

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 22 September 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

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

Public

URGENT

Request for Extension of Time

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Ekkehard Withopf, Senior Trial Lawyer

Legal Representatives of Victims

a/0001/06 to a/0003/06

Mr Luc Walley

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**Office of Public Counsel
for the Defence**

Ms Melinda Taylor

Background

1. On Friday, 15 September 2006, the Single Judge of the Pre-Trial Chamber (Single Judge) issued the "First Decision on the Prosecution Request and Amended Requests for Redactions under Rule 81"¹ (First Decision).
2. In the First Decision, the Prosecution was ordered to inform the Chamber by Monday, "25 September 2006 at 10h00 whether it: (i) withdraws from the Prosecution List of Evidence any of the witness statement and investigators' notes and reports of witness interviews included in Annex I to the present decision, along with the documents attached to those statement, transcripts, notes and reports; or (ii) assures the Chamber that the relevant witnesses, or some of those witnesses, have freely consented to the immediate disclosure of their identities to the Defence after having been adequately informed of the risks for their security inherent to such disclosure; or (iii) seeks the authorisation of the Chamber to rely on summary evidence of the above mentioned witness statements, transcripts of witness interviews and investigators' notes and reports of witness interviews."²
3. In respect of those materials the Prosecution decided to provide summaries, the First Decision gave the Prosecution until Monday, "25 September 2006 at 10h00 to file proposed summary evidence in a language which Thomas Lubanga Dyilo fully understands and speaks" witness statements, transcripts of witness interviews and investigator's notes and reports of witness interviews, in which all

¹ First Decision on the Prosecution request and Amended Requests for Redactions under Rule 81, public, 15 September 2006.

² See First Decision, at pages 9 and 10.

identifying information of the relevant witnesses shall be excluded and in which the following information shall be included: (i) a brief introduction of the relevance and probative value of the summary evidence without identifying the witness; (ii) any information on which the Prosecution intends to rely at the confirmation hearing, in particularly the information included in the paragraphs referred to in the Prosecution Charging Document and List of Evidence; and (iii) any information that could be potentially exculpatory or otherwise material for the Defence's preparation of the confirmation hearing."

4. Furthermore, in the First Decision, the Single Judge gave the Prosecution until Monday, "25 September 2006 at 10h00 to re-file the documents attached to those witness statements, transcripts of witness interviews and investigator's notes and reports of witness interviews for which the Prosecution intends to request the authorisation of the Chamber to rely in summary evidence pursuant to the present decision. The redactions should be revised in light of the concerns raised by the single judge at the hearings held on 8 September 2006 and 12 September 2006."

Prosecution's decision on the alternatives

5. The Prosecution has decided to provide summary evidence in respect of all witness statements, transcripts of witness interviews and investigator's notes and reports of the witnesses interviewed as detailed in Annex I attached to the First Decision.

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6. The Prosecution notes that it was notified of the First Decision on Friday, 15 September 2006, at 17:16 hours, and that the Single Judge has requested the Prosecution to provide for the summaries by Monday, 25 September, 10:00 hours.

Discussion in respect of the alternatives

7. In complying with the First Decision, the Prosecution first had to discuss the first two alternatives in the First Decision and to decide upon on how to approach the Single Judge's Order. The Prosecution did so immediately, and decided that in the circumstances only the third alternative – provision of summary evidence – is acceptable for the Prosecution to discharge its duties under Article 61(5).

Volume of materials

8. The Prosecution notes that complying with the First Decision requires the Prosecution to summarise eighteen witness statements and five transcripts of interviews. The witness statements and the transcripts amount to 3413 pages. Furthermore, the Prosecution by the First Decision is obliged to review approximately 460 documents, comprised of more than 700 pages, and to review its suggested redactions in light of the discussion during the Court hearings on 8 and 12 September 2006.
9. In order to comply with the direction given by the First Decision in relation to the requisite content of the summaries of the witness statements and transcripts of interviews and to redact the documents concerned, the Prosecution has to rely on

members of the LUBANGA Trial Team proper: To decide on the relevance and probative value of statements and transcripts, to summarise information on which the Prosecution intends to rely on at the Confirmation Hearing and to provide information on potentially exculpatory evidence or information that is otherwise material for the Defence's preparation of the Confirmation Hearing requires an in-depth knowledge of both, the underlying facts and the legal theory of the case against Thomas LUBANGA DYILO. Accordingly, for the Prosecution all available members of the LUBANGA Trial Team - the Senior Trial Attorney, the three Associate Trial Lawyers, the Associate Legal Officer and the one Investigator assigned to the Trial Team - have been assigned to work on the summaries.³

Translation related matters

10. The First Decision requests the Prosecution to provide the summaries of the witness statements and transcripts of interviews "in a language which Thomas Lubanga Dyilo fully understands and speaks."⁴ The language which Thomas LUBANGA DYILO fully understands and speaks is, to the knowledge of the Single Judge, French. Out of the seven staff of the Office of the Prosecutor working on the assignment to summarise 3413 pages of witness statements and transcripts of interviews, three feel sufficiently comfortable to draft the summaries in French, and four do not feel sufficiently comfortable to do so; these four staff draft in English. Accordingly, in order to comply with the First Decision, these summaries need to be translated into French by the OTP's

³ In addition, the Prosecution has included one investigator who is a lawyer and has the necessary in-depth knowledge of the case.

⁴ See First Decision, at page 10.

Language Services Unit (LSU). In addition, in order to ensure quality, the Prosecution has decided that the summaries provided in French will have to be reviewed by the OTP's LSU.

11. The Single Judge is aware that one translator can provide for translation of five pages a day. Summarising 3413 pages of witness statements and transcripts of interviews in compliance with the direction in the First Decision will result in - at least - dozens of pages to be translated and to be reviewed. The OTP's LSU can make only three translators available.⁵ Accordingly, it can be anticipated that it will take a number of days until the translations are available.

Parallel work

12. The Single Judge is very well aware that the Prosecution's LUBANGA Trial Team has not only to comply with the First Decision but that it, in parallel, has to meet other Court deadlines. These other Court deadlines include(d)

- (i) compliance with the "Second Decision on the Prosecution's Requests and Amended Requests for Redactions under Rule 81"⁶ (Second Decision). The Prosecution was notified about the Second Decision on Wednesday, 20 September 2006, at 18:20 hours. The Second Decision requests the Prosecution to by Monday, 25 September 2006 imply a highly complex decision into practice and to inform the Single Judge

⁵ The Prosecution notes that the OTP's LSU has only one English into French translator on a budgeted post. The other translators work on a GTA basis. The Prosecution refers in addition to the document ICC/ASP/4/CBF.1/7 (ICC report on the rationalization of translations) and the related document of the CBF forth session ICC/ASP/4/2.

⁶ Second Decision on the Prosecution's requests and Amended Requests for Redactions under Rule 81

about various aspects of activities following the Second Decision.⁷ The Prosecution notes that the deadline of the second Decision is the very same as has been set in the First Decision, namely Monday, 25 September 2006, and that the very same staff that works on the summaries has to work on the implementation of the Second Decision.

- (ii) Various filings, including the "Prosecution's Response to 'Observations et demande de mesures spécifiques du représentant légal de VPRS 1, 4 et 5 sur le document 'Prosecutor's Information on Further Investigation' du 28 juin 2006" - a highly complex filing -, the "Prosecution's Amended Application pursuant to Rules 81(2) and 81(4), and the regular disclosure filings were due in the course of this week, and were filed in time.
- (iii) Due to the fact that there was no decision of the Pre-Trial Chamber or the Single Judge on the date of the Confirmation Hearing, the Prosecution (as the Defence⁸ and as the Legal Representative of the Victims a/0001/06 to a/0003/06⁹) was forced, on 20 September 2006, to as a last resort, file the "Prosecution's Request to Schedule a Status Conference by 22 September 2006 the latest on the Starting Date of the Confirmation Hearing and to Provide Information to the Parties concerning the Conduct of the Confirmation Hearing."¹⁰

⁷ For details, the Prosecution refers to pages 12 to 17 of the Second Decision.

⁸ See "Request for further information regarding the confirmation hearing and for appropriate relief to safeguard the rights of the Defence and Thomas Lubanga Dyilo", public, 20 September 2006.

⁹ See "Demande urgente relative à l'audience du 28 septembre", confidential, 20 September 2006.

¹⁰ Prosecution's Request to Schedule a Status Conference by 22 September 2006 the latest on the Starting Date of the Confirmation Hearing and to provide Information to the Parties concerning the Conduct of the Confirmation Hearing. Public, 20 September 2006.

- (iv) To the knowledge of the Single Judge, the Prosecution on Monday, 25 September 2006, has to file the Response to the “Observations et demande de mesures spécifiques du représentant légal de VPRS 2, 3, and 6.” Though this filing will have parallels to the “Prosecution’s Response to ‘Observations et demande de mesures spécifiques du représentant légal de VPRS 1, 4 et 5 sur le document ‘Prosecutor’s Information on Further Investigation’ du 28 juin 2006”, it requires additional substantive work.¹¹
- (v) The Prosecution over the last days worked on the “Prosecution’s Response to Request Submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings”, which it intends to file today or on Monday, 25 September 2006 at the latest. This filing entails a number of complex legal issues that required comprehensive legal research that kept one member of the LUBANGA Trial Team busy for at least two days.

13. In addition, and most importantly, up until the 20 September 2006 “Décision sur le report de l’audience de confirmation des charges”¹², the Prosecution had to work on the basis that the Confirmation Hearing takes place on 28 September 2006. Accordingly, it had to devote the resources of the Trial Team to its preparation.

¹¹ Obviously, the Prosecution’s LUBANGA Trial Team is supported by other OTP’s staff. Fact remains, however, that it has to substantially contribute to this filing.

¹² Décision sur le report de l’audience de confirmation es charges”, public, 20 September 2006.

General remark on the Single Judge's deadlines

14. Prior to making the following observations, the Prosecution wishes to - once again - emphasise the following: The Prosecution is truly appreciative of and recognizes the extended efforts of the Single Judge and the enormous amount of work the Single Judge has undertaken to resolve the many issues raised in the connection with the Court's first-ever Confirmation Hearing. The Prosecution is also well aware that the Single Judge's intentions have the only aim to provide for expeditious and fair proceedings. The Prosecution therefore wishes that the following paragraphs be read against this background.
15. The Prosecution recalls that the Prosecution was notified about the First Decision on Friday, 15 September 2006, 17:16 hours and that it requires providing the summaries by Monday, 25 September 2006, at 10:00 hours.
16. This timetable left the Prosecution LUBANGA Trial Team with nine calendar days, amongst them five working days, to comply with the First Decision, in addition to the work as detailed in paragraphs 12 and 13 above.
17. Over the last months, the Prosecution's LUBANGA Trial Team has made each and every effort to comply with the deadlines as imposed by the Single Judge, and has regularly filed within the deadlines set.
18. The Prosecution's LUBANGA Trial Team, since many weeks and in particular over the last eight weeks, works very long hours every day to accommodate the Single Judge's Requests in time. Since many weeks, the Prosecution's LUBANGA

Trial Team has worked almost every weekend, on Saturdays and Sundays, to comply with the Court's orders.

19. At this stage, however, the Prosecutor is becoming increasingly concerned about the fact that the Single Judge's expectations, as transformed into the deadlines the Single Judge regularly sets for the Prosecution, have become more and more unrealistic.¹³ The Prosecutor is concerned about the conditions in which the LUBANGA Trial Team has to work, and wishes to put this on the Court's record. There cannot be an expectation that the OTP's staff - in this instance the members of the Prosecution's LUBANGA Trial Team - works around the clock, thus not only jeopardizing their health and well-being but also the quality of their work.

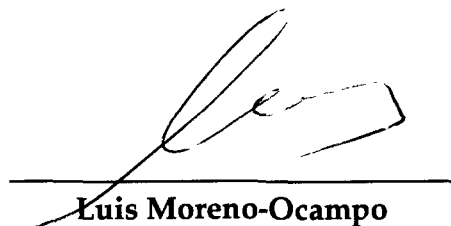
Request

20. In light of the submissions above, the Prosecution requests the Single Judge to extend the deadline set for Monday, 25 September 2006, 10:00 hours to Friday, 29 September 2006, regular filing times.

¹³ The Prosecution recalls, as an example only, the following: On Thursday, 31 August 2006, the Prosecution at 20:18 hours, was notified about a comprehensive and very detailed "Supplementary Agenda" for a Court hearing, which was scheduled for the next day, Friday, 1 September 2006, at 10:00 hours. At this point in time, the Prosecution's LUBANGA Trial Team was still very busy in preparing for the initial agenda, also a very comprehensive one, for the same hearing, in respect of which it was notified on Wednesday, 30 August 2006, at 20:20 hours. Trying to cover all aspects in the "Supplementary Agenda" would have required that some members of the LUBANGA Trial Team - the same members that were expected to appear at the hearing the next day - had to work for the second time within five days all night to meet the Single Judge's deadlines. Only the personal intervention of the Senior Trial Lawyer made the Single Judge understand that there are certain limits to the Prosecution's capacities. - In this context, the Prosecution refers to paragraph 5 in the Appeals Chamber's "Decision on the 'Prosecutor's Motion for Extension of the Time and Page Limits'", public, 3 July 2006.

Information

21. The Prosecution will again make each and every effort to provide for the summaries as soon as possible, and anticipates filing a significant number of them on Monday, 25 September 2006.



Luis Moreno-Ocampo
Prosecutor

Dated this 22nd day of September 2006
At The Hague, The Netherlands