

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04-01/06  
Date: 14 February 2007

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, 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**

**Review of the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo"**

**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, a/0105/06*  
Mr Luc Walley  
Mr Franck Mulenda  
Ms Carine Bapita Buyangandu

**Counsel for the Defence**

Mr Jean Flamme  
Ms Véronique Pandanzyla  
**The Office of Public Counsel for the  
Defence**  
Mr Xavier-Jean Keïta

I, **Judge Sylvia Steiner**, judge at the International Criminal Court (“the Court”);

**NOTING** the warrant of arrest issued on 10 February 2006 by Pre-Trial Chamber I (“the Chamber”)<sup>1</sup> 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<sup>2</sup>;

**NOTING** the “Request for Further Information Regarding the Confirmation Hearing and for Appropriate Relief to Safeguard the Rights of the Defence of Thomas Lubanga Dyilo”<sup>3</sup>, filed on 20 September 2006, 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 (“the Defence request for interim release”);

**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 whereby the Prosecution and the Legal Representatives of Victims a/0001/06, a/0002/06 et a/0003/06 are invited to submit their responses to the aforesaid request by the Defence<sup>4</sup>;

**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 in which the Legal

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<sup>1</sup> ICC-01/04-01/06-2-US.

<sup>2</sup> ICC-01/04-01/06-8-US-Corr-tFR.

<sup>3</sup> ICC-01/04-01/06-452.

<sup>4</sup> ICC-01/04-01/06-465.

Representatives of Victims *a/0001/06, a/0002/06 et a/0003/06* ask the Chamber to dismiss the Defence request for interim release<sup>5</sup>;

**NOTING** the “Prosecution’s Response to the Defence Request for Interim Release”, filed on 9 October 2006 in which the Prosecution urges the Chamber to dismiss the Defence request for interim release<sup>6</sup>;

**NOTING** the “Decision on the Application for the interim release of Thomas Lubanga Dyilo”, filed on 18 October 2006 whereby the Chamber rejects the Defence request for interim release<sup>7</sup>;

**NOTING** the Defence Appeal against the “*Décision sur la demande de mise en liberté*” provisoire de Thomas Lubanga Dyilo filed on 20 October 2006<sup>8</sup>;

**NOTING** the Judgement of the Appeals Chamber filed on 13 February 2007 whereby the Appeals Chamber confirms the decision of the Chamber on the application for the interim release of Thomas Lubanga Dyilo<sup>9</sup>;

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<sup>5</sup> ICC-01/04-01/06-530.

<sup>6</sup> ICC-01/04-01/06-531.

<sup>7</sup> ICC-01/04-01/06-586-tEN.

<sup>8</sup> ICC-01/04-01/06-594.

<sup>9</sup> ICC-01/04-01/06-824.

**NOTING** the “Décision sur la confirmation des charges”, filed on 29 January 2006<sup>10</sup>;

**NOTING** articles 21(3), 58, 60 and 61 of the Rome Statute (“The Statute”), and rule 118 of the Rules of Procedure and Evidence (“The Rules”);

**CONSIDERING** that article 60(3) of the Statute provides that “the Pre-trial Chamber shall periodically review its ruling on the release or detention of the person [...]”; and that rule 118 of the Rules provides that “The Pre Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60 (3) at least every 120 days [...]”;

**CONSIDERING** that the Chamber has ruled that this procedure is triggered only upon the first application by the person subject to a warrant of arrest for interim release in accordance with article 60(2) of the Statute<sup>11</sup>; and that this ruling has been confirmed by the Judgement of the Appeals Chamber<sup>12</sup>;

**CONSIDERING** therefore that the last time the Chamber ruled on the “release or detention” of Thomas Lubanga Dyilo was on 18 October 2006 in its “Decision on the Application for the interim release”, whereby the Chamber rejected the Defence request for interim release;

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<sup>10</sup> ICC-01/04-01/06-796. For the redacted version see, ICC-01/04-01/06-803.

<sup>11</sup> ICC-01/04-01/06-586-tEN, p.4 to 5.

<sup>12</sup> Judgement of the Appeals Chamber, para. 94.

**CONSIDERING** that in accordance with article 60 (2) of the Statute, the Chamber's denial of the Defence request for interim release was, *inter alia*, based on the grounds that the conditions set forth in article 58(1) of the Statute at the time continued to be fulfilled in so far as there were still reasonable grounds to believe that Thomas Lubanga Dyilo had committed crimes within the jurisdiction of the Court; and that his detention remained necessary to ensure his appearance at trial and to prevent him from obstructing or endangering the investigation or the court proceedings;

**CONSIDERING** that in reaching its decision the Chamber was further guided by the gravity of the crimes Thomas Lubanga Dyilo had allegedly committed, the substantial risk of his desire and ability to abscond the jurisdiction of the Court if granted provisional release; and the consequent risk on the safety of victims and witnesses of the Court<sup>13</sup>;

**CONSIDERING** that after the "Decision on the Application for the interim release" on 18 October 2006, there has not been any material change of circumstances to justify the release of the Thomas Lubanga Dyilo at this stage of the proceedings;

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<sup>13</sup> The Chamber is mindful of para. 136, 137, 139 of the Appeal Chamber's decision in ICC-01/04-01/06-824 whereby the Appeals Chamber notes that it would have preferred the Chamber to explain in more detail why it reached its conclusion that the Appellant may abscond and its assertion that the Chamber's reasoning that the potential endangerment of witnesses is scarce. However the Chamber notes that in spite of these determinations, the Appeals Chamber did not discern any error on the part of the Chamber. The Chamber recalls that para. 137 of the Judgement in particular, recognizes that "any determination by a Pre Trial Chamber whether or not a suspect is likely to abscond necessarily involves an element of prediction". Additionally, the Chamber recalls the Appeals Chamber's statement that the Chamber's finding as to the necessity of continued detention to ensure the presence of the appellant at trial justified the decision to deny release under article 60 (2) of the Statute.

**CONSIDERING** on the contrary, that having confirmed the charges against Thomas Lubanga Dyilo, the Chamber is of the view that there is now sufficient evidence to establish substantial grounds to believe that he has committed crimes within the jurisdiction of the Court; that, there is thus a greater risk that the accused might abscond; and that, his detention becomes even more necessary to ensure his appearance at trial;

**CONSIDERING** further that, for the purpose of the confirmation hearing, the identities of many witnesses have been disclosed to the accused; that the situation in the Democratic Republic of Congo still appears volatile; and that therefore his release may lead to the grave endangerment of the security of victims and witnesses;

**CONSIDERING** furthermore that the Chamber reached its decision in compliance with internationally recognized human rights and especially with due regard to the right of any person arrested or detained to trial within a reasonable time or to release pending trial<sup>14</sup>;

**CONSIDERING** that notwithstanding the complexities of this case,<sup>15</sup> the confirmation hearing of Thomas Lubanga Dyilo has taken place in an expeditious manner and in accordance with the time regime set out in the Statute, the Rules and

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<sup>14</sup> ICC-01/04-01/06-586-tEN, p. 6 to 7. The Chamber thus restates its position that since pre-trial detention cannot be extended to an unreasonable degree that reasonableness cannot be assessed in *abstracto* but depends on the particular features of each case and that to assess the reasonableness of the detention, it is particularly important to assess the complexity of the case.

<sup>15</sup> See ICC-01/04-01/06-586-tEN, p. 7 where the Chamber states that some of the reasons for the complexity of this case include the “vast majority of the evidence abroad” and the fact that the volume of evidence supporting the prosecution is huge.

the Regulations of the Court; and that, therefore, the length of Thomas Lubanga Dyilo's detention cannot be considered unreasonable;

**CONSIDERING** further that in light of the Judgement of the Appeals Chamber<sup>16</sup>, the Chamber, having determined that the period of detention is not unreasonable, the question of inexcusable delay of the Prosecution need not be addressed by the Chamber in reviewing the Defence request for interim release;

**CONSIDERING** that the Chamber notes the findings of the Appeal's Chamber that the Chamber "is required ... to assume on its motion the task of reviewing an earlier ruling denying the release of a person. Far from detracting from internationally recognized human rights of the detainee, article 60(3) of the Statute requires the Court to keep under surveillance the justification of the further detention of the arrestee."<sup>17</sup>

**CONSIDERING** that the Chamber is of the view that it does not need the observations of the parties in the exercise of its *proprio motu* powers to review an issue of this nature in accordance with article 118 (2) of the Statute<sup>18</sup>;

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<sup>16</sup> See the Appeal Chamber's ruling in ICC-01/04-01/06-824 to the effect that "having determined that the period of detention was not unreasonable, the question of the inexcusable delay has become moot."

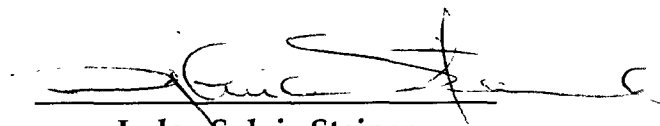
<sup>17</sup> See "Separate Opinion of Judge Georghios M. Pikis" pg. 52 to 53 at para. 17.

<sup>18</sup> The Chamber believes the observations of the parties are necessary only when the detained person has made an express and written request for interim release article 118(3) of the Statute.

**FOR THESE REASONS,**

**DECIDES** that Thomas Lubanga Dyilo shall continue to be detained.

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



**Judge Sylvia Steiner**  
**Single Judge**

Dated this Wednesday 14 February 2007

At The Hague

The Netherlands.