

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **07 June 2012**

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
THE PROSECUTOR  
v. THOMAS LUBANGA DYILO**

**Public**

**Prosecution's Response to « Requête de la Défense sollicitant l'autorisation de présenter des éléments de preuve supplémentaires lors de l'audience sur la peine prévue le 13 juin 2012 »**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court*****to:****The Office of the Prosecutor****Counsel for the Defence**

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Section****Other**

## INTRODUCTION

1. On 4 June 2012, in its « Requête de la Défense sollicitant l'autorisation de présenter des éléments de preuve supplémentaires lors de l'audience sur la peine prévue le 13 juin 2012 »<sup>1</sup>, (Defence Application), the Defence seeks leave of the Court to call two witnesses *viva voce* (via video-link) and tender two documents through one of them<sup>2</sup>.
2. Additionally, the Defence seeks to tender a third document (DRC-D01-0001-0136) into evidence, presumably from the bar table<sup>3</sup>.
3. The Defence contends that the above evidence supports its observations on sentence<sup>4</sup>.

## SUBMISSION

4. The Prosecution does not object to the Defence's application to call the two witnesses or to tender the two documents<sup>5</sup> through D01-0040. The Prosecution expects that it will require less than one hour for each witness for cross-examination.
5. With respect to the third document (DRC-D01-0001-0136), a UPC Document signed by Thomas Lubanga on 7 February 2004 while staying at the Grand Hotel in Kinshasa, it is irrelevant to Mr Lubanga's sentence pursuant to Article 78(2) of the Rome Statute (Statute) and should not be admitted into evidence. The document may confirm that Mr Lubanga was present at the hotel, but it does not demonstrate that he was detained. As Mr Lubanga points out, he voluntarily went

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<sup>1</sup> ICC-01/04-01/06-2892.

<sup>2</sup> D01-0039 and D01-0040.

<sup>3</sup> The method of introduction is not indicated.

<sup>4</sup> ICC-01/04-01/06-2892, para.1

<sup>5</sup> Election card and school diploma.

to Kinshasa at the invitation of the government; he was not brought there against his will. Moreover, even if his voluntary stay became an involuntary detention, it was not at the behest of the Prosecution<sup>6</sup>, pursuant to an order of this Court<sup>7</sup>, or connected with conduct involving the recruitment or use of child soldiers, as required to justify deducting from this Court's sentence his prior time in custody under Article 78(2) of the Statute. On the contrary, the only alleged criminal conduct Mr Lubanga refers to is "grivèlerie", which amounts to the crime of not paying one's bills.

## CONCLUSION AND RELIEF SOUGHT

6. The Prosecution does not object to the Defence calling the two witnesses indicated above and to the tendering of the two documents through D01-0040, but it does object on relevance grounds to the admission of document DRC-D01-0001-0136.




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Luis Moreno-Ocampo  
Prosecutor

Dated this 7<sup>th</sup> day of June 2012  
At The Hague, The Netherlands

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<sup>6</sup> The Decision on the Prosecutor's Application for Warrant of Arrest, Article 58, was issued on 10 February 2006, ICC-01/04-01/06-1-US-Exp, reclassified as public on 17 March 2006, ICC-01/04-01/06-8-Corr. Arrest Warrant was issued two years after the alleged detention of Mr Lubanga in Kinshasa.

<sup>7</sup> See, in particular, paragraphs 38 and 39 of the Decision on the Prosecutor's Application for Warrant of Arrest, Article 58, was issued on 10 February 2006, ICC-01/04-01/06-1-US-Exp, reclassified as public on 17 March 2006, ICC-01/04-01/06-8-Corr.