



Original: French

No: ICC-01/04-01/06

Date: 24 July 2006

**PRE-TRIAL CHAMBER I**

**Before:** Judge Sylvia Steiner, President  
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 INVITING THE DEMOCRATIC REPUBLIC OF THE CONGO AND  
THE VICTIMS IN THE CASE TO COMMENT ON THE PROCEEDINGS  
PURSUANT TO ARTICLE 19 OF THE STATUTE**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Ekkehard Withopf, Senior Trial Lawyer

**Legal Representatives of Victims a/0001/06 to  
a/0003/06**

Mr Luc Walley  
Mr Franck Mulinda

**Counsel for the Defence**

Mr Jean Flamme  
Ms Veronique Pandanzyla

**Pre-Trial Chamber I** (“the Chamber”) of the International Criminal Court (“the Court”);

**NOTING** the Application for Release<sup>1</sup> filed by the Defence on 23 May 2006 in which the Defence requests the release of Thomas Lubanga Dyilo;

**NOTING** the Order pursuant to the Application for Release<sup>2</sup> issued by the Chamber on 29 May 2006;

**NOTING** the Submissions relative to the Order of 29 May 2006<sup>3</sup> filed by the Defence on 31 May 2006, in which it observes that the application was not an application for interim release pursuant to article 60 of the Rome Statute (“the Statute”), but rather an application for release pursuant to rule 185 of the Rules of Procedure and Evidence (“the Rules”);

**NOTING** the Prosecution’s Response to Application for Release<sup>4</sup> filed by the Prosecution on 13 June 2006, in which the Prosecution submitted its observations on the Application for Release, and in which it assumed that the application is a challenge to the jurisdiction of the Court pursuant to article 19 of the Statute;

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<sup>1</sup> ICC-01/04-01/06-121

<sup>2</sup> ICC-01/04-01/06-128

<sup>3</sup> ICC-01/04-01/06-131

<sup>4</sup> ICC-01/04-01/06-149

**NOTING** the *Conclusions en réplique à la réponse du Procureur à la demande de mise en liberté*<sup>5</sup> filed by the Defence on 10 July 2006, in which the Defence states that the application for release is grounded on article 55 (1) (d), read together with article 85 of the Statute, and on the inadmissibility of the case against Thomas Lubanga Dyilo;

**NOTING** the *Conclusions suite à l'ordonnance du 13 juillet 2006*<sup>6</sup> (*les Conclusions finales de la Défense*) filed by the Defence on 17 July 2006, in which it re-characterises its application as a challenge to the jurisdiction of the Court based on the notion of misuse of power<sup>7</sup>;

**NOTING** articles 19, 55, 59, 60 and 85 of the Statute and rules 58 and 59 of the Rules;

**CONSIDERING** that, pursuant to rule 59 of the Rules, the procedural remedy chosen by the Defence under article 19 (2) (a) of the Statute provides for the making of representations in writing by the State which referred the situation pursuant to article 13 of the Statute, and by the victims in the case of The Prosecutor vs. Thomas Lubanga Dyilo;

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<sup>5</sup> ICC-01/04-01/06-188-Conf.

<sup>6</sup> ICC-01/04-01/06-197

<sup>7</sup> ICC-01/04-01/06-197, para. 8: “La Défense requalifie donc son extension de la demande comme une **exception d’incompétence**”

**FOR THESE REASONS**

**ORDERS** the Registrar to notify the Democratic Republic of the Congo (“the DRC”) and the victims in the case of the following documents:

- a) Application for Release;
- b) Submissions Relative to the Order of 29 May 2006;
- c) Prosecution’s Response to Application for Release;
- d) *Conclusions en réplique à la réponse du Procureur à la demande de mise en liberté;*
- e) *Les Conclusions finales de la Défense;*

**INVITES** the DRC and the victims in this case to make their submissions, no later than 4.00 p.m. on Friday 25 August 2006, on the challenge to the jurisdiction of the Court submitted by the Defence under article 19 (2) (a) of the Statute, in particular with regard to the following points:

- i) the alleged illegal detention of Thomas Lubanga Dyilo by the DRC authorities before 16 March 2006, and
- ii) The alleged irregularities in the subsequent arrest and the transfer to the Court of Thomas Lubanga Dyilo in execution of the warrant of arrest issued against him by Pre-Trial Chamber I on 10 February 2006.

**ORDERS** the registrar to provide the Chamber with any information he deems necessary for the transmission of this decision to the DRC.

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

*/signed/*  
**Judge Claude Jorda**  
**Presiding Judge**

*/signed/*  
**Judge Akua Kuenyehia**

*/signed/*  
**Judge Sylvia Steiner**

Done this Monday 24 July 2006

At The Hague

The Netherlands