

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06

Date: 22 March 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

**DECISION ON THE APPLICATION BY THE DUTY COUNSEL FOR THE
DEFENCE DATED 20 MARCH 2006**

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

Duty Counsel for the Defence
Mr Jean Flamme

PRE-TRIAL CHAMBER I of the International Criminal Court (the “Court”);

NOTING the “Application by Duty Counsel for Extension of Time Limit to Appeal and for Disclosure of the Office of the Prosecutor’s Case File” (the “Application by Duty Counsel”),¹ filed by the duty counsel for the defence on 20 March 2006, and requesting the following:

- (i) an extension of the five-day time limit provided for in rule 154 (1) of the Rules of Procedure and Evidence (the “Rules”) to appeal Pre-Trial Chamber I’s Decision of 10 February 2006 (the “Decision”) pursuant to article 82 (1) (a) of the Rome Statute (the “Statute”);² and
- (ii) access to all documents relating to the issuance of an arrest warrant against Mr Thomas Lubanga Dyilo;³

NOTING that the following documents filed in the record of the case against Mr Thomas Lubanga Dyilo are currently accessible to the duty counsel for the defence:

- (i) a formatted version of the Decision, which retains all parts relevant to the case against Mr Thomas Lubanga Dyilo, redacts all information concerning the identity and current whereabouts of the six witnesses whose statements were cited in the said Decision, and incorporates some purely linguistic modifications;⁴
- (ii) a redacted version of the decisions of Pre-Trial Chamber I of 20 January 2006⁵ and 31 January 2006;⁶

¹ ICC-01/04-01/06-45.

² Application by Duty Counsel, p. 3.

³ Ibid.

⁴ ICC-01/04-01/06-8; and ICC-01/04-01/06-8-Corr.

⁵ ICC-01/04-01/06-27.

- (iii) a redacted version of the transcripts of the hearing of 2 February 2006;⁷
- (iv) a non-redacted version of the two non-exhibits relevant to the case against Mr Thomas Lubanga Dyilo presented by the Prosecution at the hearing of 2 February 2006;⁸ and
- (v) a formatted⁹ and/or redacted¹⁰ version of the filings of the Prosecution during the application process for a warrant of arrest against Mr Thomas Lubanga Dyilo;

NOTING the “Decision to Unseal and Reclassify Certain Documents in the Record of the Case against Mr Thomas Lubanga Dyilo” (the “Decision to Unseal and Reclassify”),¹¹ issued by Judge Sylvia Steiner acting as single judge of Pre-Trial Chamber I on 20 March 2006, according to which, save for the two non-exhibits referred to above, a non-redacted and non-formatted version of the said documents shall remain under seal and “*ex parte*, Prosecution only” in both the record of the case against Mr Thomas Lubanga Dyilo and the record of the situation in the Democratic Republic of the Congo until otherwise ordered by the Chamber;¹²

NOTING articles 57 (3) (c), 67 (1), 68 (1) and 82 (1) (a) of the Statute and rules 87 (2) (c), 88 (4), 101 (1) and 154 (1) of the Rules;

⁶ ICC-01/04-01/06-28-Conf.

⁷ ICC-01/04-01/06-29-Conf.

⁸ ICC-01/04-01/06-18-Conf; and ICC-01/04-01/06-19.

⁹ Annexes A, A1 to A10, B, B1, B2, C and C1 to C10 to the “Submission of Formatted and Redacted Documents” (ICC-01/04-01/06-32-US-Exp), filed by the Prosecution on 9 March 2006.

¹⁰ Annexes A, B, B1 to B10, C, C1 to C3, D and D1 to D10 to the “Submission of Redacted Documents” (ICC-01/04-01/06-39) filed by the Prosecution on 20 March 2006.

¹¹ ICC-01/04-01-06-42.

¹² Decision to Unseal and Reclassify, pp. 4 and 5.

CONSIDERING that, according to article 82 (1) (a) of the Statute, “[e]ither party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence: (a) A decision with respect to jurisdiction or admissibility”; and that therefore an appeal against the Decision on any matter concerning jurisdiction or admissibility can be filed directly with the Appeals Chamber without prior leave from Pre-Trial Chamber I;

CONSIDERING that the Appeals Chamber is the competent Chamber of the Court to decide whether the defence may at this stage avail itself of the procedural remedy provided for in article 82 (1) (a) of the Statute to challenge any matter concerning jurisdiction or admissibility dealt with in the Decision, and that the Appeals Chamber is therefore the only competent Chamber of the Court which can rule on the Application by Duty Counsel for the extension of the five-day time limit provided for in rule 154 (1) of the Rules;

CONSIDERING moreover that, as discussed at the initial appearance of Mr Thomas Lubanga Dyilo on 20 March 2006, the Prosecution should be given the opportunity to present its observations on the Application by Duty Counsel for access to all documents relating to the issuance of an arrest warrant against Mr Thomas Lubanga Dyilo,¹³ and that, according to article 67 (1) of the Statute, duty counsel for the defence must have access to the Prosecution’s observations;

CONSIDERING the urgency of the Application by Duty Counsel, because of the five-day time limit provided for in rule 154 (1) of the Rules, and because the duty counsel for the defence requests access to all documents relating to the issuance of an arrest warrant against Mr Thomas Lubanga Dyilo in order to be in a position to avail

¹³ Transcript of the Initial Appearance of Mr Thomas Lubanga Dyilo on 20 March 2006, p. 11, lines 4 to 23.


himself of the remedy provided for in article 82 (1) (a) of the Statute,¹⁴ and that the time-limit given to the Prosecution to present its observations must take into consideration the urgency of the Application by Duty Counsel;


FOR THESE REASONS

DECIDES that Pre-Trial Chamber I is not competent to entertain the Application by Duty Counsel for an extension of the time limit provided for in rule 154 (1) of the Rules;

DECIDES to grant the Prosecution until Friday 24 March 2006, 16.00 hours to present its observations on the Application by Duty Counsel for access to all documents relating to the issuance of an arrest warrant against Mr Thomas Lubanga Dyilo.

Done in English and French, the English version being authoritative.


Judge Claude Jorda
Presiding Judge


Judge Akua Kuenyehia


Judge Sylvia Steiner

Dated this Wednesday 22 March 2006

At The Hague

The Netherlands

¹⁴ Application by Duty Counsel, p. 2.