8. The Defence therefore recharacterise the scope of its application as a **challenge to jurisdiction**.

In this respect, the Defence refers to the case-law of the ICTR.¹

The Defence also refers to the reasoning set out in its submissions of 10 July 2006 (para. 12 *in fine*).

The application of the doctrine of "abuse of process" consists of making the Court state that it declines to exercise its jurisdiction in proceedings where continuing to exercise this competence and jurisdiction in relation to violations of the Accused's fundamental rights would cause irreparable damage to the integrity of the judicial process.²

For the reasons previously set out, the Court, within the context of its

¹ *The Prosecutor v. Barayagwiza*, Appeals Chamber decision of 3 November 1999, para 11

² Abovementioned decision under 1 para 74 *in fine*

supervisory powers, could not endorse a violation of the Accused's fundamental rights by continuing to exercise its jurisdiction over him.

In this respect, the Court no longer has personal jurisdiction over the applicant.

9. Since the Court must reject the Prosecutor's criminal proceedings in their entirety, release is also essential under this current challenge to jurisdiction.
10. The applicant reserves the right, under the Statute and in the alternative, to subsequently challenge admissibility.

FOR THESE REASONS

MAY IT PLEASE THE COURT TO

Reject the Prosecutor's criminal proceedings.

Release Mr Thomas Lubanga Dyilo immediately.

Jean Flamme, Counsel for the Defence.

[signature]

Done this 17 July 2006
At Ghent, Belgium.