

1 International Criminal Court

2 Trial Chamber I

3 Situation Democratic Republic of Congo, Case No: ICC 01/04-01/06

4 Tuesday, 4 September 2007 –Transcription No ICC-0104-0106-T-50-ENG

5 Open session. The hearing starts at 10:07 a.m.

6 COURT USHER: All rise. The International Court is now in
7 session. Please be seated.

8 JUDGE FULFORD: Ms. Bensouda, can I, through you and with your
9 assistance, identify counsel and the representatives here today. I
10 understand that you, together with Mr. Withopf, represent the
11 Prosecution. Present also is Nicole Samson, Julieta Solano, and Ramu
12 Bittaye. Is that right?

13 MS. BENSOUDA: That is correct, Mr. President.

14 JUDGE FULFORD: For the Defence, I understand that Ms. Mabilie is
15 present today, together with some other members of your team; is that
16 correct?

17 MS. MABILLE (interpretation): Excuse me. That is absolutely
18 correct. Would you like me to present the members of my team who are
19 present here today?

20 JUDGE FULFORD: Ms. Mabilie, we've been told that Caroline
21 Buteau, Marc Desalliers, Sandra D'angelo and Emilie Cuk are present
22 here in court today; is that right?

23 MS. MABILLE (interpretation): Indeed, it is, Mr. President.

24 JUDGE FULFORD: As well, we understand that Carine Bapita and Luc
25 Walleyne are present as Victims' Legal Representatives, and that Sarah

1 Pellet, or Pellet, I'm sorry, is present as well as Legal Officer in
2 relation to victims' issues. Is that correct?

3 MS. BAPITA (interpretation): Certainly it is, Mr. President.
4 But I would just like to correct my name. It's Carine Bapita.

5 MR. WALLEYN (interpretation): Mr. President, Franck Mulenda -- I
6 would just like to -- Franck Mulenda would like to excuse himself for
7 not being able to attend for reasons of health. Thank you.

8 JUDGE FULFORD: Before we hear submissions from the parties,
9 there are some introductory observations that I would wish to make on
10 behalf of the Bench.

11 We shall sit today in one-and-a-half-hour sessions. At the first
12 break we shall rise for some 20 minutes, and the second session, if we
13 need to use it, will end at the beginning of the lunch break, which
14 will be for an hour and a half.

15 For the better understanding of the public, we wish to explain
16 the relatively limited purpose of today's Status Conference. This is
17 the first hearing of the Trial Chamber in this case, and before the
18 trial can start, the Chamber needs to resolve certain matters of law
19 and other procedural issues. It seemed to us that it is unrealistic -
20 indeed, it would be burdensome on all concerned - to attempt to deal
21 with all of those matters and issues in one hearing. Some require
22 urgent attention; others, although important, can wait for a slightly
23 later determination.

24 Accordingly, today's hearing is principally designed to create a
25 workable timetable and, if possible, at least to pencil in a trial

1 date.

2 So that the parties and participants can know in advance of it
3 happening, given that the Pre-Trial Chamber amended the charges, we
4 intend, in due course, to ask the Court Officer to read them both out
5 in their amended form so that the public and, of course, the defendant
6 can know with certainty the precise nature of the allegations the
7 defendant faces. We propose for that to happen at the end of this
8 hearing, subject, of course, to any submissions that are advanced.

9 We have borne in mind in this regard that Article 68(8)(a) is, to
10 an extent, relevant to this proposed course, given that it provides
11 that at the commencement of the trial the Trial Chamber shall have
12 read to the accused the charges previously confirmed by the Pre-Trial
13 Chamber and shall thereafter afford him an opportunity to enter a
14 plea.

15 Our preliminary view, subject, of course, to any argument, is
16 that the expression "the commencement of the trial" means precisely
17 that - the first day of the trial and not at a Status Conference.
18 Therefore, at the moment our preliminary view is that we do not
19 propose to ask Mr. Lubanga to enter a plea today but instead, for the
20 reasons we have just indicated, we intend merely to have the charges
21 in their amended form read out. If anyone wishes to submit otherwise,
22 we shall, of course, include this issue in the timetable that is to be
23 created this morning.

24 We would add that taking the approach that I have just indicated
25 would not prevent a defendant from entering a plea, either guilty or

1 not guilty, at any stage before the commencement of the trial should
2 that be necessary.

3 In addition to the matters that were set out in our document of
4 the 18th of July, which was circulated to the parties and the
5 participants, the following additional issues have arisen:

6 The Prosecution wishes to add the place of trial and the manner
7 of submission of evidence to the timetable, and Ms. Mabilie has
8 indicated that she wishes us to consider her problems in securing
9 co-counsel. Those matters, again, of course, subject to submission,
10 will need to be added to the timetable to the extent it's necessary.

11 On the subject of in situ hearings, the parties will have already
12 heard but we should explain for the benefit of the public and for the
13 participants that the possibility of in situ hearings is being
14 investigated. Depending on the outcome of a feasibility study that is
15 currently being coordinated by Stéphanie Godart, the Legal Advisor to
16 the Trial Chamber, this may be listed as an issue by the Chamber at a
17 Status Conference as an issue for discussion. We are taking this
18 course, and by that I mean the feasibility study, in order to ensure
19 that we are in a position as a Chamber to express our views to the
20 Presidency on this issue should we be asked to do so pursuant to Rule
21 100.

22 It is necessary that at this stage we should indicate that,
23 subject to any representations from the Prosecution, there will need
24 to be a hearing on Friday with the Prosecution and the Registrar only
25 present to deal with an ex parte filing that was made late yesterday

1 afternoon by the Prosecution. There are a number of issues arising
2 from that ex parte filing that need to be dealt with before the end of
3 this week.

4 Because today's exercise involves consideration of a detailed
5 timetable, we shall promulgate our decision on all of the issues dealt
6 with today before the end of this week. That, we believe,
7 sufficiently identifies certainly what seems to the Bench to be the
8 broad agenda for this morning's hearing based on all of the
9 communications from the parties to the Court.

10 Before we invite submissions, we have noted that on the 7th of
11 August the Defence requested a two-month delay in order for
12 Ms. Mabilie to put her complete team in place and perhaps most
13 particularly to secure the assistance of co-counsel.

14 Against that background matter, on the submissions that we are
15 about to hear, we ask the parties to focus on the following issues:

16 First, we assume that the Prosecution are now in reality ready
17 and prepared to argue all of the pre-trial matters. It seems to us,
18 therefore, on a preliminary basis that on all issues, perhaps save
19 one, it would be helpful if the Prosecution served their written
20 arguments forthwith or within a relatively short period of time so
21 that Ms. Mabilie has a concrete case on each issue to respond to. The
22 one potential exception to that is 7(E) of our document of the 18th of
23 July, the role of the victims prior to trial, in relation to which it
24 may be more convenient if the victims' representatives put in, filed,
25 their submissions first.

1 Second, Ms. Mabilille was only designated as Defence counsel on the
2 21st of June and did not formally take office until she entered into
3 her solemn undertaking on the 5th of July. Whilst we readily
4 acknowledge the Prosecution's argument that many of these issues can
5 be dealt with and considered without a detailed knowledge of the case,
6 nonetheless, Ms. Mabilille and her team self-evidently need to be given
7 adequate time to prepare. Without in any way prejudging the final
8 outcome of this hearing, for the purposes of discussion only, we set
9 out the following proposed amended timetable:

10 For the first tranche of submissions, those in paragraph 6(A) to
11 (D) of the document of the 18th of July, we suggest for consideration
12 Defence submissions being filed by the 24th of September and a hearing
13 on the 1st of October.

14 I pause for a moment to indicate that under 6(C), which is the
15 disclosure of evidence issue, we will wish to raise with the parties
16 the use of ex parte filings and ex parte hearings. It is right at the
17 very outset that this Bench should indicate that we propose to
18 scrutinise very carefully each and every occasion when it is suggested
19 that there should be a departure from the principle of open justice.
20 In our view this area is one that calls for careful evaluation on each
21 and every occasion to ensure that private communications with the
22 Court are really justified.

23 Returning to the proposed amended timetable, for the second
24 tranche, that is, paragraph 7(E) to (G), we suggest on a preliminary
25 basis Defence submissions by the 19th of October and a hearing on the

1 30th of October.

2 For the third set of submissions, that is paragraph 8(H) to (I),
3 we suggest Defence submissions on the 2nd of November and a hearing on
4 the 6th of November. In that regard we suggest that the issue raised
5 recently by the Prosecution, the manner of submission of evidence,
6 should come into that last category.

7 Whether or not in situ hearings are listed by the Chamber as an
8 issue for consideration as opposed to being listed by the parties will
9 depend on the outcome of the preliminary feasibility study.

10 Finally, given that in essence this hearing today relates to
11 Ms. Mabilille's request for additional time, we intend, subject, of
12 course, to any observations from her, to invite the Defence to make
13 their submissions first so that we and the Prosecution and the
14 participants can fully understand the nature of her suggested
15 difficulties. Then we would propose to hear from the representatives
16 of the victims and then from the Prosecution. If necessary,
17 Ms. Mabilille will be permitted to make a short reply.

18 That is the conclusion of the preliminary remarks that we would
19 wish to make, and unless there are any contrary submissions, we invite
20 Ms. Mabilille to advance her submissions.

21 MS. MABILILLE (interpretation): Thank you, Mr. President.

22 Judges, your Honours, with regards to the timetable which you've
23 just proposed, Mr. President, I think that we could -- we could be in
24 agreement with regards to these proposed dates. My only slight
25 reservation would be with regard to the last date that you proposed,

1 because I think that what's going to -- well, in terms of our team,
2 what's going to take the most time will be the points (H) and (I), and
3 2nd of November, 6th of November, these dates, well, perhaps if you
4 could put it back just a bit, because this is where the -- really, the
5 knowledge of the case really is necessary. So with regard to the
6 first dates, I am in agreement. Furthermore, I think that you would
7 perhaps ask us for our opinion on this, and I proposed to my team,
8 indeed, practically the timetable that you've proposed, so I have
9 absolutely no concern in that regard.

10 However, I would just like to draw your attention to -- the
11 attention of the Court to the following point: I certainly have made
12 up my particular team. Our case manager came into the team on the
13 1st -- the two assistants came on the 1st of August, the second
14 assistant came -- the second assistant came into the team yesterday.
15 So, therefore, I can say that we've worked a lot -- well, I have
16 worked a lot to be able to find the team because July and August isn't
17 exactly the best time to search for such people.

18 Furthermore, I would also like to say that the only reservation
19 that I can make with regard to the timetable -- well, I'm not going to
20 mention all the different difficulties that we have had. Today I want
21 us to be able to make progress. It's really the spirit of this team.
22 But at the same time I have to take into account a certain number of
23 factors which do harm our work.

24 We have been able to move into premises which are particularly
25 appropriate, and that is good news for us. However, at the same time

1 we do have computer problems and these computer problems are seriously
2 harming our work. And I would wish, Mr. President and your Honours,
3 that you are aware, not just to make a complaint but to understand
4 that it really is undermining the work of the Defence.

5 Just to mention another point. With regard to -- there's so much
6 security with regards to the Defence data that the Defence themselves
7 can't even have access to it. That's the state that we're finding
8 ourselves at the moment. My assistant, who came on the 1st of August,
9 does not have access to Ringtail, et cetera - that's Marc Desalliers -
10 so he doesn't have access to the evidence of the Prosecutor. And I do
11 not want to know who's responsible for it, who, where, why. I just
12 want a result where it concerns the only objective.

13 So today we are relatively handicapped by this computer system
14 which does not work. And I have to say that on the 1st of July it was
15 functioning and until the 1st of August, but since the 1st of August
16 hardly anything is working. We have to work on paper copies, when we
17 have paper copies of course, and sometimes we don't have them on
18 everything. Otherwise, there is a real problem there.

19 I would just like to finish by saying that normally the idea was
20 that the principal counsel and the co-counsel could work in place and
21 not have to be in The Hague always, and this is impossible at the
22 moment.

23 So I really do hope, and I'm a positive person and say, well, all
24 this is going to be solved and can be solved, but I'm just saying that
25 we are seriously handicapped, the Defence is seriously handicapped by

1 it.

2 These are the comments that I would like to make on a preliminary
3 basis. Thank you, Mr. President.

4 JUDGE FULFORD: Ms. Mabilille, can I just ask one or two questions
5 about what you have raised.

6 I suspect that it would be most helpful for the Bench and for the
7 Registry, indeed for the Prosecution, if you could provide us in
8 writing, perhaps by the end of the week, with a summary of the
9 difficulties that you're currently encountering. My experience is
10 that when these things are set out in writing, they become easier to
11 address. And I would be grateful, unless there are difficulties in
12 relation to that, if you would set out your problems in writing.
13 That's the first matter. I'll ask you to respond to that in a moment.

14 Before I do, two issues which we indicated earlier which I would
15 ask your assistance with is whether today we are going to be able to
16 progress with at least pencilling in a trial date. I think all three
17 of us readily understand that there are problems at the moment with
18 saying with certainty when everybody involved in this case is going to
19 be ready. But it seems to us, if it's possible to have at the end of
20 today at least a preliminary understanding as to when it is hoped that
21 the trial will take place, whilst recognising that that is not going
22 to be a firm date today. That's the second matter.

23 And the third is: Do you have any objections to the charges in
24 their amended form simply being read out to the Court?

25 MS. MABILILLE (interpretation): Mr. President, in relation to your

1 first comments and requests, of course the Defence team will do as
2 suggested.

3 I'd just like to let you know that each day, at the end of the
4 day, I send an e-mail to the Registry to set out the difficulties
5 encountered. The idea is to try and arrive at solutions and to move
6 forward. So usually at the end of the day, at around 8:00, I send an
7 e-mail to the Registry indicating any difficulties encountered. I
8 can, of course, provide you with a detailed summary of the specific
9 points.

10 Turning now to your second point regarding your invitation, my
11 team has met with the Office of the Prosecutor and we asked for a
12 two-month period of grace but not to avoid making progress; rather, we
13 have had various meetings with the Office of the Prosecutor to discuss
14 the various points which figure in your calendar.

15 Now, if you would like us to give our views and our feelings
16 regarding the initial points, and particularly the date of the
17 commencement of trial, I would be delighted to relate to you the
18 comments which I have already made to the Office of the Prosecutor.
19 Would you like me to make those comments now?

20 JUDGE FULFORD: As I understand it, Ms. Mabilille, your position is
21 that the first and second tranche of dates is acceptable. You would
22 wish us to extend the time slightly in relation to the third set of
23 dates. So I think we probably needn't --

24 MS. MABILILLE (interpretation): Yes, absolutely, your Honour. But
25 if you would like us already to deal with point (A), as of today I am

1 in a position to make a number of comments on it, particularly given
2 that we have already discussed the matter with the Prosecutor, the
3 matter of item (A).

4 JUDGE FULFORD: I think in the circumstances at the moment it
5 would simply be most helpful to know what you're proposing in relation
6 to the third tranche of dates, the one where your appreciation is that
7 you'll need to have an understanding of -- a particularly deep
8 understanding of the nature of the case.

9 MS. MABILLE (interpretation): I see. Our proposal would be that
10 we postpone by, for instance, two weeks. This would be particularly
11 helpful for us as regards written submissions. My issue is not so
12 much with the time lapse between the 2nd and the 6th of November but,
13 rather, my issue is with the first date, the date of the written
14 submissions and the drafting of the document. I believe that the two
15 issues that fall under this tranche are quite substantive.

16 JUDGE FULFORD: So you'll be asking for two extra weeks in
17 relation to that. That's very helpful.

18 MS. MABILLE (interpretation): Yes.

19 JUDGE FULFORD: And trial date, Ms. Mabilille, on a preliminary
20 basis?

21 MS. MABILLE (interpretation): Yes. Regarding the date of trial,
22 I have said to the Prosecutor and to the Office of the Prosecutor that
23 I feel that this is an issue which is one which falls primarily or
24 initially to the Prosecutor, because my initial concern is to know
25 when the Prosecutor can provide me with his evidence in its totality

1 because it will then be incumbent upon us to respond to it. We have
2 had discussions with the Prosecutor and the latter has said to me that
3 as regards evidence it will be disclosed on the 15th or by the 15th of
4 November, for a trial beginning on the 1st of December.

5 Now, I must say that this is entirely unacceptable to us, simply
6 impossible, because if evidence is provided to us two weeks in advance
7 of the commencement of the trial, we do -- it needs to be understood
8 that the Defence must carry out investigations, must investigate the
9 validity of evidence, and to do that when operating between the Congo
10 and France or the Congo and The Hague, quite clearly this amount of
11 work cannot be done within a fortnight.

12 I have said to the Prosecutor that he has been working on the
13 case for three and a half years now and that he would only disclose
14 evidence by the 15th of November for a trial opening on the 1st of
15 December seemed to me not to be a reasonable approach. I indicated to
16 him that in the case of the two international tribunals where there is
17 not the obligation of a reasonable time period, as there is here, at
18 those tribunals the period in advance of trial by which evidence had
19 to be provided was 30 or 60 days. The difficulties, the geographical
20 difficulties were also difficult, for instance, travel between Kigali
21 and Arusha. We need to also bear in mind the distances to be
22 travelled between The Hague and the Congo.

23 I believe that there is here a preliminary issue which needs to
24 be discussed before going any further and that is the deadline by
25 which the Prosecutor proposes to provide his evidence. Now, I do

1 understand that 100 per cent of the evidence may be just a little bit
2 too much to ask, but I do believe that the evidence should be provided
3 sufficiently in advance to allow this team to do its job as it should,
4 your Honours. This is my answer on this point.

5 JUDGE FULFORD: Okay. That's very helpful. Thank you very much.

6 Can I make it clear that it was the view of the Bench that the
7 matters that you have raised just now undoubtedly do fall for
8 consideration and we had seen those issues as really fitting into
9 paragraph 6(C) of our document of the 18th of July, and we had put it
10 within the first category of preliminary issues because we recognised
11 that this was undoubtedly something that you would wish to have
12 ventilated at the earliest stage possible. Now, obviously, with the
13 time difficulties, it may be that we're going to have to consider that
14 slightly later than we'd originally hoped, but it's clearly something
15 that does fall for early determination.

16 I think, therefore, that provides us with an answer to the
17 questions we raised, save for the issue of whether you have any
18 objections to the charges in their amended form being read out.

19 MS. MABILLE (interpretation): Your Honour, if I have understood
20 rightly, but perhaps I have not understood rightly, if you are
21 speaking of reading out the modified charges to Mr. Lubanga Dyilo, I
22 have no observations to make on that point; that is to say, if we are
23 speaking only of reading out the modified charges as they stand. No,
24 I have no observation on that point, if that is the proposition.

25 JUDGE FULFORD: That is so. Thank you very much.

1 Can I next then ask Ms. Bapita to assist us with any observations
2 that she would wish to make?

3 MS. BAPITA (interpretation): Thank you, your Honour. I would
4 also like to state that the proposed calendar is, indeed, agreeable to
5 us. This calendar also includes the role of victims in the
6 proceedings in the period leading up to the commencement of the trial.
7 We have, of course, reflected on the matter; however, we will not be
8 able to give you an objective response until certain preliminary
9 matters have been resolved.

10 For instance, we would need to know whether the Trial Chamber
11 proposes to retain the same modes of participation by the victims as
12 the Pre-Trial Chamber. We wish to know whether the criteria --
13 whether the criteria will be modified or whether you will maintain the
14 criteria used by the Pre-Trial Chamber.

15 Secondly, if the criteria are modified, will the existing victims
16 have their status as participants in the proceedings re-evaluated or
17 not; that is to say, if they have enjoyed status as participants based
18 on the criteria of the Pre-Trial Chamber, that new victims would be
19 evaluated based on new criteria.

20 A further observation I wish to make before moving on to the
21 matter of participation of victims before this Honourable Court is
22 what are the consequences of anonymity?

23 In relation to anonymity, shall the rights of victims be reduced,
24 or are you obliged to continue to base victims' participation on the
25 approach adopted by the Pre-Trial Chamber, or whether you propose to

1 vary participation of anonymous victims.

2 It is important that we have news on these issues so that we can
3 contact our victims to establish whether * they are willing to renounce
4 their anonymity and, if so, based on what criteria, and to discuss the
5 issues with the Victims and Witnesses Unit.

6 Should you decide, based on Regulation 56, to include * in the
7 trial questions to witnesses regarding possible reparations, might you
8 * allow us to question witnesses. As you know, during the * trial we
9 do not have the right,

10 as the Prosecution and the Defence does, to

11 question witnesses. However, if * you were to address reparations
12 issues at trial, we would like to know what margin you might be able
13 to accord us on this aspect.

14 Witnesses may be called by various participants to these
15 proceedings. These witnesses will relate what they have seen and what
16 they have experienced. Victims will be in a position to assist, to
17 assist all of us to question these witnesses based on what we have
18 experienced. In this connection I do not believe that our role should
19 be that of a simple observer but to be active and effective
20 participants.

21 For instance, to tell you what our views are of the substantive
22 aspects of the testimony and aspects of testimony in relation to
23 reparations --

24 JUDGE FULFORD: I hate to interrupt, and please forgive me for
25 doing so. The reason is, in essence we wish today to set a timetable

1 for the consideration of these issues rather than developing the
2 issues substantively now, and I think what I've understood from your
3 submissions is that you are happy with the proposals that we've made
4 in relation to dates for the consideration of the various pre-trial
5 matters and that clearly includes 7(E), the role of victims in the
6 proceedings in the period leading up to the commencement of the trial,
7 which clearly would include as topics modes of participation, whether
8 the criteria is to be modified, anonymity, and the extent to which we
9 would depart from the course of action taken by the Pre-Trial Chamber,
10 and so I think we can deal with this aspect relatively briefly. All
11 of those matters, subject to the submissions of the Prosecution, can
12 be included in the hearing that will take place in October.

13 As regards the final matter that you've just turned to, which is
14 really the way in which the trial is to be conducted and the role of
15 victims during the trial itself, that is clearly a separate issue that
16 will need to be built into the timetable for later consideration.
17 And, again, subject to the views of the Prosecution and Ms. Mabilie,
18 that will be factored in.

19 Now, can I again apologise for interrupting, but we would wish to
20 concentrate on timetabling rather than on the substance at this stage.

21 MS. BAPITA (interpretation): Thank you, your Honour.

22 JUDGE FULFORD: Anything to add?

23 MR. WALLEYN (interpretation): Yes, your Honour. I'm entirely in
24 agreement with the submissions made by Ms. Bapita. I feel that the
25 victims should take the initiative to deal with the issue of their

1 participation at a Status Conference, that is to say, later in this
2 series of hearings. It is, for us, a very important issue. During
3 these hearings our very future, if you like, shall be determined.

4 In relation to dates, your Honour, you have not set dates for our
5 submissions. We are, however, quite willing to take the initiative to
6 make submissions within a number of weeks, if that is of agreement to
7 the Court.

8 JUDGE FULFORD: Thank you very much. We'll turn to that in a
9 moment.

10 Ms. Pellet, anything to add?

11 MS. PELLET (interpretation): No, Mr. President.

12 JUDGE FULFORD: Now, submissions from the Prosecution,
13 Mr. Withopf.

14 MR. WITHOPF: Mr. President, your Honours, to address the
15 preliminaries first.

16 Mr. President, your Honours, we agree with the timetable as set
17 out by your Honours, and we will also be in a position to address the
18 first tranche of items in sufficient time prior to the filing date
19 that you, Mr. President, have set for the Defence.

20 We would not object, Mr. President, your Honours, to the
21 application made by the Defence to delay the last, the third, hearing
22 for two weeks. This appears to be reasonable for the reasons my
23 learned friend from the Defence has outlined.

24 My learned friend from the Defence has also outlined the
25 difficulties she and her team is facing. I wish to make the

1 observation that these difficulties can be solved by the Registry.
2 They are not immediately related -- they are not immediately related
3 to the Office of the Prosecutor.

4 You asked the question, Mr. President, whether there are any
5 observations in respect of reading out the charges as they have been
6 amended by the Pre-Trial Chamber. I can state for the Office of the
7 Prosecutor there are no objections.

8 The trial date, Mr. President, your Honours, is obviously, and
9 rightly so, of the Bench's main concern. I will be in a position to,
10 on behalf of the Office of the Prosecutor, make submissions on the
11 trial date today and these submissions will also address a number of
12 matters that have been raised by Madame Mabilille. If you would grant
13 me leave, I would like to do so now.

14 Mr. President, your Honours, the Trial Chamber is the ultimate
15 authority for determining the date of the commencement of the trial,
16 and it's the Trial Chamber, as the ultimate authority, which is
17 duty-bound to preserve the rights of the accused and in this case of
18 the accused, Mr. Thomas Lubanga Dyilo.

19 In our view, your Honours, the applicable law provides for
20 guidance, provides for clear guidance, in respect of the commencement
21 of the trial. The law provides first for the right of the accused,
22 for Mr. Thomas Lubanga Dyilo, to be tried without undue delay and the
23 law also provides for the right of Mr. Thomas Lubanga Dyilo and his
24 Defence team to have adequate time for the preparation of the defence.

25 In the Prosecution's view, Mr. President, your Honours, these two

1 criteria seen together require particular consideration of the
2 situation in respect of, and I add predominantly in respect of, the
3 victim and witness protection, and, of course, also of the disclosure
4 situations, both aspects, Mr. President, your Honours, which indeed
5 have a significant bearing on the commencement of the trial.

6 Mr. President, your Honours, the Prosecution, in acknowledging
7 your ultimate authority, will not suggest a specific date for the
8 commencement of the trial. We will, however, support all the efforts
9 that are being made by all participants to the proceedings to commence
10 trial as early as possible in 2007, if feasible.

11 In doing so, Mr. President, we want to provide you with all
12 elements at our disposal which would allow you, Mr. President, your
13 Honours, to make a determination, a determination which is fair to all
14 participants to the trial.

15 The first and, in the view of the Office of the Prosecutor, the
16 most important aspect that undoubtedly has a bearing on the trial date
17 is the fact that the proceedings against Mr. Thomas Lubanga Dyilo are
18 characterised by an unusual scope - and I repeat, by an unusual scope
19 - of matters directly related to victims' and witnesses' protection.
20 The very nature of the case, the very nature of the case against
21 Mr. Thomas Lubanga Dyilo, namely, recruitment and use of children
22 under 15 years in hostilities, the very nature of this case indicates
23 that the Office of the Prosecutor will have to rely on witnesses which
24 are particularly vulnerable, Mr. President, your Honours, and the law
25 requires that all participants to the proceedings take enhanced care

1 and provide for enhanced care.

2 The Office of the Prosecutor has shown its concern for victim-
3 and witness-related matters and in particular safety and security in
4 the past, and it will continue to do so in future.

5 In that respect, the Office of the Prosecutor is carefully
6 monitoring the situation on the ground, and obviously and in
7 particular in the region, namely, in Ituri, and as a result,
8 Mr. President, your Honours, as a very worrisome result, we have to,
9 and we have unfortunately to report that there is evidence, including
10 reasoned evidence, that shows that the security situation for the
11 Prosecution's witnesses is worsening, is worsening because of the
12 threats, mostly by the UPC but also of other supporters of Thomas
13 Lubanga Dyilo, to the Prosecution's witnesses.

14 We would be prepared, Mr. President, your Honours, to provide
15 additional information on the subject matter and to supplement what I
16 have just said. Of course, due to the delicateness of the matter and
17 being mindful of the exception of ex parte hearings and proceedings,
18 we would, however, prefer to provide such information to the Chamber
19 at the very least in closed session. We would be able to do so today.

20 JUDGE FULFORD: Mr. Withopf, I'm going to ask you to forgive me
21 for interrupting. It seems to me that essentially what you are saying
22 is that achieving a date for trial is, to a very large extent, going
23 to depend on our resolution of 6(C), the timing and the manner of
24 disclosure of the evidence the Prosecution seek to rely on, and all of
25 the various issues, some of which you've touched on, that relate to

1 that. So subject to the views of my two learned colleagues, it seems
2 to me that rather than going into the substance of that now, some of
3 which is undoubtedly not going to be accepted by the defendant and so
4 is contentious, it seems to me that it would be better to leave both
5 the setting of a trial date and the investigation of those issues
6 until the hearing at the beginning of October, the 10th [sic] of
7 October.

8 So unless there's a particular reason for continuing with these
9 submissions now, I think our view will probably be that this should be
10 put over to October.

11 MR. WITHOPF: Mr. President, your Honours, that's well
12 understood. Is there a possibility for the Office of the Prosecutor
13 provides the Honourable Chamber with some information on the situation
14 on disclosure, an issue which has been addressed by my learned friend
15 from the Defence?

16 JUDGE FULFORD: The great advantage of that is that it will mean
17 that rather than hearing of this for the first time in open court, the
18 Defence will have an opportunity of considering that in advance of any
19 hearing, so I would encourage you to take that course.

20 MR. WITHOPF: Thank you very much, Mr. President.

21 First, I will provide you with summarised information on the past
22 disclosure, and I can promise you I will keep this section very short.
23 I will detail the future, the anticipated future disclosure, and then
24 I will -- and I wish to address two aspects in the context of the
25 document collection which relate to the case against Mr. Thomas

1 Lubanga Dyilo which have a significant impact on the timeline of
2 disclosure.

3 If I may, with your leave, Mr. President, briefly touch on the
4 past disclosure.

5 JUDGE FULFORD: For the moment, yes, Mr. Withopf, but can you
6 make sure that this remains relevant to the issue of setting a
7 timetable rather than descending now into substantive issues that
8 we're going to need to consider later.

9 MR. WITHOPF: I believe in the context of setting a timetable,
10 the issues I wanted to address are not immediately relevant. I wanted
11 to use this opportunity to give the Chamber an idea or a flavor of
12 what disclosure-related matters are pending. Of course, if the
13 Chamber so wishes, we are very well prepared to make such submissions
14 at a later point in time.

15 JUDGE FULFORD: Will you give us just a moment, please.

16 [Trial Chamber confers]

17 JUDGE FULFORD: Mr. Withopf, thank you very much for the offer,
18 but given that your submissions or your observations in relation to
19 disclosure really aren't directly related to today's objective, which
20 is setting a timetable primarily, we will look forward to hearing your
21 submissions in due course as to what you propose in relation to
22 disclosure. That will principally take place on the 10th of October,
23 but obviously the Prosecution are bearing in mind their obligations in
24 relation to disclosure and the need to furnish the Defence with the
25 material that will enable them to prepare this case for trial. But I

1 think we need not today descend into the detail of what you propose.

2 I think, therefore, that has addressed all of the issues that we
3 raised earlier.

4 MR. WITHOPF: That's correct, Mr. President.

5 JUDGE FULFORD: Thank you very much for your assistance.

6 Ms. Mabilie, in those circumstances, are there any additional
7 submissions that you would wish to advance?

8 MS. MABILIE (interpretation): I shan't go into the discussion
9 right now. I just wanted to tell the Prosecutor that the witnesses
10 who do not wish to be mentioned and consider themselves to be under
11 threat by the UPC and for which reason he refuses to provide evidence
12 or details regarding these witnesses, I will say that I will not have
13 a discussion on that today. We will stay with things as they are.
14 Thank you.

15 JUDGE FULFORD: The Bench entirely agrees with that, Ms. Mabilie,
16 in the sense that those issues can be put over until our detailed
17 consideration of them on the 10th of October. But we understand that
18 there is a dispute in relation to the matters that Mr. Withopf raised
19 in that regard.

20 Right. That, therefore, concludes today's hearing. We will
21 adjourn the issue of fixing a date for trial. It is quite clear that
22 we cannot realistically even pencil in a date today, and we will look
23 again at that issue in October. Although during the course of this
24 week we will set out a final timetable in writing that will be
25 communicated to the parties, it will, in fact, remain as originally

1 drafted, save that for the third tranche of submissions, rather than
2 the 2nd of November, that will be the 16th of November, and the
3 hearing will be on the 20th of November.

4 We will invite the representatives of the victims to put in their
5 submissions first in relation to item 7(E) and we would ask for -- I'm
6 going to pause in relation to this and I'm going to ask the two
7 representatives whether they have positive proposals as to when
8 submissions will be filed.

9 MR. WALLEYN (interpretation): Mr. President, thank you. We have
10 just discussed the matter. We should be able to make these
11 submissions at the end of September for the 1st of October, so around
12 the end of this month. I understood that it would only be on the
13 modalities for the participation in Status Conferences.

14 I would like to put to the Court that in the time schedule where
15 you put a question in a footnote regarding the role of the victim
16 being considered subsequently, I suggest that we should include this
17 point in the discussions or the submissions in preparation for that
18 hearing, because it would determine many other points for us. The
19 modalities that have been decided upon for the participation of
20 victims in trials would for us, in our view, determine the date on
21 which we would be ready to face a trial, as it were, because our role
22 would be important during proceedings on the merits, and it would also
23 require us to address other problems relating to protection and
24 preparation and so on and so forth.

25 JUDGE FULFORD: Mr. Walley, that's very helpful. If you and

1 your colleague would be ready to put in your submissions on the issue
2 of participation by the victims in both the pre-trial and the trial
3 stage by the last day of September, that would be extremely helpful.
4 That would give -- I just pause for a moment. Yes, that would give
5 the Defence and the Prosecution adequate time to respond to your
6 submissions. So we will fix that, therefore, for the submissions of
7 the victims on those issues by the last day in September, please.
8 Thank you very much, indeed.

9 It's been pointed out to me that I should correct the fact that I
10 have on a number of occasions referred to a date as being the 10th of
11 October for the first tranche of submissions and the hearing. In
12 fact, that was an error on my part. The submissions will be in by the
13 24th of September and the hearing will be on the 1st of October, in
14 line with what I indicated earlier.

15 Finally, therefore, I will ask the Officer of the Court simply to
16 read out the two charges as amended by the Pre-Trial Chamber to the
17 defendant.

18 MR. MIJUSKOVIC: Thank you, Mr. President.

19 Charges as confirmed by the Pre-Trial Chamber in its Decision on
20 29 January 2007.

21 The Pre-Trial Chamber confirms, on the evidence admitted for the
22 purpose of the confirmation hearing, that there is sufficient evidence
23 to establish substantial grounds to believe that Thomas Lubanga Dyilo
24 is responsible, as a co-perpetrator, for the charges of enlisting and
25 conscripting children under the age of fifteen years into the FPLC and

1 using them to participate actively in hostilities within the meaning
2 of Articles 8(2)(b)(xxvi) and 25(3)(a) of the Statute from early
3 September 2002 to 2 June 2003.

4 Furthermore, the Pre-Trial Chamber confirms, on the evidence
5 admitted for the purpose of the confirmation hearing, that there is
6 sufficient evidence to establish substantial grounds to believe that
7 Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the
8 charges of enlisting and conscripting children under the age of
9 fifteen years into the FPLC and using them to participate actively in
10 hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a)
11 of the Statute from 2 June to 13 August 2003.

12 Thank you.

13 JUDGE FULFORD: Thank you very much, indeed.

14 The next hearing for the Trial Chamber will be on Friday of this
15 week, which will be with only the Prosecution and the Registry
16 present. Unless there are requests in due course for earlier
17 hearings, the next public hearing of the Trial Chamber will be on the
18 1st of October, when we will consider the first tranche of
19 submissions.

20 We would like to express our gratitude for the assistance of all
21 counsel this morning.

22 COURT USHER: All rise.

23 The hearing adjourned at 11:09 a.m.

24

25

1 CORRECTIONS REPORT

2 After verification, the Court Interpretation and Translation Section
3 have made the following modifications in the transcript:

4 * p 16 lines 3,4 "wish to participate as anonymous victims" is replaced
5 by "are willing to renounce their anonymity and, if so, based on what
6 criteria,"

7 * p 16 lines 6,7 "in the substantive issues observations, submissions,
8 from the victims" is replaced by "in the trial questions to
9 witnesses"

10 * p 16 line 8 "wish to question -- we might wish" is replaced by
11 "allow us"

12 * p 16 line 8 "proceedings" is replaced by "trial"

13 * p 16 lines 11,12 "we were to become participants in the proceedings"
14 is replaced by " you were to address reparations issues at trial"