

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 28 June 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

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

Public Formatted and Redacted Document

Prosecutor's Information on Further Investigation

The Office of the Prosecutor

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

Counsel for the Defence

Mr Jean Flamme

Background

1. On 12 January 2006, the Prosecution filed the “REDACTED”¹ (REDACTED), requesting, *inter alia*, that an arrest warrant be issued for Thomas LUBANGA DYILO. On 25 January 2006, the Prosecution filed the “Prosecution’s Submission of Further Information and Materials”² (25 January 2006 Submission), and further detailed³ the information provided in the REDACTED⁴ on the urgent need to arrest and surrender Thomas LUBANGA DYILO.
2. In the REDACTED, the Prosecution informed the Pre-Trial Chamber and the future Defence for Thomas LUBANGA DYILO that it will, if and when the collection of evidence meets the threshold of Article 58(1)(a) of the Rome Statute (Statute) in relation to the further allegations of crimes currently under investigation, seek to amend the REDACTED in order to add substantial new charges to the ones already charged.⁵ At the time, the Prosecution anticipated to, within “the next months”, be in a position to make a determination as to whether there is sufficient evidence and information establishing reasonable grounds to believe that Thomas LUBANGA DYILO is criminally responsible for additional crimes.⁶
3. On 2 February 2006, the Pre-Trial Chamber convened an *ex parte* hearing on the REDACTED (Hearing). In the course of the Hearing, the Prosecution explained that the focus of the further investigation includes, *inter alia*, allegations related to

¹REDACTED.

² Prosecution’s Submission of Further Information and Materials, 25 January 2006.

³ See the redacted and formatted version of the 25 January 2006 Submission, at paras. 8 to 15.

⁴ REDACTED.

⁵ REDACTED.

⁶ REDACTED.

the intentional direction of attacks against the civilian population, murders committed during and after these attacks, the pillaging of towns and places, and ordering the displacement of the civilian population.⁷ In addition,⁸ the Prosecution informed the Pre-Trial Chamber that it will be in a position to make its final determination on a possible amendment of the charges “towards the end of the first half of this year.”⁹

4. On 20 March 2006, the Pre-Trial Chamber set the date for the Confirmation Hearing for 27 June 2006.¹⁰ On 22 May 2006, the Prosecution filed the REDACTED¹¹ (REDACTED), requesting the postponement of the date of the Confirmation Hearing due to reasons related to victim and witness protection. On 23 May 2006,¹² the Prosecution¹³ advised the Pre-Trial Chamber that the Prosecution’s internal discussion, in respect of the issue as to whether or not to amend the charges, taking into account the procedural aspects and the impact on the timetable, was almost completed.¹⁴
5. By its Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure of 24 May 2006 (24 May 2006 Decision),¹⁵ the Pre-Trial Chamber re-scheduled the

⁷ See the redacted and formatted version of the English transcript of the 2 February 2006 Hearing, at pages 56 and 57.

⁸ In response to a specific question posed by the Presiding Judge.

⁹ See the redacted and formatted version of the English transcript of the 2 February 2006 Hearing, at page 57.

¹⁰ See (English) transcript of the 20 March 2006 Hearing, at page 8.

¹¹ REDACTED.

¹² REDACTED.

¹³ In response to a question posed by the Presiding Judge.

¹⁴ REDACTED.

¹⁵ Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure, 24 May 2006.

date of the Confirmation Hearing to 28 September 2006.¹⁶ In addition, the Pre-Trial Chamber established a detailed timetable leading up to the date of the Confirmation Hearing.¹⁷

6. On 6 June 2006, in the Prosecution's Observations on the Applications for Participation of Applicants a/0001/06 to a/0003/06¹⁸ (6 June 2006 Observations), the Prosecution informed the Pre-Trial Chamber that it will in near future convey to the Pre-Trial Chamber its decision in respect of the amendment of the charges.¹⁹

Information on the temporary suspension of the further investigation

7. The Prosecutor herewith informs the Pre-Trial Chamber and the Defence of Thomas LUBANGA DYILO that he has decided to temporarily suspend the further investigation in relation to other potential charges against Thomas LUBANGA DYILO up until the close of the present proceedings pertaining to the present charges. Accordingly, the Prosecutor will not amend the charges during the present proceedings.
8. Against the background of the date of the Confirmation Hearing and the related timetable of the Pre-Trial Chamber, the Prosecutor's decision is determined by

¹⁶ See 24 May 2006 Decision, at page 6.

¹⁷ See 24 May 2006 Decision, at pages 6 to 9.

¹⁸ See the redacted and formatted version of the Prosecution's Observations on the Applications for Participation of Applicants a/0001/06 to a/0003/06, 6 June 2006.

¹⁹ In footnote 11.

the fact that it can reasonably be anticipated that the current limited²⁰ possibilities to further investigate into crimes allegedly committed by Thomas LUBANGA DYILO will make it impossible to complement the collection of evidence²¹ to the extent necessary to amend the charges within the time frames as legally determined by Articles 61(4) and 61(9) of the Statute.

9. In addition, the pace of the present proceedings, based on the current charges against Thomas LUBANGA DYILO has been heavily affected by the ongoing efforts of the Court to provide for adequate protection of victims and witnesses. In the Prosecutor's view, amending the charges would unavoidably add to these difficulties, likely to result in further significant delays that conflict with Thomas LUBANGA DYILO's right to be tried without undue delay.²²

10. The Prosecutor explicitly emphasizes that his decision does not exclude that he may continue his investigation into crimes allegedly committed by Thomas LUBANGA DYILO after the close of the present proceedings. In the event that these additional investigations²³ establish reasonable grounds²⁴ to believe that Thomas LUBANGA DYILO is criminally responsible for additional crimes, the Prosecutor will apply to the Pre-Trial Chamber for a new warrant of arrest against Thomas LUBANGA DYILO or will submit a further document containing the charges for confirmation by the Pre-Trial Chamber respectively.

²⁰ The ability of the Office of the Prosecutor to investigate in the DRC, and in particular in the area of Ituri, is currently significantly limited by the security conditions in the region and the impact of the upcoming election period on these conditions.

²¹ Of both, incriminating and exonerating nature, in compliance with the Office of the Prosecutor's statutory duty pursuant to Article 54(1) of the Rome Statute.

²² Article 67(1)(c) of the Rome Statute.

²³ Any additional investigations will equally cover incriminating and exonerating circumstances.

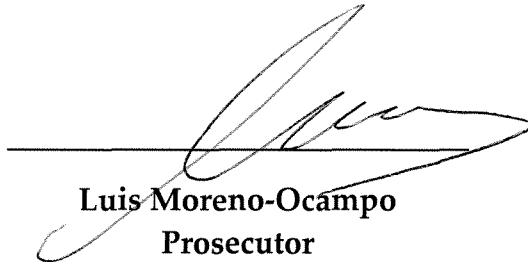
²⁴ Or substantial grounds respectively.

No impact on Rule 81(2) Applications

11. The Prosecution notes that due to the fact that the further investigation against Thomas LUBANGA DYILO is only temporarily suspended, the Prosecutor's decision has no bearing on the Prosecution's pending and/or future applications pursuant to Rule 81(2).

Public formatted and redacted version

12. The present filing contains information that the Prosecution provided to the Pre-Trial Chamber on an *ex parte* basis.²⁵ Accordingly, the Prosecution will file a public formatted and redacted version as soon as practicable.



Luis Moreno-Ocampo
Prosecutor

Dated this 28th day of June 2006
At The Hague, The Netherlands

²⁵ And has not been re-classified.