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N°. ICC-01/04-01/06
Date: 18 October 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Single judge

Registrar: Mr Bruno Cathala

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

Public Document

Decision on the Application for the interim release of Thomas Lubanga Dyilo

The Office of the Prosecutor

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Defence**

Ms Melinda Taylor

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

NOTING the warrant of arrest issued on 10 February 2006 by the Chamber¹ and the *Décision relative à la Requête du Procureur aux fins de délivrance d’un mandat d’arrêt en vertu de l’article 58* (“the Decision on the warrant of arrest”), rendered on 20 February 2006 by the Chamber;²

NOTING the “Request for Further Information regarding the Confirmation Hearing and for Appropriate Relief to Safeguard the Rights of the Defence and Thomas Lubanga Dyilo” (“the Request”), filed on 20 September 2006³, in which the Defence requests i) the interim release of Thomas Lubanga Dyilo and ii) certain information about the date and holding of the confirmation hearing;

NOTING the “Decision establishing a deadline in relation to the Defence Request for the interim release of Thomas Lubanga Dyilo”, rendered on 22 September 2006 by the Single Judge;⁴

NOTING the “Decision on the date of the confirmation hearing”, rendered on 5 October 2006 by the Chamber;⁵

NOTING the “*Observations des victimes a/0001/06, a/0002/06 et a/0003/06 sur la demande de mise en liberté introduite par la Défense*”, filed on 9 October 2006;⁶

¹ ICC-01/04-01/06-2-US.

² ICC-01/04-01/06-8-US.

³ ICC-01/04-01/06-452.

⁴ ICC-01/04-01/06-465.

⁵ ICC-01/04-01/06-521-tEN.

NOTING the “Prosecution’s Response to the Defence Request for Interim Release”, filed on 9 October 2006”;⁷

NOTING the “*Requête demandant l’autorisation de répondre au Bureau du Procureur et aux représentants des victimes a/0001/06 à a/0003/06*”, filed on 13 October 2006 by the Defence;⁸

NOTING the “Defence Request for an Order of the Pre-Trial Chamber to the Prosecution to provide legal argument to the Defence in advance of the confirmation hearing and for a variation of the time limit” (“the Request to order the Prosecution to provide its legal arguments”), filed on 16 October 2006 by the Defence;⁹

CONSIDERING articles 21, 58, 60 and 61 of the Rome Statute (“the Statute”), rules 118 and 122 of the Rules of Procedure and Evidence (“the Rules”) and regulation 24(5) of the Regulations of the Court;

CONSIDERING that the Defence has submitted an application for leave to file a reply; that the Single Judge considers that he has sufficient material to rule on Thomas Lubanga Dyilo’s application for interim release;

CONSIDERING that “Decision on the date of the confirmation hearing” addresses the first two points about the schedule raised in the Request, and that with respect to the Defence’s third, fifth and sixth points relating to arrangements for the holding of the confirmation hearing, a hearing is scheduled for 26 October 2006 at which

⁶ ICC-01/04-01/06-530.

⁷ ICC-01/04-01/06-531.

⁸ ICC-01/04-01/06-571.

⁹ ICC-01/04-01/06-573.

participants will be heard on the arrangements for the holding of the confirmation hearing in order to allow the Presiding Judge to assess these arrangements pursuant to rule 122(1) of the Rules; that on the Defence's fourth point, a decision is currently pending following the Request to order the Prosecution to provide its legal arguments;

CONSIDERING, on one hand, that the Defence is challenging the legality of Thomas Lubanga Dyilo's detention for non compliance with the provisions of article 60(3) of the Statute and rule 118(2) of the Rules;

CONSIDERING that article 60(3) of the Statute provides that "[t]he Pre-Trial Chamber shall periodically review its ruling on the release or detention [...]" and that rule 118(2) of the Rules provides that "[t]he Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days [...]";

CONSIDERING, moreover, that the two abovementioned provisions appear after provisions which specifically deal with applications for interim release brought after the person subject to a warrant of arrest has been surrendered to the Court;

CONSIDERING, therefore, that the ruling on "[...] detention" referred to in article 60(3) of the Statute and rule 118(2) of the Rules cannot be confused with the warrant of arrest issued pursuant to article 58 of the Statute ordering the initial detention of Thomas Lubanga Dyilo;

CONSIDERING that the Request constitutes the first application for Thomas Lubanga Dyilo's interim release submitted by the Defence under article 60(2) of the Statute; that, as a result, the Chamber has not yet had to rule on the "release or

detention” of Thomas Lubanga Dyilo, and that therefore it is not possible to speak of a violation of article 60(3) of the Statute and rule 118(2) of the Rules;

CONSIDERING, on the other hand, that the Defence requests that the Chamber order the interim release of Thomas Lubanga Dyilo on the basis of article 60(4) of the Statute which provides that “[t]he Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.”;

CONSIDERING that article 60(2) of the Statute provides that “[a] person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.”;

CONSIDERING that under article 21(3) of the Statute, the application and interpretation of law pursuant to this article must be consistent with internationally recognised human rights;

CONSIDERING that the conditions set forth in article 58(1) of the Statute continue to be fulfilled in so far as there are still reasonable grounds to believe that Thomas Lubanga Dyilo has committed crimes within the jurisdiction of the Court and that his detention remains necessary to ensure his appearance at trial or does not obstruct or endanger the investigation or the court proceedings;

CONSIDERING that, because of the gravity of the crimes with which Thomas Lubanga Dyilo is charged, there is a substantial risk that he may wish to abscond

from the jurisdiction of the Court;¹⁰ that Thomas Lubanga Dyilo's main ties are in the Democratic Republic of the Congo;¹¹ and that there are also reasonable grounds to believe that Mr Thomas Lubanga Dyilo has been the President of the UPC since it was founded on 15 September 2000, that at the beginning of or in mid-September 2002, Mr Thomas Lubanga Dyilo established the FPLC as the military wing of the UPC and that he immediately became its commander-in-chief which, in the circumstances, allowed him to establish numerous contacts nationally and internationally which would readily enable him to abscond from the jurisdiction of the Court;

CONSIDERING also, that Thomas Lubanga Dyilo now knows the identities of certain witnesses; that the Prosecution states that if Thomas Lubanga Dyilo were to be released and were thus to be in a position to have completely unmonitored communications with the outside world, there would be a risk that he would, directly, or indirectly with the help of others, exert pressure on the witnesses, thus obstructing or endangering the court proceedings;¹² and that it appears that some witnesses, who appeared at the trials of middle- or high-ranking UPC members before the *Tribunal de Grande Instance* of Bunia, have been killed or threatened;¹³

CONSIDERING, moreover, that, in accordance with internationally recognised human rights, everyone arrested or detained is entitled to trial within a reasonable time or to release pending trial;¹⁴

¹⁰ See for example: European Court of Human Rights, *Tomasi v. France* judgment of 27 August 1992, Application No. 12850/87, para. 89; European Court of Human Rights, Case of *Mansur v. Turkey*, Judgment of 8 June 1995, Application No. 16026/90, para. 52

¹¹ See for example: European Court of Human Rights, *Van der Tang v. Spain* judgment of 13 July 1995, Application No.19382/92, para. 60 or European Court of Human Rights, Case of *W. v. Switzerland*, Judgment of 26 January 1993, Application No. 14379/88, para. 33.

¹² Prosecution's Response to the Defence Request for Interim Release, para. 13.

¹³ Decision on the warrant of arrest, para. 101.

¹⁴ Article 5(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 7(5) of the Inter-American Convention on Human Rights, article 9 of the International Covenant on Civil and Political Rights.

CONSIDERING that since pre-trial detention cannot be extended to an unreasonable degree;¹⁵ that reasonableness cannot be assessed *in abstracto* but depends on the particular features of each case;¹⁶ and that to assess the reasonableness of the detention, it is particularly important to assess the complexity of the case;¹⁷

CONSIDERING that, in the instant case, the period of detention to be considered under article 60 of the Statute started on 16 March 2006, the date of the surrender of Thomas Lubanga Dyilo to the Court;

CONSIDERING that the case before the Court is complex, particularly because the vast majority of the evidence is abroad¹⁸ and that the volume of evidence supporting the prosecution is huge;¹⁹

CONSIDERING, finally, that the organs of the Court have acted swiftly and that at no moment were proceedings dormant;

CONSIDERING that for these reasons and at this stage in the proceedings, the length of Thomas Lubanga Dyilo's detention cannot be considered unreasonable;

FOR THESE REASONS

¹⁵ European Court of Human Rights, *Wemhoff v. Germany* judgment of 27 June 1968, Application No. 2122/64, "As to the Law", para. 5.

¹⁶ See European Court of Human Rights, *Stögmüller v. Austria* judgment of 1 November 1969, Application No. 1602/62, "As to the Law", para. 4 or European Court of Human Rights, *W. v. Switzerland* judgment of 26 January 1993, Application No.14379/88, para. 30.

¹⁷ European Court of Human Rights, *Van der Tang v. Spain* judgment of 13 July 1995, Application No.19382/92, para. 75.

¹⁸ Inter-American Commission on Human Rights, *Guy Malary v. Haiti*, Case No. 11.335, Report No. 78/02, 27 December 2002, para. 64.

¹⁹ European Court of Human Rights, *Contrada v. Italy* judgment of 24 August 1998, paras. 66 and 67; Inter-American Court of Human Rights, *Genie Lacayo v. Nicaragua*, Judgment of 29 January 1997, Series C No. 30, para. 78.

²⁰ European Court of Human Rights, *Contrada v. Italy* judgment of 24 August 1998, paras. 66 and 67; Inter-American Court of Human Rights, *Genie Lacayo v. Nicaragua*, Judgment of 29 January 1997, Series C No. 30, para. 78.

DECIDES to reject the application to reply filed by the Defence;

DECIDES to reject the application for the interim release of Thomas Lubanga Dyilo.

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

[*signed*]

Judge Claude Jorda
Single Judge

Done this Wednesday 18 October 2006

At The Hague, The Netherlands.