

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06

Date: 1 February 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

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

Public

**Decision reviewing the Trial Chamber's ruling on the detention of Thomas
Lubanga Dyilo in accordance with Rule 118(2)**

Office of the Prosecutor

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

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

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

Background

1. On 20 September 2006 in its filing "Request for further information regarding the confirmation hearing and for appropriate relief to safeguard the rights of the Defence and Thomas Lubanga Dyilo"¹ the defence sought, *inter alia*, an order for the "provisional release" of the defendant, Mr Thomas Lubanga Dyilo ("Defence Request").²
2. On 9 October 2006 the Office of the Prosecutor ("prosecution") and the legal representatives of Victims a/0001/06 to a/0003/06 separately filed their responses,³ asking Pre-Trial Chamber I to dismiss the Defence Request.
3. Pre-Trial Chamber I rejected the Defence Request for interim release in its "Decision on the Application for the interim release of Thomas Lubanga Dyilo"⁴ on 18 October 2006. This Decision was subsequently upheld on appeal⁵ and reviewed by Pre-Trial Chamber I on 14 February 2007⁶ and, following the request of Trial Chamber I⁷ reviewed again on 11 June 2007.⁸ On 9 October 2007 the Chamber reviewed the detention status of Mr Thomas Lubanga Dyilo.⁹ All three reviews provided for the continued detention of the defendant.

¹ ICC-01/04-01/06-452.

² *Ibid.*, paragraph 55 vii).

³ Prosecution's Response to the Defence Request for Interim Release, ICC-01/04-01/06-531, and Observations of victims a/0001/06, a/0002/06 and a/0003/06 in respect of the application for release filed by the Defence, ICC-01/04-01/06-530-tEN.

⁴ ICC-01/04-01/06-586-tEN.

⁵ Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", 13 February 2007, ICC-01/04-01/06-824.

⁶ Review of the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo", ICC-01/04-01/06-826.

⁷ Request for Review of Detention, 6 June 2007, ICC-01/04-01/06-921.

⁸ Second Review of the "Decision on the Application for Interim Release of Thomas Lubanga Dyilo", ICC-01/04-01/06-924.

⁹ Decision reviewing the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo", ICC-01-04-01-06-976.

4. The right of the defendant to apply for interim release pending trial is enshrined in Article 60(2) of the Rome Statute ("Statute") which provides:

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.

5. The conditions set forth in Article 58(1) are that:

- (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
- (b) The arrest of the person appears necessary:
 - (i) To ensure the person's appearance at trial,
 - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
 - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

6. Article 60(3) of the Statute requires the Pre-Trial Chamber to review periodically its decision on interim release:

The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

Rule 118(2) of the Rules of Procedure and Evidence ("Rules") stipulates that such review shall be undertaken at least every 120 days:

The 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 and may do so at any time on the request of the person or prosecutor.

7. In addition, Article 60(4) of the Statute provides:

The 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.

8. While the Statute and Rules require only the Pre-Trial Chamber to undertake this periodic review of any decision on interim release, Article 61(11) of the Statute vests the relevant powers of the Pre-Trial Chamber in the Trial Chamber as follows:

Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

Accordingly, the Chamber has undertaken a review of its Decision of 9 October 2007, as provided below.

The Requirements of Article 58(1)(a)

9. In its review of the Decision, and in particular of the continued application of the conditions set out in Article 58(1), the Chamber has been assisted by the finding of the Pre-Trial Chamber in its “Decision on the confirmation of charges”¹⁰ that:

there is sufficient evidence to establish substantial grounds to believe that Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities...¹¹

On this basis, the Trial Chamber remains of the view that the requirements of Article 58(1)(a) of “reasonable grounds to believe” are met in this instance.

¹⁰ ICC-01/04-01/06-803-tEN, 29 January 2007.

¹¹ *Ibid*, pages 156-157.

The Requirements of Article 58(1)(b)(i)

10. In relation to the requirements of Article 58(1)(b)(i), the Chamber considers that the defendant faces grave charges and if released is likely to return to the Democratic Republic of the Congo, with the probable consequence that the Court would no longer be able to ensure his attendance at trial. Furthermore, the Chamber considers that the defendant is highly unlikely to attend his trial voluntarily. For these reasons the Chamber concludes that it is necessary to continue to detain the defendant.

Article 60(4)

11. The Appeals Chamber has held that "there is, in addition [to the review conducted under Article 60(3)] an obligation upon the Pre-Trial Chamber to review the overall period of the detention of the suspect under article 60(4)."¹²

12. The Trial Chamber in its review of the overall period of detention under Article 60(4) has taken into account the current detailed timeline set for a trial commencing on 31 March 2008. Notwithstanding recent applications in relation to disclosure,¹³ the Chamber has not made any finding that the preparation for trial has been delayed by the prosecution. In light of this, and the general progress that has been made to facilitate the commencement of the trial, the Chamber concludes that the period of detention of the accused has not been unreasonable. Taking into account all of these circumstances, the Chamber has determined that there has been no breach of Article 60(4).

¹² Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", 13 February 2007, ICC-01/04-01/06-824, paragraph 98; see also paragraphs 118-124.

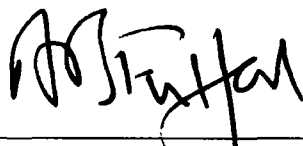
¹³ See Decision suspending deadline for final disclosure, 30 January 2008, ICC-01/04-01/06-1141.

Conclusion

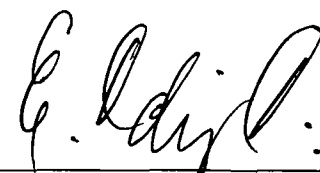
13. Accordingly, for the reasons set out above, the Chamber **decides that Thomas Lubanga Dyilo shall continue to be detained.**

Judge René Blattmann was consulted but is unavailable to sign the Order as he is away from the seat of the Court on the day of signature.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito

Judge René Blattmann

Dated this 1 February 2008

At The Hague, The Netherlands