



Original: French

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

Date: 9 October 2006

**THE APPEALS CHAMBER**

**Before:** Judge Navi Pillay  
Judge Philippe Kirsch  
Judge Georghios M. Pikis  
Judge Sang-Hyun Song  
Judge Erkki Kourula

**Registrar:** Mr Bruno Cathala

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

**Public Document**

**Appeal by Counsel for the Defence from the “*Decision on the Defence Challenge to the jurisdiction of the Court pursuant to article 19(2)(a) of the Statute*” of 3 October 2006**

**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

**Legal assistant**

Ms Véronique Pandanzyla

## I. Background

1. On 23 May 2006, the Defence filed an application for the release of Mr Thomas Lubanga Dyilo.

The application was grounded on the unlawful arrest and detention of Mr Thomas Lubanga Dyilo in the DRC since 13 August 2003, the violation of the *Rome Statute* and the violation of the *Rules of Procedure and Evidence*.

2. On 10 July 2006, the Defence filed submissions in reply to the Prosecutor's response to the application for release.

3. By order of 13 July 2006, Pre-Trial Chamber I considered that the Defence had resorted to a variety of procedural remedies and requested that they be clarified.

4. The Defence did so in its submissions of 17 July 2006, and stated that it was challenging jurisdiction.

5. In its submissions of 8 September 2006, the Defence responded to the observations of the DRC and to those of the Victims.

6. By decision of 3 October 2006, Pre-Trial Chamber I dismissed the challenge to jurisdiction and the application for the release of Mr Thomas Lubanga Dyilo.

## 2. As to the law: Appeal

7. Mr Thomas Lubanga Dyilo is appealing against the *Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute* of 3 October 2006, reference no. ICC-01/04-01/06-512.

8. This appeal is based on rule 154 and articles 19 and 82(1)(a) and (b) of the Statute.

9. The impugned decision considers that there is no cause to examine the lawfulness of the arrest and detention of Mr Thomas Lubanga Dyilo in the DRC prior to 14 March 2006 in the absence of any “concerted action” between the Court and the DRC prior to that date and in the absence of torture or serious mistreatment of Mr Thomas Lubanga Dyilo.

10. The Defence considers that the decision contradicts the decision of 24 July 2006 rendered by the same Pre-Trial Chamber, inviting the DRC, amongst others, to submit observations on the alleged unlawful detention of Thomas Lubanga Dyilo by the DRC authorities prior to 16 March 2006, without distinction.

11. The Defence also considers that the Pre-Trial Chamber failed to provide sufficient reasons for its decision in its recitals, and, more specifically, that it failed to address the grounds raised by the Defence, in particular, those raised in its submission of 10 July 2006 (particularly in paras. 9 to 13) and in its submission of 8 September 2006 (particularly in paras. 12 to 22), thus infringing the right of the accused to a fair trial.

12. Furthermore, the Defence considers that the Pre-Trial Chamber committed an error of fact in holding that Mr Thomas Lubanga Dyilo had not been seriously mistreated and/or tortured during his detention in the DRC.

13. The Defence also considers that the impugned decision erred in fact and law in holding that Mr Thomas Lubanga Dyilo’s surrender to the Court complied with the Statute and the Rules.

14. Regulation 64 of the *Regulations of the Court* allows an appellant to file a document in support of an appeal within 21 days of notification of the relevant decision.

The Defence will therefore set out its grounds of appeal in more detail in an appeal brief.

**FOR THESE REASONS,**

**MAY IT PLEASE THE COURT,**

To declare the appeal admissible and meritorious.

To set aside the *Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute* of 3 October 2006, reference number ICC-01/04-01/06-512.

To declare that it lacks jurisdiction over Mr Thomas Lubanga Dyilo.

To dismiss the prosecution.

To release Mr Thomas Lubanga Dyilo immediately.

[signed]

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Jean Flamme,  
Counsel for the Defence

Dated this 9 October 2006

At Ghent