

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 1 November 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
*v. Thomas Lubanga Dyilo***

Public Document

Decision convening a hearing on Friday 3 November 2006

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

**Legal Representatives of Victims
a/0001/06 to a/0003/06 and a/105/06**

Mr Luc Walley
Mr Franck Mulenda
Me Carine Bapita Buyangandu

Counsel for the Defence

Mr Jean Flamme
Ms Véronique Pandanzyla

Office Public for the Defence

Ms Melinda Taylor

I, Judge Claude Jorda, judge at the International Criminal Court (the “Court”);

NOTING the Final Decision on the e-court protocol for the provision of evidence, material and witness information in electronic version (“Final decision on the e-court protocol”), issued by the single judge on 28 August 2006;¹

NOTING the “Décision sur la demande de prolongation de délai” issued by the single judge on 25 October 2006;²

NOTING the Status Conference held by the Chamber on 26 October 2006;³

NOTING the Decision concerning the Prosecution Information on the Proofing of a Witness, issued by the single judge on 30 October 2006;⁴

NOTING the “Prosecution’s Request for a Hearing on an Expedited Basis on the Proofing of a Witness”, filed by the Prosecution on 31 October 2006;⁵

NOTING articles 57-3-c and 61 of the Rome Statute (“the Statute”), rules 78 and 122 of Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that in the Decision concerning the Proofing of a witness by the Prosecution, the single judge requested the Prosecution to elaborate by Wednesday 1 November 2006 on the content of what it means by the expression “proofing of a

¹ ICC-01/04-01/06-360.

² ICC-01/04-01/06-613-Conf.

³ ICC-01-04-01-06-T-26-EN ; ICC-01-04-01-06-T-27-CONF-27.

⁴ ICC-01/04-01/06-630-Conf-Corr.

⁵ ICC-01/04-01/06-632-Conf.

witness” and the specific conditions under which the Prosecution wishes to undertake the proofing of the witness;

CONSIDERING further that the Defence has until Friday 3 November 2006 to file a written response to the aforesaid submissions of the Prosecution;

CONSIDERING that an expedited Court hearing before receiving the written observations of the Prosecution and the Defence does not appear to be necessary;

CONSIDERING that the Chamber considers it necessary to hear the participants on the calendar to be followed during the confirmation hearing and other matters which are related;

FOR THESE REASONS

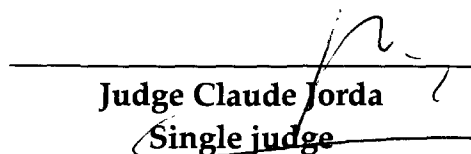
REJECT the Prosecution’s Request for a Hearing on an Expedited Basis on the Proofing of a Witness;

DECIDE to convene a public hearing on Friday 3 November at 9.30 am with the Prosecution, the Defence, the Legal Representatives of victims, in the presence of the Registrar or his Representatives, and the Victims and Witnesses Unit;

DECIDE that the agenda of the aforesaid hearing shall be as follows:

- i) Issues related to witness protection and in particular the necessity of using pseudonyms during the confirmation hearing;
- ii) Issues related to the grouping of evidence that has to be presented in public or closed sessions;
- iii) Issues related to the filing of the additional evidence by the Defence if any and in particular the inspection by the Prosecution pursuant to rule 78 of the Rules;
- iv) The access to the detention center by the Defence Team during week-ends;
- v) Issues related to the filing of the electronic version for the provision of evidence, material and witness information according to the Final decision on the e-court protocol;
- vi) Any other matters.

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


Judge Claude Jorda
Single judge

Dated this Wednesday 1 November 2006

At The Hague

ANNEX I: PROPOSED SCHEDULE FOR THE CONFIRMATION HEARING IN THE CASE OF *THE PROSECUTOR VS THOMAS LUBANGA DYILO*

1- Commencement of the Confirmation Hearing

- a. Thursday 9 November 2006. Morning session from 9.30 hours to 13.00 hours. Public Session:
 - i. From 9.30 hours to 11.00:
 - 1. The Presiding Judge shall open the confirmation hearing and the charges shall be read out, pursuant to rule 122 (1) of the Rules of Evidence and Procedure ("the Rules");
 - 2. Matters relating to jurisdiction, admissibility or procedural issues relating to the proceedings leading to the confirmation hearing that the parties may wish to raise under rule 122 (2) and (3) of the Rules.
 - ii. From 11.30 h to 13.00 hours. The Prosecution shall have ninety minutes to make its initial submissions;
- b. Thursday 9 November 2006. Afternoon session from 14.30 hours 18.00 hours. Public Session. The two teams of legal representatives of victims 01 to 03 and 105 shall in total, have one hour, thirty minutes to make their initial submissions (from 14.30 h to 16.00 h.) Then half an hour break. Finally, the Defence shall have ninety minutes to make its initial submissions (from 16.30 h to 18.00 h).

2- Presentation by the Prosecution of the Evidence included in the Prosecution Amended List of Evidence:

- c. Friday 10 November 2006 to Tuesday 14 November 2006 from 9.30 hours to 16.00 hours. A session from 16.30 to 17.30 can be scheduled if necessary

During the above-mentioned sessions of 10, 13 and 14 (morning) November 2006, the Prosecution can discuss: (i) the evidence relating to the Prosecution contextual general and/or background allegations related to the charges against Thomas Lubanga Dyilo (ii) the evidence relating to the UPC; (iv) the evidence relating to the FPLC; (v) the evidence relating to the alleged enlistment into the FPLC, conscription by the FPLC and active use in hostilities of children under the age of fifteen; (vi) the evidence relating to the alleged role of Thomas Lubanga Dyilo and (vii) discussion of evidence on individual cases.

- d. Wednesday 15 November 2006 (morning and afternoon sessions) and Thursday 16 November 2006 (morning and afternoon sessions). Prosecution examination of one witness in public session. At the end of Thursday 16 November 2006, after the Prosecution examination of the said witness has finished, the confirmation hearing shall be suspended until Monday 20 November 2006 when it will resume with the Defence examination of the said witness.
- e. From Friday 17 November 2006, some time is accorded to the Defence in order to be prepared to the examination of the said witness.

The Chamber considers that for the purposes of this hearing, public sessions shall be the norm and the Chamber will only go into closed sessions under exceptional circumstances where absolutely warranted. Accordingly, to facilitate the confirmation hearing in an expeditious manner, the presentation of each group of evidence as mentioned above shall be initially be dealt with, in public session and matters that are confidential shall be subsequently dealt with in closed session

3- Presentation by the Defence of the evidence that might be included in the Defence Additional List of Evidence to be filed on 2 November 2006 and Defence discussion of the evidence included in the Prosecution List of Evidence and Amended List of Evidence

- f. Monday 20 November 2006 (morning and afternoon sessions) and Tuesday 21 November 2006 (morning and afternoon sessions). Defence examination in public session, of the only witness the Prosecution has previously examined;

- g. Wednesday 22 November 2006 to Friday 24 November 2006. from 9.30 hours to 16.00 hours. A session from 16.30 to 17.30 can be scheduled if necessary. Start with Public Session, although at one point it might be necessary to go to closed session;

During the sessions of 22, 23, 24 and 27 November 2006 in the morning, the Defence can discuss: (i) the evidence relating to the Prosecution General Allegations and Background Allegations (ii) the evidence relating to the UPC; (iv) the evidence relating to the FPLC; (v) the evidence relating to the alleged enlistment into the FPLC, conscription by the FPLC and active use in hostilities of children under the age of fifteen; and (vi) the evidence relating to the alleged role of Thomas Lubanga Dyilo and (vii) discussion of evidence on individual cases.

The Chamber reiterates that it considers that for the purposes of this hearing, public sessions shall be the norm and the Chamber will only go into closed sessions under exceptional circumstances where absolutely warranted. Accordingly, to facilitate the confirmation hearing in an expeditious manner, the presentation of each group of evidence as mentioned above shall be initially be dealt with, in public session and matters that are confidential shall be subsequently dealt with closed session

4- Monday 27 (afternoon) November 2006 : Prosecution Response to the evidence that might be included in the Defence Additional List of Evidence to be filed on 2 November 2006 (the Prosecution shall be prevented from using this time to reply to the Defence discussion of the evidence included in the Prosecution Amended List of Evidence as filed on 20 October 2006).

5- Final Submissions by the Prosecution, the Legal Representatives of the Victims 01 to 03 and 105 and the Defence:

- h. On Tuesday 28 November 2006, the Prosecution, the Legal Representatives of the Victims 01 to 03 and 105 and the Defence shall proceed in this order with their final oral submissions:
 - a. In the morning session (9.30 h to 13.00 h) the Prosecution (ninety minutes) and the Legal Representatives of the Victims 01 to 03

and 105 (forty-five minutes each or one and a half hours in total) shall make their final submissions;

- b. In the afternoon session (14.30 h to 16.00 h) the Defence shall make its final oral submissions and the confirmation hearing shall be brought to an end by the Presiding Judge. A session from 16.30 to 17.30 can be scheduled if necessary.
- i. The Prosecution, the Legal Representatives of Victims 01 to 03 and 105 and the Defence have until Monday 4 December 2006 at 16h00 to file a document in which they can put, if they find it necessary any matters they raised at the confirmation hearing.