



Original: **French**

No.: ICC-01/04-01/06
Date: **13 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 THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

**Motion Requesting Authorisation to Respond to the Office of the Prosecutor and
the Representatives of Victims a/0001/06 to a/0003/06**

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence

Mr Jean Flamme
Ms Véronique Pandanzyla

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda

I) Introduction

1. On 20 September 2006, the Defence filed a motion entitled “Request for further information regarding the confirmation hearing and for appropriate relief to safeguard the rights of the defence and Thomas Lubanga Dyilo” seeking clarification on how the confirmation hearing was to proceed and requesting Thomas Lubanga’s release.

2. On 22 September 2006, the Pre-Trial Chamber considered that, because the Defence’s request was made in public documents, it affected the personal interests of victims a/0001/06 to a/0003/06, and therefore invited the Office of the Prosecutor and the Representatives of Victims a/0001/06 to a/0003/06 to submit a response to the Defence’s request for the release of Thomas Lubanga by 9 October at the latest.

3. On 9 October 2006, the Office of the Prosecutor and the Representatives of Victims a/0001/06 to a/0003/06 filed their responses.

II) Facts and Proceedings

4. On 9 October 2006, the Office of the Prosecutor and the Representatives of Victims a/0001/06 to a/0003/06 responded to the Defence’s motion seeking the release of Thomas Lubanga. Their responses raise various issues which require that Defence be able to reply, in particular with regard to the following:

5. The Office of the Prosecutor’s erroneous interpretation which wrongly considers that the conditions provided for in article 58(1)(b) of the Statute are satisfied. The Defence disputes the arguments made by the Office of the Prosecutor (points 12 and 13) and the Representatives of the Victims (points 11 and 12) which attempt to show that:

- a. Thomas Lubanga's detention is necessary not only to ensure his appearance at trial,
- b. He will obstruct or endanger the investigation and Court proceedings,
- c. He may return to the UPC leadership once released.

6. In addition, contrary to the Office of the Prosecutor and the Representatives of the Victims, the Defence maintains its position that Thomas Lubanga's detention has been unreasonably lengthy within the meaning of article 60(4) of the Statute. In this respect, the Defence is of the opinion that the prolonged nature of Thomas Lubanga's detention is partly due to the lengthy delays caused by the Office of the Prosecutor and to the fact that the Court's internal operations are still evolving.

7. The Defence also disputes the argument made by the Representatives of the Victims which maintains that, if the accused were to be released, he would need, on the one hand, prior authorisation from the Democratic Republic of the Congo to enter its territory or to travel to another country and, on the other hand, the application of rule 185(2) by analogy.

III) Basis of the motion

8. This motion is based on regulation 24(5) of the Regulations of the Court, which provides that participants may only reply to a response with leave of the Chamber, unless otherwise provided in these Regulations.

9. The Defence considers that it is important that it be granted the right to reply to the responses of the Office of the Prosecutor and the Representatives of Victims a/0001/06, a/0002/06 and a/0003/06.

10. Indeed, granting this right would be in the interest of justice and the right to a fair trial under the Rules of Procedure and Evidence. Moreover, to apply for interim

release is a fundamental right for all accused persons in detention and raises complex issues, which must be argued by all parties. In addition, in the interests of the proper administration of justice, the accused must have the right in all equality to have his case heard fairly.

11. The Defence is aware that the Court will have to rule for the first time on an application for interim release and that it is a fundamental matter which is not entirely regulated by the Statute or the Rules of Procedure and Evidence.

12. In addition, as this issue will certainly receive varying interpretations and since it will be incumbent upon the Court to determine the applicable criteria, the Defence maintains that it must be able to present its point of view, in order to make any useful suggestions, and to lay out its position before any decision likely to affect its legal position, in a sincere wish to enlighten the Chamber in its decision-making.

IV) Motion for leave to exceed page limit

13. According to regulation 37, documents filed with the Registry shall not exceed 20 pages.

14. Consequently, if the Defence is authorised to reply to the observations filed by the Office of the Prosecutor and the Representatives of Victims a/0001/06 to a/0003/06, its consolidated reply would be limited to 20 pages.

15. Limiting the reply to 20 pages would be contrary to the spirit of the regulation given that the Defence has to provide a relevant and detailed reply to the combined observations of the Office of the Prosecutor and the Representatives of the Victims.

16. Given that the total number of pages of the observations filed by the Office of the Prosecutor and the Representatives of the Victims exceeds 20 pages, and given

the stakes that the issue of release raises, it is of paramount importance that the Defence be allowed the same number of pages to make its case.

For these reasons,

May it please Pre-Trial Chamber I,

- To grant leave to the Defence to reply to the observations presented by the Office of the Prosecutor and the Representatives of Victims a/0001/06 to a/0003/06.
- To allow the Defence to exceed the page limit.

And justice shall be done.

[signed]

Jean Flamme, Defence Counsel

Done on 13 October, 2006

At The Hague