



Original: **French**

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

Date: **31 May 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 relative to the Order of 29.5.2006

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence

Mr Jean Flamme

Legal Assistant
Ms Véronique Pandanzyla

Noting the order of 29 May 2006.

1. Primary submission

The Defence wishes to make clear that it did not invoke regulation 51 of the Regulations of the Court because, in its opinion, this regulation relates to applications for interim release and Mr Thomas Lubanga Dyilo's application of 23 May 2006 does not seek interim release, but release.

Instead, the Defence refers to rule 185 of the Rules of Procedure and Evidence which pertains to release because the Court does not have jurisdiction, the case is inadmissible, the charges have not been confirmed or ... **for any other reason.**

Under regulation 51, neither the indication of the State to which the person seeks to be released, nor solicitation of observations from the host State and from the State to which the person seeks to be released, are preconditions for a decision to release. The arrangements the Court would make and the views of the relevant States it would seek, would therefore be **subsequent** to the decision to release.

This position can be defended since **interim** release is not at issue.

As a further consequence of this regulation, once the accused has been released, the Court itself must take the initiative to facilitate his transfer to an appropriate State. It should be added that, until such time as the applicant has been released, it will be impossible for him to ascertain his future status. (Will he still be considered an accused or will he be a free person?) Under such circumstances, it is impossible for him to identify a State to which he wishes to be released, since his rights will vary according to the State and his future status.

2. Alternative submission

For obvious reasons which relate particularly to the arbitrary and purely politically-motivated nature of his detention in the DRC, Mr Thomas Lubanga Dyilo no longer wishes to be transferred to the DRC.

He therefore requests to be released on the territory of the Kingdom of Belgium or Great Britain.

3. Additional submissions

3.1 Disclosure

In his application of 22.5.2006, the Prosecutor asked that the confirmation hearing be postponed.

It is noteworthy, that in this respect, in support of his application the Prosecutor relies on another application dated 12.5.2006 filed *ex parte*. Its contents are therefore not available to the accused which is unacceptable and infringes the rights of the Defence.

It would seem from this application, that the Prosecutor will not be in a position to disclose the identities of certain individuals, until such time as protective measures have been put in place.

It would seem that, for the same reasons, the Prosecutor is unable to issue the indictment. Mr Thomas Lubanga Dyilo considers that this confirms what was stated in his application for release relating to his need to be informed as soon as possible and in detail of the nature of, cause and content of the charges against him.

It would appear from the Prosecutor's application that at the time of the applicant's arrest, the Office of the Prosecutor was not at all in a position to proceed with the disclosure of its case-file, as should have been the case.

Furthermore, Mr Thomas Lubanga Dyilo notes that the Prosecutor has yet to fulfil his obligations to disclose not only the identities and the relevant unredacted versions, but also the redacted versions and other documents and exhibits not requiring protective measures.

Mr Thomas Lubanga Dyilo cannot accept being detained further, whilst the Prosecutor concludes his investigation. He reiterates that the Prosecutor should have been in a position to fulfil his legal obligations at the time of his arrest.

3.2 Solitary detention

Further to regulations 99 to 101, Mr Thomas Lubanga Dyilo has the right to regular contact with his co-detainees.

Any restriction to access to other persons must be specifically ordered by the Chamber further to a reasoned application.

The isolation of Mr Thomas Lubanga Dyilo from his co-detainees since 17.3.2006

therefore constitutes a measure illegally imposed on him because he has not been informed of any application to that effect.

It follows that disciplinary measures have been imposed on him for no reason.

Mr Thomas Lubanga Dyilo therefore considers that this patently illegal action also constitutes a ground for his release.

FOR THESE REASONS

MAY IT PLEASE THE COURT TO

Release Mr Thomas Lubanga Dyilo immediately.

[signature]

J. Flamme

Counsel for the Defence

31 May 2006

The Hague