

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 11 June 2007

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single Judge**

**Registrar: Mr Bruno Cathala**

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

**Public Document**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo

Mrs Fatou Bensouda

Mr Ekkehard Withopf

**Legal Representatives of Victims**

a/0001/06 to a/0003/06 and a/0105/06

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

**Thomas Lubanga Dyilo**

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

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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.

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

**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” (“the Decision”) 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 “Décision sur la confirmation des charges”, filed on 29 January 2007;<sup>9</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>10</sup>

**NOTING** the “Review of the “Decision on the Application for Interim Release of Thomas Lubanga Dyilo” (“the Review of the Decision”) issued by the Chamber on 14 February 2007;<sup>11</sup>

**NOTING** the “Decision transmitting the pre-trial record of proceedings in the case of The Prosecutor v. Thomas Lubanga Dyilo to Trial Chamber I” issued by the Presidency on 6 June 2007;<sup>12</sup>

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

<sup>10</sup> ICC-01/04-01/06-824.

<sup>11</sup> ICC-01/04-01/06-826.

**NOTING** the “Request for Review of Detention”<sup>13</sup> issued by Trial Chamber I on 6 June 2007 whereby pursuant to article 64(4) of the Statute Trial Chamber I requests that the Chamber review its ruling on the detention of Thomas Lubanga Dyilo prior to or on the date of 14 June 2007;

**NOTING** articles 21(3), 58, 60 and 61 of the Rome Statute (“the Statute”), and rules 118 and 130 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 “[t]he 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 last time the Chamber ruled on the “release or detention” of Thomas Lubanga Dyilo was on 14 February 2007 in its “Review of the Decision on the Application for the interim release”, whereby the Chamber decided that Thomas Lubanga Dyilo shall continue to be detained;

**CONSIDERING** that in accordance with article 60(2) of the Statute, the Decision 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 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

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<sup>12</sup> ICC-01/04-01/06-920.

<sup>13</sup> ICC-01/04-01/06-921.

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>14</sup>

**CONSIDERING** that in the Review of the Decision on 14 February 2007, the Chamber found that no material change of circumstances occurred since its Decision denying the release of Thomas Lubanga Dyilo at that stage of the proceedings;

**CONSIDERING** further that in the Review of the Decision, the Chamber held that having confirmed the charges against Thomas Lubanga Dyilo, it was of the view that i) there was sufficient evidence to establish substantial grounds to believe that he has committed crimes within the jurisdiction of the Court; ii) there was thus a greater risk that the accused might abscond; iii) his detention became even more necessary to ensure his appearance at trial; iv) the identities of many witnesses have been disclosed to the accused during the confirmation hearing; v) that the situation in the Democratic Republic of Congo still appeared volatile; and vi) his release would lead to the grave endangerment of the security of victims and witnesses;

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<sup>14</sup> The Chamber mindful of paras. 136, 137 and 139 of the Appeal 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 judgment 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 Chambers' findings 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** that pursuant to article 60(3) of the Statute, upon review of a decision on interim release, the Chamber may modify its ruling if it is satisfied that changed circumstances so require;

**CONSIDERING** that in the present case the following circumstances still exist: i) the charges against Thomas Lubanga Dyilo have been confirmed and the Chamber has rejected the Applications on leave to appeal of the decision confirming the charges;<sup>15</sup> ii) there is still a greater risk that the accused might abscond; iii) the detention is still necessary to ensure the appearance of the accused at trial; iv) the fact that the identities of many witnesses have been disclosed to the accused during the confirmation hearing still remains; v) the situation in the Democratic Republic of Congo still appears volatile; and vi) his release would lead to the grave endangerment of the security of victims and witnesses;

**CONSIDERING** therefore, that the circumstances remain the same under article 60(2) and (3) of the Statute;

**CONSIDERING** in addition that the full record of the proceedings in the case The Prosecutor v. Thomas Lubanga Dyilo has been transmitted to Trial Chamber I, pursuant rule 130 of the Rules thus indicating that the proceedings are advancing;

**CONSIDERING** that pursuant to article 60(4) of the Statute, the Chamber "shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor" and that the Appeals Chamber in its Judgment has confirmed that "unreasonableness of any period of detention prior to trial cannot

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<sup>15</sup> ICC-01/04-01/06-915.

be determined in the abstract, but has to be determined on the basis of the circumstances of each case";<sup>16</sup>

**CONSIDERING** therefore that in assessing whether the period of pre-trial detention of Thomas Lubanga Dyilo is reasonable, the Chamber shall take into account all the circumstances in the present case;

**CONSIDERING** further that in assessing the reasonableness of the detention the Chamber shall outweigh the genuine requirement of public interest with the rule of respect for individual liberty;<sup>17</sup> and that the circumstances outlined above fulfill the requirement of public interest, in particular in relation to the need to ensure the appearance of the accused at trial and the security and protection of victims and witnesses;

**CONSIDERING** that notwithstanding the complexities of the case,<sup>18</sup> the proceedings of the confirmation of charges 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 the Regulations of the Court;

**CONSIDERING** that the delay which occurred after the confirmation of charges is attributable i) to the withdrawal of the former Defence Counsel of the accused;<sup>19</sup> ii) to the postponement of time limit for submission of response by the Defence to the Application of the Prosecution for leave to appeal the decision confirming the charges,<sup>20</sup> as to ensure that the rights of the Defence under the Statute be fully

<sup>16</sup> ICC-01/04-01/06-824, para. 122.

<sup>17</sup> See European Court of Human Rights, *W v Switzerland* judgment of 27 June 1993, Application No. 14379/88, para 30; European Court of Human Rights, *Ilijkov v Bulgaria* judgment 26 July 2001, Application No. Application no 33977/96, para. 84

<sup>18</sup> ICC-01/04-01/06-586-tEn, p. 7.

<sup>19</sup> ICC-01/04-01/06-829-Conf; ICC-01/04-01/06-833-Conf.

<sup>20</sup> ICC-01/04-01/06-848 and ICC-01/04-01/06-906.

respected; iii) to the subsequent motions filed by the Defence in relation to the appointment of a Defence Counsel and of a Duty Counsel;<sup>21</sup>

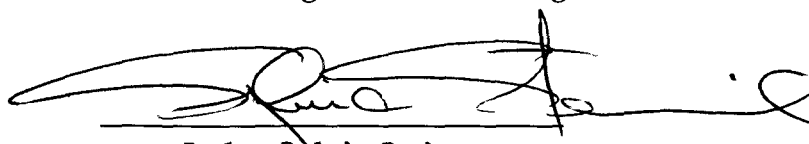
**CONSIDERING** therefore that the period of detention is reasonable and that there was no inexcusable delay caused by the Prosecution according to article 60(4) of the Statute;

**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;

**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 Monday 11 June 2007

At The Hague

The Netherlands

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<sup>21</sup> ICC-01/04-01/06-859 ; ICC-01/04-01/06-868-Conf-Exp-Anx.; ICC-01/04-01/06-872-Conf-Exp-Anx.; ICC-01/04-01/06-877-Conf-Exp.