Cour
Pénale
Internationale

International
Criminal
Court

Original : **English**

No.: **ICC-01/04-01/06**
Date: **5 October 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 CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO

Public Document

Submission on the Decision autorisant le depot d'observations sur les demandes de participation a la procedure a/0072/06 a a/0072/06 a a/0080/06 et a/0105/06

The Office of the Prosecutor
Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Ekkehard Withopf, Senior Trial Attorney

Counsel for the Victims a/0001/06 to a/003/06
Mr. Luc Walleyn,
Mr. Frank Mulenda

Counsel for the Defence
Mr. Jean Flamme
Ms. Véronique Pandanzyla

1. On 22 September 2006, the Honourable Pre-Trial Chamber issued the 'Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06'.[1]
2. On 28 September 2006, the Defence filed its Request for Leave to Appeal the Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06'.[2]
3. The Defence Request for Leave identified the following issues that derived from the decision.
   - whether the Chamber may *proprio motu*, and without providing the Defence or the prosecution with a previous opportunity to present submissions, grant protective measures;
   - whether the range of protective measures which the Chamber can order in accordance with article 81(4) extends to redacting the identities of the applicants from the Defence;
   - whether it is consistent with the requirements of fairness and equality of arms to place the Prosecutor in a privileged position vis à vis their access to the substance of the victims applications;
   - whether the failure of the Chamber to utilize rigorous and transparent criteria for determining whether the measures in question were warranted violated the presumption of innocence; and
   - whether the Pre-trial Chamber's overarching obligation to ensure the fairness of the proceedings requires that some limitations be placed on the timing of applications to participate as victims in the proceedings.

4. Subsequent to this Request, for which a decision is still pending, on 29 September 2006 the Pre-Trial Chamber issued its 'Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0072/06 à a/0080/06 et a/0105/06'.[3] This decision was in the same format, and reached the same conclusions as the 22 September Decision.
5. Due to the fact that the issues in both the 22 September Decision and the 29 September Decision are identical, the Defence will not seek leave to appeal the latter Decision. To do so would result in unnecessary litigation on issues that are already squarely before the Pre-Trial Chamber.

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[1] ICC-01/04-01/06-463 (Hereafter the '22 September Decision')
[2] ICC-01/04-01/06-487 (Hereafter the 'Defence Request')
[3] ICC-01/04-01/06-494 (Hereafter the '29 September Decision')

6. However, the Defence would like to expressly confirm that its objections to the 22 September Decision apply equally to the 29 September Decision. Furthermore, if leave to appeal is granted to the Defence by the Pre-Trial Chamber with regards to the 22 September Decision, and the subsequent appeal is successful on one or more of the issues included within the Defence Request, the Defence is of the view that the Decision of the Appeals Chamber should apply automatically to the 29 September Decision.
7. Additionally, if there are any further ''Decisions autorisant le dépôt d'observations sur les demandes de participation à la procédure' in relation to new victim applications, issued by the Pre-Trial Chamber before there is a Decision on the Defence Request for Leave to Appeal, the Defence requests that its challenge to the 22 September Decision, will apply equally to these further Decisions.

RELIEF SOUGHT

8. The Defence respectfully requests that the Honourable Pre-Trial Chamber takes notice of the Defence objections to the 29 September Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0072/06 à a/0080/06 et a/0105/06 and to any forthcoming decisions which entail the same issues rasied by the Defence in its Request for Leave to Appeal the Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06.

Defence counsel

Jean FLAMME

Dated this 5th day of October, 2006

At The Hague