

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 February 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
v. THOMAS LUBANGA DYILO**

Under seal

**Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the
Incorporation of Documents into the Record of the Case against Mr Thomas
Lubanga Dyilo**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Ekkerhard Withopf, Senior Trial Lawyer

Ms Lyne Décarie, Trial Lawyer

PRE-TRIAL CHAMBER I of the International Criminal Court (the “Court”);

NOTING the decision of Pre-Trial Chamber I issued on 10 February 2006 (the “Decision”), in which the Chamber decided to issue a warrant of arrest against Mr Thomas Lubanga Dyilo;

NOTING that certain parts of the Decision do not refer to Mr Thomas Lubanga Dyilo and shall remain under seal;

NOTING the warrant of arrest against Mr Thomas Lubanga Dyilo issued by Pre-Trial Chamber I on 10 February 2006;

NOTING articles 57 (3) (c), 67 (1) and 68 (1) of the Rome Statute, Rules 87 (2) (c) and 88 (4) of the Rules of Procedure and Evidence, and Regulation 111 of the Regulations of the Court;

CONSIDERING the Decision initiating the case against Mr Thomas Lubanga Dyilo;¹

CONSIDERING that Mr Thomas Lubanga Dyilo has right of access to a readable version of the part of the Decision that refers to the case against him as soon as he is transferred to the premises of the Court in The Hague; and that the current format of the Decision precludes a readable redacted version of the Decision;

CONSIDERING that according to Regulation 111 of the Regulations of the Court: “[w]hen transmitting a request for the arrest and surrender of a person in accordance

¹ The Decision, para. 107-110; and Warrant of Arrest against Mr Thomas Lubanga Dyilo, p. 3-4.

with article 89, paragraph 1, the Registrar shall enclose a copy of any relevant admissibility ruling of the Court”;

CONSIDERING furthermore that the protection of the six witnesses whose statements were cited in the Decision requires that any information concerning their identity and current whereabouts be redacted at this stage;

CONSIDERING that a number of documents currently in the record of the situation in the Democratic Republic of the Congo (DRC) are directly related to the case against Mr Thomas Lubanga Dyilo; and that it is necessary for the protection of victims and witnesses and the preservation of evidence in the ongoing investigation of the situation in the DRC that Mr Thomas Lubanga Dyilo have access only to the redacted index of the record of the situation in the DRC and the public documents therein contained unless otherwise provided by the Chamber upon a motivated request by him;

CONSIDERING that those documents in the record of the situation in the DRC directly related to the case against Mr Thomas Lubanga Dyilo should also be part of the record of the case against Mr Thomas Lubanga Dyilo;

CONSIDERING that all documents currently in the record of the case against Mr Thomas Lubanga Dyilo are under seal; that it appears that Mr Thomas Lubanga Dyilo has the incentive and means to attempt to evade appearance before the Court for trial;² and that in order to guarantee the effective execution by the DRC authorities of the cooperation request for the arrest and surrender of Mr Thomas Lubanga Dyilo, any document from the record of the DRC situation incorporated

² The Decision, para. 140.

into the record of the case against Mr Thomas Lubanga Dyilo must be kept under seal until otherwise provided by the Chamber;

FOR THESE REASONS,

DECIDES to include in Annex I of this decision, which shall remain under seal until otherwise provided by the Chamber, a formatted version of the Decision in which:

- (i) Parts of the Decision have been removed and all parts relevant to the case against Mr Thomas Lubanga Dyilo retained;
- (ii) All information concerning the identity and current whereabouts of the six witnesses whose statements were cited in the Decision is redacted;
- (iii) Purely linguistic modifications necessary in view of the level of confidentiality of the proceedings are incorporated.

DECIDES that all documents currently in the record of the situation in the DRC shall remain there; that Mr Thomas Lubanga Dyilo shall have access only to the redacted index of the record of the situation in the DRC and to any public document contained therein; and that Mr Thomas Lubanga Dyilo shall not have access to non-public documents in the record of the situation in the DRC unless otherwise provided by the Chamber upon a motivated request by him.

DECIDES that the Registrar shall include in the record of the case against Mr Thomas Lubanga Dyilo the following documents, including certain transcripts and materials presented at the hearing of 2 February 2006, containing the reference numbers of the original documents in the record of the situation in the DRC:

- (a) ICC-01/04-1 and ICC-01/04-1-tFR;
- (b) ICC-01/04-2 and ICC-01/04-2-tEN;

- (c) ICC-01/04- 98-US-Exp and 01/04-98-US-Exp-Anx1 to 10;
- (d) ICC-01/04-99-US-Exp and 01/04-99-US-ExpAnx1 to 2;
- (e) ICC-01/04-102-US-Exp and ICC-01/04-102-US-Exp-tFR;
- (f) ICC-01/04-104-US-Exp; ICC-01/04-104-US-Exp-Anx1 to 3; and ICC-01/04-104-US-Exp-tFR;
- (g) ICC-01/04-106-US-Exp and ICC-01/04-106-US-Exp-Anx1 to 10;
- (h) ICC-01/04-108-US-Exp and ICC-01/04-108-US-Exp-tFR;
- (i) T-01-04-8-Conf-Exp-FR and T-01-04-8-Conf-Exp-EN;
- (j) HNE5-01/04-US-Exp in ICC-01/04-114-US-Exp; and
- (k) HNE6-01/04-US-Exp in ICC-01/04-115-US-Exp.

DECIDES that the above-mentioned documents shall be incorporated into the record of the case against Mr Thomas Lubanga Dyilo; and that a reference number in the record of the case against Mr Thomas Lubanga Dyilo shall be given to all of the above-mentioned documents.

DECIDES that all of the above-mentioned documents in the record of the case against Mr Thomas Lubanga Dyilo shall remain under seal until otherwise provided by the Chamber.

DECIDES that those above-mentioned documents which in the record of the situation in the DRC are marked *ex parte*, Prosecution only, shall also be marked *ex parte*, Prosecution only in the record of the case against Mr Thomas Lubanga Dyilo.

REQUESTS the Registrar to remove the decisions with the quotes: ICC-01/04-01/06-1-US-Exp-Corr and ICC-01/04-01/06-7-US-Exp from the record of the

case against Mr Thomas Lubanga Dyilo and to incorporate it into the record of the situation in the DRC.

REQUESTS the Prosecutor accordingly to prepare a formatted version of the following documents in line with Annex I of the present decision:

- (i) ICC-01/04-98-US-Exp and 01/04-98-US-Exp-Anx1 to 10;
- (ii) ICC-01/04-104-US-Exp and ICC-01/04-104-US-Exp-Anx1 to 3; and
- (iii) ICC-01/04-106-US-Exp + ICC-01/04-106-US-Exp-Anx1 to 10.

INSTRUCTS the Registrar accordingly to redact:

- (i) The index of the record of the situation in the DRC; and
- (ii) The index of the record of the case against Mr Thomas Lubanga Dyilo.

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

[Electronic signature]

Judge Claude Jorda
Presiding Judge

[Electronic signature]

Judge Akua Kuenyehia

[Electronic signature]

Judge Sylvia Steiner

Dated this Friday 24 February 2006
At The Hague
The Netherlands