

Cour Pénale Internationale International Criminal Court	No.: ICC-01/04 Date: 27 January 2006 Original: English
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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

Under Seal Ex Parte, Prosecutor Only Prosecution's Submission of Further Information and Materials

The Office of the Prosecutor	
Mr Luis Moreno-Ocampo, Prosecutor Ms Fatou Bensouda, Deputy Prosecutor Mr Ekkehard Withopf, Senior Trial Lawyer Ms Lyne Décarie, Trial Lawyer	

Background

1. On 12 January 2006, the Prosecution filed the “Prosecutor’s Application for Warrants of Arrest, Article 58” (the “Application”), requesting, *inter alia*, that arrest warrants be issued for Thomas LUBANGA DYILO and Bosco NTAGANDA.
2. On 23 January 2006, the Pre-Trial Chamber rendered the “Decision concerning Supporting Materials in Connection with the Prosecution’s Application for Warrants of Arrest pursuant to Article 58” (the “Decision”). In its Decision, the Pre-Trial Chamber, considering, *inter alia*, “the absence of supporting materials relating to several factual allegations in the Prosecution’s Application”,¹ “invite(d)”² the Prosecution to provide further information and “supporting materials”,³ by 30 January 2006 at the latest. The information and “supporting materials” that the Prosecution is invited to provide the Pre-Trial Chamber with are detailed in the Decision.

Information about the current whereabouts and on the security situation of REDACTED
REDACTED
REDACTED and protective measures implemented by the
Prosecution to ensure their security

3. The safety, physical and psychological well-being, dignity and privacy of victims and witnesses are of highest concern to the OTP. Accordingly, the OTP, aware of the fact that REDACTED
REDACTED (the “children”) fall within a group of particularly vulnerable victim-witnesses, has - in close co-operation with

¹ See Decision, at page 3.

² See Decision, at page 5.

³ See Decision, at pages 5 and 6.

the Court's Victims and Witnesses Unit⁴ - taken substantive measures to ensure their protection.

4. In compliance with its best practices,⁵ the OTP has paid particular attention to the children's security situation at all times, both prior to contacting and after having approached any of them. Individual security assessments and a psychological evaluation of the suitability of interviews were made in respect to all of the children. These assessments have revealed that, in view of the imminent filing of the Application, it would no longer be safe for the children to continue living in

REDACTED Consequently, the OTP has decided to REDACT
REDACTED Following that decision, in the context of a collective solution, R
REDACTED as
detailed below. Since then, they are living REDACTED

REDACTED In detail:

(i) REDACTED

(ii) REDACTED

(iii) REDACTED

(iv) REDACTED

⁴ The measures as described in paras. 4 to 7 were taken and implemented by OTP.

⁵ The Prosecution refers to the comprehensive information provided to the Pre-Trial Chamber in the context of the (closed session) Court hearing on 15 March 2005, ICC-01-04-T-1-EN, at pages 16 - 20.

(v) REDACTED

(vi) REDACTED

5. REDACTED

6. In order to control the security situation of the children, OTP has implemented a close net of permanent security checks.

(i) On a broad level, such measures include monitoring of the security situation by the OTP's DRC Investigation Team. In doing so, the OTP's DRC Investigation Team relies on information and intelligence provided by MONUC and other reliable sources.

(ii) REDACTED

⁶ REDACTED

REDACTED

⁷ REDACTED

REDACTED

7. The assessment of these reports and updates makes OTP to conclude that, currently, there are REDACTED to the security of the children.
8. In the event of a direct or imminent threat against the children,⁸ OTP - in cooperation with VWU -, has, *inter alia* REDACTED implemented an Immediate Response System (IRS), REDACTED REDACTED REDACTED REDACTED has established Standard Operating Procedures, in particular providing for an immediate response to a direct or imminent threat to a victim or witness.
9. Prior to the implementation to the SOP-based IRS, and now in addition to it, REDACTED REDACTED in a case of emergency.⁹

Information on the video (Annex 6 to the Application)

10. In respect of the video, submitted as Annex 6 to the Application, the Prosecution can provide the following information:
- (i) The video is an excerpt of a copy of a video-cassette. The video-cassette forms part of a set of two video-cassettes that are registered under the OTP Pre-Registration Form (PRF) #00891. The Evidence Registration Number (ERN) of the PRF is DRC-00120-292. The ERNs of the two VHS cassettes are DRC-00120-294 and DRC-00120-295.

⁸ Defined as a real and imminent risk of serious harm or death.

⁹ See Article 17(8) of the Memorandum of Understanding between the United Nations and the International Criminal Court (Annex 10 to the Application).

- (ii) The video-cassettes - VHS cassettes - were received on 28 September 2005 by the Team Leader of the DRC Investigation Team in REDACTED REDACT. The video-tapes contain a compilation of videos taken from other videotapes. They were provided by REDACTED REDACTED
- According to REDACTED he has taped the scenes REDACTED
- (iii) REDACTED had met the Team Leader of the DRC Investigation Team prior to 28 September 2005. On such occasions, R informed the Team Leader of the DRC Investigation Team that R had taped scenes that could be of interest to the OTP. According to REDACTED such materials were scattered on a large number of videotapes, mixed with irrelevant materials. Following the instructions of the Team Leader of the DRC Investigation Team, REDACTED REDACTED reviewed the materials at R disposal, copied and compiled the relevant materials on the two VHS cassettes that were handed over to the Team Leader of the DRC Investigation Team on 28 September 2005.¹⁰
- (iv) From the moment the Team Leader of the DRC Investigation Team had obtained the video-cassettes, he kept them in his custody. Once he returned from mission to The Hague on 4 October 2005, he submitted the two VHS cassettes with the aforementioned Pre-Registration Form

¹⁰ On the occasion of the hand-over of the two VHS cassettes, REDACTED was given 200, -- US\$ for expenses for transport, communication and expenses for compiling and copying the materials on the two VHS cassettes, including the purchase of the two VHS cassettes. If the Pre-Trial Chamber so wishes, the respective receipt can be provided.

to the OTP's Information and Evidence Unit (IEU). Following their Standard Operating Procedures (SOPs), IEU registered the two VHS cassettes, digitised them to preserve their quality, and burnt them onto two DVDs. The VHS cassettes and the DVDs were stored in the OTP's evidence vault.

- (v) Afterwards, for investigative reasons and in order to transcribe the audio on the video-tapes, the DVDs were repeatedly signed out and signed back in, always in compliance with IEU's SOPs.
- (vi) Once the decision was taken to submit the excerpt of the video-footage as an Annex to the Application, the VHS cassettes were signed out twice, in order to allow for the preparation of a high-quality copy, the copy that was submitted as Annex 6 to the Application. The VHS cassettes were signed in again, and since then they have remained in the OTP's IEU's evidence vault.

Invitation to provide “supporting materials”

11. For the legal reasons as detailed below, the Prosecutor has chosen not to act upon the “invitation” by the Pre-Trial Chamber to provide “supporting materials”.

The concept of invitations

12. The Prosecution notes that the Pre-Trial Chamber has “invite[d]” the Prosecution to provide “supporting materials”.¹¹ The concept of “invitations” is used on a number of occasions in the Rome Statute and the Rules of Procedure and Evidence. A review of the respective provisions¹² shows that in all these instances the “invitation” is meant to seek and/or encourage a form of

¹¹ See Decision, at page 5.

¹² E.g., in Article 75(3), 81(2)(b), and 87(5)(a) of the Rome Statute and in Rules 97, 99, 103, 115, 122, 139, 141, and 224 of the Rules of Procedure and Evidence.

participation by presenting “views” and “arguments” or by making “observations”.¹³

13. In no case, however, are the respective addressees of such “invitations” required to act upon them.¹⁴ Accordingly, the Prosecution interprets the “invitation” by the Pre-Trial Chamber by its literal meaning.¹⁵

No legal basis for the provision of “supporting materials”

14. The Prosecution notes that, on its face, the Pre-Trial Chamber’s “invitation” encompasses ten distinct factual aspects.¹⁶ A closer review, however, reveals that some of these aspects include a number of complex sub-issues.¹⁷

15. The “invitation” of the Pre-Trial Chamber to provide “supporting materials” lacks a legal basis. Article 58(2)(d) of the Rome Statute provides for a “*summary* of the evidence and other information”¹⁸ only. In addition, in the context of arrest warrant applications, the applicable law does not contain the notion of “supporting materials”.

16. Article 58(2)(d) of the Rome Statute provides that the Prosecution’s application seeking the issuance of a warrant of arrest shall contain “[A] *summary* of the

¹³ “Observations” are invited pursuant to Rules 97(2), 99(3), 103(1) and 224(1) of the Rules of Procedure and Evidence. “Views” are invited pursuant to Rules 115(1) and 139(1) of the Rules of Procedure and Evidence. “Arguments” or “statements” are invited pursuant to Rules 122(5) and 141(2) of the Rules of Procedure and Evidence.

¹⁴ In respect to the submission of materials annexed to the 25 January 2006 filing (“Prosecution’s Submission of Further Information and Materials”), the Prosecution makes reference to footnote 5, outlining the only legal basis on which the Prosecution has provided such materials.

¹⁵ This interpretation is supported by the 11 February 2004 Decision in the ICTY case of *The Prosecutor v. Hadžihasanović & Kubura*. The Trial Chamber in its “Disposition” uses the terms “orders”, “requests” and “invites”, implying that these terms encompass different levels of obligations.

¹⁶ See (i)b. and (iii) on page 5, and (iv)a.-h. at page 6 of the Decision.

¹⁷ In particular (iv)h. on page 6 of the Decision. - It appears that the Pre-Trial Chamber by way of its “invitation” wishes to receive the Prosecutor’s file (the “dossier”) on Thomas LUBANGA DYILO and Bosco NTAGANDA.

¹⁸ Emphasis added by the Prosecution.

evidence and any other information which establish reasonable grounds to believe that the person committed those crimes.”¹⁹

17. The Prosecution has reviewed the wording of Article 58(2)(d) of the Rome Statute in versions of all official languages of the Court as detailed in Article 50(1) of the Rome Statute, namely²⁰ Arabic, Chinese, English, French, Russian and Spanish. In all versions but the Chinese version²¹ the word for “summary” is used,²² thus clearly indicating that the notion of a “summary” was the one intended by the legislator. The fact that the Chinese version refers to “evidence” does not militate in favour of a different interpretation, given that the article was not negotiated in Chinese.²³

18. The notion of a “summary” is not ambiguous. Accordingly, the Prosecution submits that - in accordance with the principles of interpretation - there is no room for an interpretation of its meaning, and certainly not to the extent of including “supporting materials”.

19. In addition, in support of the Prosecution’s terminological interpretation of the notion of “*summary* of evidence and any other information”,²⁴ Article 58 of the Rome Statute does not provide for submission of “supporting materials” or any materials in addition to the summary. Whilst the notion of “supporting materials”, “supporting documentation”, or “supporting documents” is known as a concept in both the Rome Statute and the Rules of Procedure and Evidence,²⁵ it is not used in the context of the procedures following an application by the

¹⁹ Emphasis added.

²⁰ In the order of the law.

²¹ Insofar as the Prosecution, having made inquiries within the OTP, can assess it.

²² The French version does not include the portion on “and any other information” of the English version.

²³ To the knowledge of the Prosecution.

²⁴ Emphasis added.

²⁵ See, e.g., in Articles 14(2), 15(3), 15(4), 87(2), 87(3), 89(1), 92(1), 92(3), 92(4) of the Rome Statute, and Rules 94(1)(g), 159(1), 178(1), 188, 189 of the Rules of Procedure and Evidence.

Prosecution for arrest warrants. The silence of the law²⁶ allows for the only conclusion that the legislator has deliberately chosen, at the stage of the arrest warrant application, to require the Pre-Trial Chambers to trust the Prosecution's summary.²⁷

20. The Prosecution's position is further supported by a contextual review of the applicable law. An analysis of the provisions governing the submission of materials to the Pre-Trial Chamber shows that only at the procedural stage immediately prior to the Confirmation Hearing, the Prosecution is obliged to provide *a list of evidence*²⁸ - not the evidence itself - to the Pre-Trial Chamber. Only at the Confirmation Hearing is the Prosecution required to present evidence.²⁹

21. The significant procedural differences between the ICC procedures in respect to the issuance of arrest warrants and the respective provisions in the Rules of Procedure and Evidence of the *ad hoc* Tribunals³⁰ do not allow for an analogous application of the law of the *ad hoc* Tribunals regarding the submission of "supporting materials". Whilst the issuance of an arrest warrant pursuant to Article 58 of the Rome Statute and the confirmation of the document containing the charges pursuant to Article 61 of the Rome Statute are two distinct steps, the issuance of arrest warrants by the *ad hoc* Tribunals pursuant to their own rules may only take place upon confirmation of the indictment by the reviewing Judge.³¹ Accordingly, and unlike the present situation, the safeguards for the

²⁶ Differing from the use of the notion in the respective provisions in the Rules of Procedure and Evidence of the *ad hoc* Tribunals, see Rule 47 of the ICTY Rules of Procedure and Evidence and Rule 47 of the ICTR Rules of Procedure and Evidence.

²⁷ As Article 58(1) of the Rome Statute shows, the Prosecutor *can, if he wishes to do so*, provide evidence or other information. In the present case, the Prosecutor has decided to submit evidence and information to the extent that it forms part of the Annexes submitted with the Application. - Additional evidence is submitted within the parameters of paragraph 24 of the present submission.

²⁸ Rule 121(3) of the Rules of Procedure and Evidence. Emphasis added by the Prosecution.

²⁹ Article 61(5) of the Rome Statute.

³⁰ See Rules 47 of the ICTY and ICTR Rules of Procedure and Evidence.

³¹ Rule 47(H) of the ICTY and ICTR Rules of Procedure and Evidence.

issuance of an arrest warrant in the context of the *ad hoc* Tribunals necessarily had to follow those of the confirmation of an indictment.

22. REDACTED

23. The analysis confirms the Prosecutor's submission that it falls entirely within the discretion of the Prosecutor to decide what he believes necessary to be submitted to the Pre-Trial Chamber. Accordingly, the Prosecutor has a choice in what to present to the Pre-Trial Chamber.

Provision of full statements of REDACTED

REDACTED

24. Within the scope of his discretion, the Prosecutor has decided to provide the full statements of REDACTED³² REDACTED³³ REDACTED³⁴ REDACTED³⁵ REDACTED³⁶ and REDACTED³⁷

Additional information

25. Within the scope of his discretion, the Prosecutor has decided not to provide further evidence. Acknowledging the Pre-Trial Chamber's wish to determine on

³² Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 1.

³³ Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 2.

³⁴ Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 3.

³⁵ Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 4.

³⁶ Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 5.

³⁷ Attached as - Under Seal , *Ex Parte*, Prosecution Only - Annex 6.

the Application based on the best possible knowledge of the facts, however, the Prosecution, whilst not providing further evidence as “supporting materials”, submits further information.³⁸ This information enhances³⁹ the “summary” as furnished by the Application, and takes into account, in particular, the subject matters detailed in the Decision.⁴⁰

Dates of birth of the children

26. The Prosecution has double-checked the available evidence. In addition to the information provided by the children, the Prosecution afterwards has gathered further evidence. This additional evidence - birth certificates of the DRC authorities - reveal that the dates of birth provided by REDACTED REDAC correlate with the birth certificates. In relation to REDACTED REDACTED the birth certificates reveal discrepancies as follows:

- (i) REDACTED had informed the OTP that he was born on R REDACTED. The birth certificate states REDACTED as his date of birth.
- (ii) REDACTED had informed the OTP that he was born on REDA RED. The birth certificate states REDACTED as his date of birth.

³⁸ The additional information follows the order of the aspects as detailed in the Decision. Whenever a certain aspect is not covered, all at this stage available evidence and information has been summarized in the Application.

³⁹ The Prosecution hopes that it will be able by providing the additional information to address the “difficult[ies]” the Pre-Trial Chamber had “in following some of the Prosecution’s factual allegations”; see Decision, at page 3.

⁴⁰ The Prosecution notes that it has received substantial amounts of materials under the condition of confidentiality pursuant to Article 54(3)(e). Thus - pending decisions on requests for lifting the respective restrictions - the Prosecution is currently not in a position to include such materials in its enhanced summaries. None of such materials is referred to in the Application.

- (iii) [REDACTED] had informed the OTP that she was born on [REDACTED]
[REDACTED] The birth certificate states [REDACTED] as her date of birth.
- (iv) [REDACTED] had informed the OTP that she was born in [REDACTED]
[REDACTED] The birth certificate states [REDACTED] as her date of birth.

Objectives of the UPC and the FPLC and their involvement in the armed conflict in Ituri between mid-2002 and the end of 2003

27. The Prosecution can provide the following additional information in respect to paragraph 53 of the Application: During the negotiations that led to the signing by Thomas LUBANGA DYILO and other leaders of the various political-military movements of Ituri of the *Acte d'Engagement* at Dar-Es-Salaam on 16 May 2003, Thomas LUBANGA DYILO declared that Ituri did not need “Kinshasa” and refused to agree to a proposal concerning the integration of the militias into the national army. He furthermore stated to a leader of another political-military movement that if the Government of the DRC wanted to discuss, they would have to deal with Ituri as if it were an independent state, and that he had a dream of making Ituri an independent republic.

The level of organization and organizational charts of the UPC and the FPLC

28. In respect of the UPC, the Prosecution attaches two charts detailing the UPC Executive Political Structure. The first chart⁴¹ covers the time period 3 September 2002 to 11 December 2002. The second chart⁴² covers the time period 11 December 2002 to 6 March 2003.⁴³

⁴¹ Attached as - Under Seal, *Ex Parte*, Prosecution Only - Annex 7.

⁴² Attached as - Under Seal, *Ex Parte*, Prosecution Only - Annex 8.

⁴³ In respect of the time period after 6 March 2003, reference is made to the statement on the chart.

29. Furthermore, the Prosecution informs the Pre-Trial Chamber that the UPC had established an effective system for reporting police and security matters. Daily, weekly and monthly reports went up through the hierarchy, through Rafiki SABA AIMABLE MUSANGANYA to Thomas LUBANGA DYILO. In addition, Thomas LUBANGA DYILO received reports directly from the UPC leadership. Such reports would include reports on sensitive security dossiers.
30. With respect to the FPLC, the Prosecution attaches a chart,⁴⁴ detailing⁴⁵ the organisation of the FPLC from its creation in September 2002 throughout December 2003.
31. In addition, publicly available information⁴⁶ confirms that the FPLC⁴⁷ was seen as an armed group with integrated military command, and - compared to other armed groups - better armed, trained and organized.

The relationship between the UPC and the FPLC

32. In addition to the information provided in the Application,⁴⁸ the Prosecution provides the following information:
- (i) A substantial overlap in people allowed continuous exchanges between the UPC and the FPLC, thus ensuring permanent coordination between them. In particular, Floribert KISEMBO, the later Chief of the General Staff of the FPLC, and Bosco NTAGANDA, the later Deputy Chief of the General Staff, in charge of military operations,⁴⁹ were

⁴⁴ Attached as - Under Seal, *Ex Parte*, Prosecution Only - Annex 9.

⁴⁵ To the extent necessary for the purposes of the Application.

⁴⁶ See ICG Africa Report No. 64, *Congo crisis: Military intervention in Ituri*, 13 June 2003, at pages 15 - 16, available at http://www.crisisgroup.org/library/documents/report_archive/A401005_13062003.pdf, last accessed on 27 January 2006.

⁴⁷ Though the Report makes reference to the "UPC", the statements relate to its military wing, the FPLC.

⁴⁸ See Application, at paras. 21, 39, and 57 - 70.

⁴⁹ And from 8 December 2003 onwards the successor of Floribert KISEMBO.

involved in the creation of the UPC, and maintained a substantial role throughout their tenure as FPLC military officers.

- (ii) On a regular basis, meetings took place, involving members of both the UPC and the FPLC. Such meetings included meetings on high levels, such as meetings between Thomas LUBANGA DYILO, Floribert KISEMBO and Rafiki SABA AIMABLE MUSANGANYA, the Head of the UPC's Security and Information Department.⁵⁰ They regularly met and discussed, *inter alia*, military matters.
- (iii) The UPC leadership, including at the level of National Secretaries, did not always distinguish between the UPC and the FPLC. In line with the fact that the FPLC was commonly seen as the army of the UPC,⁵¹ the military uniforms of the FPLC often displayed the party symbols of the UPC.

Armed groups, aside from the UPC/FPLC, involved in the conflict in Ituri between July 2002 and December 2003 and their level of organization (at least with regard to one of them)

33. The Prosecution attaches⁵² a time-line, detailing the key events and military engagements in which the RCD-ML / APC and the FNI / FRPI were involved between July 2002 and December 2003.

34. In addition, the Prosecution provides the following information in respect of the RCD – ML / APC:

- (i) Prior to mid-2002, the RCD-ML, in using its armed wing, the APC, controlled the most of Ituri.

⁵⁰ See Application, at para. 52.

⁵¹ See Application, at para. 57.

⁵² Attached as - Under Seal, *Ex Parte*, Prosecutor Only - Annex 10.

- (ii) The APC forces contained, amongst others, Lendu and Hema militia. In April 2002, following an alleged bias towards Lendu and Ngiti elements in Ituri by the RCD-ML, the Hema militia within the APC left and moved out of Bunia. The Hema militia was, by this time, affiliated with the Front pour la Réconciliation et la Paix (FRP). The FRP was formed from the UPC, which had previously been part of the RCD-ML. The Hema militia based itself at Mandro, and the next three months saw regular skirmishes between the largely Lendu and Ngiti APC units, operating out of Bunia, and the Hema militia operating out of Mandro. The violence was centred around Bunia, and some sections of the town were controlled by the different factions in this period. By July-August 2002, due to increased violence in the town, the APC leadership was forced to leave Bunia, and moved their headquarters to Beni.
- (iii) In early August 2002, the Hema militia seized control of Bunia. This tipped the balance in the conflict, and the Hema militia, effectively transformed into the FPLC under their FRP and then UPC leadership by September 2002, began to push the APC forces out of the region. The APC remained strong in the south, around Beni, and continued to harass the Bunia area from this location, as well as using this as a base to support over-stretched and fragile supply-lines. The APC had lost Djugu, Mahagi and Aru in the north to the FPLC by September 2002, and the remaining elements were pushed north to Kpandromo, from which they continued harassment of UPC holdings. The west of Bunia saw a longer and more complex conflict. The Hema militia, and then later the FPLC, pushed the APC back to Komanda, and then beyond. Komanda town, a strategically important location at the junction of the roads between Beni, Mambasa and Bunia, was taken by the UPC troops in late August 2002. Further west, Mambasa was attacked by MLC/RCD-N fighters in October, later assisted by the UPC, having

previously been controlled by the RCD-ML prior to this time. Throughout October 2002 to December 2002, the south and southeast of Mambasa territory, in particular the area between Mambasa, Komanda and Mangina, was a disputed area between MLC/RCD-N forces and the APC.

- (iv) Despite the FPLC offensive in Bunia territory, and the capture of key towns and roads, a number of APC units remained in the territories of Bunia and Aru. This was most obvious in the attack on Nyankunde allegedly committed by Ngiti militias with APC assistance in early September 2002, but there were continuing skirmishes until the end of the year. Also, the APC held the important gold mining town of Mongbwalu, to the northeast of Bunia up until November, having successfully repulsed a UPC attack on the town with the help of Lendu militia in October. In November 2002, the UPC captured the town with assistance from the MLC.
- (v) A cease-fire was signed between the MLC, RCD-ML, and RCD-N at the end of December 2002. Major engagements between the RCD-ML/APC and other groups ceased at this time, and the group was eventually absorbed into the Transitional Government in August 2003.
- (vi) The APC's conflicts with the Hema militia and later the FPLC and with the MLC/RCD-N both took place over extended periods, each lasting a number of months. The repeated military engagements were conducted to capture and control territory and strategic locations.
- (vii) The APC had commanding officers in command of distinct units. It had an implicit character as a military force and explicitly defined itself as an "army". The APC contained conventionally named military formations, such as battalions, and had distinct command

personnel, including a Chief of Staff. APC soldiers were consistently referred to as soldiers in all reporting, and were reported to wear recognisable uniforms. APC forces received training, and the organisation controlled military bases for this purpose, including camp Ndoromo near Bunia. APC troops were typically equipped with infantry small arms, AK-47s or similar. During the period referred to above, the APC had sufficient quantities of ammunition, and was able to supply its units to conduct effective military operations across a large territory. In late 2002, the APC started using heavy weapons.

35. Furthermore, the Prosecution provides information on the FNI/ FRPI, as follows:

- (i) In response to the rise to power of the Hema ethnic group through the UPC, the Lendu and Ngiti ethnic groups established their own political parties. The FNI was created in late 2002 as the political umbrella of the Lendu armed groups mainly from Kpandroma and Rethy, whereas the FRPI (Force de Résistance Patriotique d'Ituri) was launched in November 2002 as the political umbrella of Ngiti armed groups mainly from Gety, Bogoro and Songolo. FNI and FRPI merged in March 2003.
- (ii) After the alliance of March 2003, the FRPI was generally perceived to be the military arm of the FNI. Its organization followed a standard military structure, including a General Staff, with a chief of Staff and a Chief of Operations.
- (iii) The FNI benefited from military training and support from another rebel group, the RCD/ML. The FRNI/FRPI took part in the FIPI (Front pour l'Intégration et la Paix en Ituri) coalition established in late December 2002.

- (iv) From the creation of the FNI until late 2003, it repeatedly launched significant military operations. *Inter alia*, in February 2003, the FNI attacked Bogoro, a Hema village, including by using heavy weapons. In early March 2003, the FNI / FRPI attacked Mandro. A few days later, the FNI / FRPI drove UPC out of Bunia. After the attack on Bunia, it attacked Kilo, a town south of Mongwalu. In early April 2003, Drodro and surroundings villages were the target of another attack by Lendu combatants. Numerous other attacks, up until the end of 2003, are attributed to the FNI / FRPI.

De jure and de facto authority of Thomas LUBANGA DYILO within the UPC and the FPLC

36. The Prosecution adds that it was only Thomas LUBANGA DYILO who was in a position to issue such orders as detailed in paragraph 55 of the Application.

Hierarchical relationship between Thomas LUBANGA DYILO and Bosco NTAGANDA

37. The hierarchical relationship between Thomas LUBANGA DYILO and Bosco NTAGANDA is visualised in Annex 9.⁵³ Bosco NTAGANDA as the FPLC Deputy Chief of the General Staff was subordinated to Floribert KISEMBO, the Chief of the General Staff and Thomas LUBANGA DYILO, the FPLC Commander-in-Chief.⁵⁴ This form of superior/subordinate relationship reflects the regular military structure.

Factual statements in paragraph 46 of the Application

38. The Prosecution adds that Thomas LUBANGA DYILO in the August 2002 declaration repeatedly referred to an “inter-ethnic war” and a “bloody conflict”.

⁵³ See paragraph 30.

⁵⁴ In December 2003, Bosco NTAGANDA succeeded Floribert KISEMBO as Chief of the General Staff.

In his September 2002 statement, he urged everyone to participate in the construction of “real peace”.

Urgency

39. Due to the urgency of the Application as detailed in paragraphs 5 to 16 of the Prosecution’s 25 January 2006 filing,⁵⁵ the Prosecution has decided to provide the additional information and materials at the earliest possible opportunity. The Prosecution reiterates the urgency of the Application.



Luis Moreno-Ocampo
Prosecutor

Dated this 27th day of January 2006
At The Hague, The Netherlands

⁵⁵ Prosecution’s Submission of Further Information and Materials, filed on 25 January 2006.