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No.: ICC-01/04-01/06
Date: **05 October 2006**

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

**SITUATION
CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

Application for Extension of Time Limit

The Office of the Prosecutor
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I. BACKGROUND

1. On 22 September 2006, Pre-Trial Chamber I rendered the decision authorising the filing of observations regarding applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06.

2. In that decision, Pre-Trial Chamber I set a time limit of 9 October 2006 for the Defence to file its observations. However, on 3 October 2006, six days before the time limit granted to the Defence expired, the Defence had not yet received copies of the applications for participation in the proceedings from Applicants nos. a/0053/06 to a/0063/06 and a/0071/06.

3. On 14 and 25 September 2006, Applicants nos. a/0072/06 to a/0080/06 and a/0105/06 filed their applications for participation in the proceedings, on a confidential and *ex-parte* basis, in the records of the case of *The Prosecutor v. Thomas Lubanga Dyilo* and the investigation into the situation in the Democratic Republic of the Congo.¹

4. On 29 September 2006, Pre-Trial Chamber I rendered the decision authorising the filing of observations on applications for participation in the proceedings of Applicants nos. a/0072/06 to a/0080/06 and a/0105/06.

5. In this regard, Pre-Trial Chamber I, in accordance with rule 89(1) of the *Rules of Procedure and Evidence*, which states that the Prosecutor and the Defence are entitled to reply to any application for participation within a time limit to be set by the Pre-Trial Chamber, set a time limit of 16 October 2006 for the Defence.

6. However, as at 5 October 2006, the Defence has not yet received the applications for participation in the proceedings of Applicants nos. a/0072/06 to

¹ Decision authorising the filing of observations on applications for participation in the proceedings a/0072/06 to a/0080/06 and a/0105/06, p. 2, No. ICC-01/04-01/06.

a/0080/06 and a/0105/06 thus preventing it from effectively exercising its prerogatives under rule 89(1) of the *Rules of Procedure and Evidence*.

II. IN LAW

7. Regulation 24(1) provides that: “The Prosecutor and the defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations and any order of the Chamber”.

8. Regulation 35(2) makes provision for participants to apply for a time limit to be extended or reduced by showing good cause.

9. Regulation 34(b) provides that: “Unless otherwise provided in the Statute, Rules or these Regulations, or unless otherwise ordered: A response referred to in regulation 24 shall be filed within 21 days of notification in accordance with regulation 31 of the document to which the participant is responding”.

10. *In specie casu*, the document on which the Defence must make observations or to which it must respond consists of redacted copies of the applications for participation filed by several applicants. The time limit for the Defence to submit its observations ought to run from the date on which it receives the redacted version of the applications for participation. In fact, the time limit started to run on the date on which the decisions of the Chamber were rendered rather than the date on which the documents to which the Defence must respond were notified.

11. In addition, rule 89(1) of the *Rules of Procedure and Evidence* provides that: victims who wish to present their views and concerns “shall make written application to the Registrar, who shall transmit the application to the relevant Chamber [...] **the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber**”.

12. **No copies of the applications for participation a/0072/06 to a/0080/06 and a/0105/06 have been received by the Defence to date;** yet the time limits set by the Pre-Trial Chamber for the Defence to make its observations are already running. This means that the Defence is unable to effectively exercise the prerogatives afforded to it under rule 89(1) *in fine*.

13. The time limit granted to the Defence is unfairly curtailed as a result of the delay in providing the redacted versions of applications for participation a/0053/06 to a/0063/06 and a/0071/06, thus forcing the Defence to conduct a hasty analysis of the documents for fear of being time-barred.

14. As a result, the Defence requests that the time limit granted to it be extended and, in this respect, invokes the following valid grounds:

- the redacted copies of the applications for participation of Applicants nos. a/0053/06 to a/0063/06 and a/0071/06 on which the Defence must base its observations were only made available to the Defence on Wednesday 4 October 2006, which gave the Defence **three working days** to examine the said redacted versions of the applications for participation, which run to more than 295 pages. The Defence thus finds itself in a difficult position given its lack of human resources and the amount of documents (both prosecution evidence and exculpatory materials) disclosed by the Office of the Prosecutor which the Defence is working hard to examine.
- to date, the Defence has not received redacted copies of the applications for participation of Applicants nos. a/0072/06 to a/0080/06 and a/0105/06 even though it has only **seven working days** until the time limit granted to it by Pre-Trial Chamber I to make its observations expires.

For these reasons,

May it please Pre-Trial Chamber I:

- to allow all time limits granted to the Defence to run **from the date on which the redacted copies of the applications for participation are received.**
- to grant an additional time limit of two weeks to the Defence which should run from the time it receives redacted copies of the applications for participation of Applicants nos. a/0053/06 to a/0063/06 and a/0071/06 and Applicants nos. a/0072/06 to a/0080/06 and a/0105/06.

[signed]

Jean Flamme, Counsel for the Defence

Dated this 05 October 2006

At The Hague