

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 8 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
With Confidential Annex**

**Prosecution's Information in respect of the "Decision concerning list of issues on
jurisdiction, admissibility or proper conduct of the proceedings"**

The Office of the Prosecutor

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

Legal Representatives for the 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 7 November 2006, the Pre-Trial Chamber issued the "Decision concerning list of issues on jurisdiction, admissibility or proper conduct of the proceedings"¹ (7 November 2006 Decision). In the 7 November 2006 Decision, the Pre-Trial Chamber requested the Parties "to file by Wednesday 8 November 2006 at 14h00 hours the list of those issues of jurisdiction, admissibility or concerning the proper conduct of the proceedings prior to the confirmation hearing that they intend to raise pursuant to rules 122(2) and (3) of the Rules."²

Prosecution's information

2. The Prosecution will make observations on two issues related to the proper conduct of the proceedings prior to the Confirmation Hearing.

First Observation

3. To date, not even 24 hours prior to the Confirmation Hearing, the Defence has neither provided the Prosecution an opportunity to inspect material in possession or control of the Defence pursuant to Rule 78 nor has the Defence made available to the Prosecution its evidence as filed on 6 November 2006.³

¹ Decision concerning list of issues on jurisdiction, admissibility or proper conduct of the proceedings, public, 7 November 2006.

² See 7 November 2006 Decision, at page 3.

³ See Notification of filing of evidence, public, 6 November 2006.

4. Accordingly, the Prosecution is not in a position to review and to analyse the Defence evidence in sufficient time prior to the Confirmation Hearing.⁴ This is in particular highly problematic in terms of the procedural principle of fairness against the background that the Defence materials appear to relate to matters that are closely linked to the contextual and/or background allegations the Prosecution is scheduled to address in the afternoon of Friday, 10 November 2006.⁵
5. The Prosecution notes that in respect of Rule 78, the Defence has not complied with the Court order in the 5 October 2006 "Decision sur la date de l'audience de confirmation des charges"⁶ (5 October 2006 Decision). In the 5 October 2006 Decision, the Pre-Trial Chamber ordered the Defence to provide for the inspection of materials pursuant to Rule 78 by 31 October 2006 at the latest.⁷ In the Prosecution's view, the deadline set by the Pre-Trial Chamber for 31 October 2006 provides clear guidance on the time the Pre-Trial Chamber deemed appropriate and necessary for adequate preparation by the Prosecution upon inspection.
6. In the current schedule, the Prosecution will present its evidence commencing in the afternoon of Friday, 10 November 2006. Accordingly, the Prosecution informs the Pre-Trial Chamber that it will request an adjustment to the schedule of the Confirmation Hearing in order to allow the Prosecution sufficient time to

⁴ The Prosecution realizes that some of the Defence evidentiary materials are known to the Prosecution. The Prosecution notes, however, that other materials, including those materials that are likely to be the more important ones, are not known to the Prosecution.

⁵ See Schedule of the Confirmation Hearing, as annexed to the "Decision on the schedule and conduct of the confirmation hearing", public, 7 November 2006.

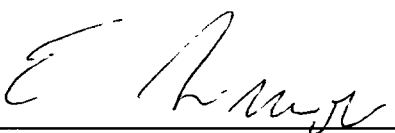
⁶ Decision sur la date de l'audience de confirmation des charges, public, 5 October 2006.

⁷ The Prosecution has informed the Defence on its position. The respective e-mail exchange is annexed as confidential Annex 1.

prepare adequately. The Prosecution submits that commencing its presentation on Monday, 13 November 2006 accommodates the required preparation time. Consequently, in the Prosecution's view, the subsequent schedule needs to reflect the adjustment.

Second observation

7. The Prosecution makes reference to the 7 November 2006 "Ordonnance demandant au Greffier d'enregistrer un document au dossier de l'affaire".⁸ The Prosecution will re-state its position that, pending a final decision on the ability of the Senior Legal Adviser to advise the Pre-Trial Chamber, the Senior Legal Adviser should remain provisionally segregated from the case of *The Prosecutor vs Thomas Lubanga Dyilo*.



Luis Moreno-Ocampo
Prosecutor

Dated this 8th day of November 2006
 At The Hague, The Netherlands

⁸ Ordonnance demandant au Greffier d'enregistrer un document au dossier de l'affaire, public, 7 November 2006.