

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04-01/06  
Date: 30 November 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**

**URGENT**

**Prosecution's Response to "Defence Motion for Clarification and Request for an  
Extension of the Page Limit"**

**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**

Mr Luc Walley  
Mr Franck Mulenda  
Ms Carine Bapita Buyangandu

**Counsel for the Defence**

Mr Jean Flamme  
Ms Véronique Pandanzyla

**Office of Public Counsel  
for the Defence**

Ms Melinda Taylor

## Background

1. On 29 November 2006, the Defence filed the "Defence Motion for Clarification and Request for an Extension of the Page Limit"<sup>1</sup> (Request). The Defence requests, *inter alia*,<sup>2</sup> in making reference to the 7 November 2006 "Decision on the schedule and conduct of the confirmation hearing"<sup>3</sup> (Scheduling Order), (i) that the Pre-Trial Chamber confirm that "the Prosecution cannot in its brief make written submissions on issues that it did not discuss during the confirmation hearing"; and (ii) an extension of the page limit for the Defence brief to 60 pages.<sup>4</sup>

## Discussion

### *Scope of the Prosecution's 4 December 2006 submission*

2. The Prosecution submits that it can address, as announced in its Closing Statement,<sup>5</sup> issues pertaining to the mode of liability, the principle of legality, and the form of the Document Containing the Charges, as well as any other legal issue in its final written submission that has been raised by the Participants during the Confirmation Hearing.

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<sup>1</sup> Defence Motion for Clarification and Request for an Extension of the Page Limit, public, 29 November 2006.

<sup>2</sup> The Prosecution notes that it does not oppose the Defence request to file a brief which is written in both, French and English. The Prosecution reserves its right to request the Pre-Trial Chamber to file its brief in English.

<sup>3</sup> Decision on the schedule and conduct of the confirmation hearing, public, 7 November 2006.

<sup>4</sup> See Request, at page 6.

<sup>5</sup> See (real time) transcript of the Court session of 28 November 2006, at page 42.

3. The Prosecution has extensively discussed the mode of liability in both, its factual and legal components.<sup>6</sup> Accordingly, it falls squarely within the parameters of the Scheduling Order for the Prosecution to address further aspects of the mode of liability in its 4 December 2006 filing.
4. The Prosecution submits that it is entitled to address any other legal (or factual) issue that was discussed at the Confirmation Hearing, irrespective of which participant discussed it:
  - (i) In the Prosecution's submission, a combined reading of the relevant portions of the Scheduling Order reveals that the Pre-Trial Chamber's aim was to limit the observations of each Participant in the written submissions to issues that were raised during the Confirmation Hearing, thereby avoiding the discussion of any *new* aspects of the case. The legal matters that the Prosecution will further discuss in its 4 December 2006 filing are not new matters; they were discussed in the course in the Confirmation Hearing.<sup>7</sup>
  - (ii) In addition, the Defence's legal submissions were triggered in their entirety by the Prosecution's Document Containing the Charges. Thus, these legal submissions are linked to a document, indeed the key document that was at length discussed by the Prosecution in the course of the Confirmation Hearing.

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<sup>6</sup> See transcript of the Court session of 14 November 2006, at pages 87 to 126, in particular at pages 88 to 90, 120 and 125.

<sup>7</sup> The Prosecution notes that in the Defence's logic the Defence could not address a number of matters that were discussed by the Legal Representatives of the Victims during their Closing Statement, which certainly cannot be the case.

- (iii) Furthermore, if the Defence's interpretation of the Scheduling Order were correct, it would result in the Participants to the proceedings being limited to making repetitive submissions, which would render the briefs meaningless.
- (iv) The Prosecution also submits that not granting the Prosecution the opportunity to respond to the Defence's legal submissions would deprive the Prosecution of its right to be heard, a fundamental principle of procedural law.
- (v) Finally, the Prosecution submits that legal submissions, distinct from submissions on facts, and subject to the usual principles governing the procedure, can be made at any time.

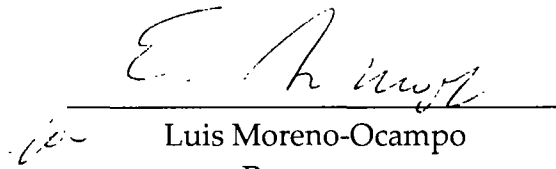
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- 5. The Prosecution submits that the Defence's request for an extension of the page limit is unfounded.
- 6. The schedule to the Confirmation Hearing had amply considered the fact that the Defence has to respond to both the Prosecution and the Legal Representatives of the Victims. Accordingly, the Defence was allocated significantly more time than to the Prosecution to make their submissions. The Defence has made extensive use of the time allocated to it in developing its Responses to the Prosecution's submissions. There is limited additional value to repeating those submissions in a written legal brief.

7. The Prosecution recalls that the additional written submissions as provided for in the Scheduling Order are an extra opportunity for the Participants to make submissions; they are not foreseen in the law applicable to the Confirmation Hearing. Whilst the law does not exclude that the Pre-Trial Chamber grants such an additional opportunity to the Participants to make submissions, it does not require that the Pre-Trial Chamber mirrors all features of the Confirmation Hearing in relation to the additional written submissions.
  
8. Finally, the Prosecution submits that the "document" referred to in the Scheduling Order<sup>8</sup> is not a "Closing Brief" at the end of a trial. Accordingly, considerations that may be applicable to a "Closing Brief" do not apply in the present context.

### Request

9. Accordingly, the Prosecution requests to deny the Defence Request to the extent that it is addressed in the present Response.<sup>9</sup>

  
 Luis Moreno-Ocampo  
 Prosecutor

Dated this 30<sup>th</sup> day of November 2006  
 At The Hague, The Netherlands

<sup>8</sup> See at page 14 of the Scheduling Order.

<sup>9</sup> Specific reference is made to footnote 2.