

1 International Criminal Court

2 Pre-Trial Chamber I

3 Situation Democratic Republic of Congo, case number ICC-01/04-01/06

4 First appearance hearing in open session

5 Monday, 20th March 2006 - Open session

6 The hearing starts at 4.02 p.m.

7 THE USHER: The International Criminal Court is now in session.

8 PRESIDING JUDGE JORDA (interpretation): This hearing is opened.

9 I hope that the interpreters can hear me well. Without any further ado,

10 I would like to ask the security officers to bring in the detainee.

11 Thank you. The Chamber has decided that photographers may take

12 photos for one minute. If there are photographers, they may take

13 photographs for one minute, no longer.

14 Very good. Have you had an opportunity to take your photographs?

15 Very well. Thank you very much.

16 I would like to turn now to the court officer and ask her to call

17 the case that appears on our docket this afternoon.

18 THE REGISTRAR (interpretation): President, Situation the

19 Democratic Republic of Congo, the case of the Prosecutor versus Thomas

20 Lubanga Dyilo, case number ICC-01/04-01/06.

21 PRESIDING JUDGE JORDA (interpretation): Thank you very much. On

22 behalf of my colleagues, I would like to ask all of those participating

23 in this afternoon's hearing to introduce themselves, starting with the

24 Office of the Prosecutor.

25 Prosecutor, would you like to introduce yourself and your

1 colleagues, although of course we know you, Mr. Withopf and
2 Mrs. Bensouda.

3 MS. BENSOUDA: Mr. President, your Honours, the Office of the
4 Prosecutor is represented this afternoon by Mr. Ekkehard Withopf, Senior
5 Trial Attorney; Julieta Solano, Associate Trial Lawyer; Olivia Struyven,
6 Associate Trial Lawyer; Pascal Turlan, Associate Trial Lawyer; Ramu
7 Bittaye, Case Manager. My name is Fatou Bensouda, Deputy Prosecutor.
8 I'm leading the team.

9 PRESIDING JUDGE JORDA (interpretation): Thank you, Prosecutor.
10 I would now like to turn to the Defence. As we are going to request
11 various details regarding the identity of Mr. Thomas Lubanga, I would
12 invite the counsel for the Defence to present himself first.

13 MR. FLAMME (interpretation): Thank you, President. My name is
14 Jean Flamme. I am a member of the bar at Gent in Belgium, and I am the
15 duty counsel representing Thomas Lubanga.

16 PRESIDING JUDGE JORDA (interpretation): Thank you. As you know,
17 for the time being your status is provisional. It is not definitive.
18 The Chamber did indeed receive notification from the Registrar of your
19 assignment, also notification from the head of the Bureau for Defence
20 Counsel, which included your particulars.

21 I would now like to ask Mr. Thomas Lubanga Dyilo to stand and to
22 answer to a number of questions to ascertain his identity. These are
23 basic questions. We would like you to confirm your name, your date of
24 birth, and your profession. And you may speak in the language -- the
25 language which you speak well. Please confirm that you speak French.

1 MR. LUBANGA DYILO (interpretation): Thank you, Mr. President.
2 My name is Thomas Lubanga Dyilo. I was born on the 29th of December,
3 1960, in Jiba, in the Democratic Republic of Congo. I am a politician by
4 profession.

5 PRESIDING JUDGE JORDA (interpretation): I'm afraid I didn't hear
6 every word you said. You said you are a politician? Do you have
7 anything to add at this time? Very well. Thank you. You may be seated.

8 Would my colleagues like to put further questions regarding your
9 identity? No. That is not the case. You may dispose.

10 I asked whether French was a language which you understand and
11 speak. As you know, French is a working language of the Court. I
12 presume that French is a language which you speak and understand
13 perfectly. You have just demonstrated that, I believe. Thank you.

14 The Chamber and the Court would like to ensure that as of your
15 arrival on Dutch territory, that is to say on Friday night, you were
16 indeed informed of all of your rights as set out under Article 67 of the
17 Statute. If not, I would summarise those for you. Would you like me to
18 recapitulate on them for you?

19 You may stand if you wish to answer, and please do switch on your
20 microphone before speaking. Thank you.

21 MR. LUBANGA DYILO (interpretation): Upon my arrival, I was
22 informed of a number of rights.

23 PRESIDING JUDGE JORDA (interpretation): You said "we were
24 informed." Were you accompanied by a lawyer? Thank you very much,
25 Mr. Lubanga. I understand -- or I see that you understand French well.

1 As regards the rights of the accused, the International Criminal
2 Court sets out a number of rights. Your Defence counsel will be aware of
3 them. You are to be informed promptly and in detail of the nature,
4 cause, and consent of the charge in a language which you fully understand
5 and speak. You should always have adequate time and facilities for the
6 preparation of your defence.

7 This text is quite a long one, but I will summarise and mention
8 the most important rights.

9 You are to be tried without undue delay. You should be present
10 at your trial to conduct the defence in person or through legal
11 assistance. This is something we will return to. Needless to say, if
12 you do not have a defendant, the Court will assign one to you without
13 cost, of course. It would be the legal assistance of the Court provided
14 at the cost of the Court.

15 What I have just said relates to the trial, but also as regards
16 the confirmation of charges. You may put questions, examine witnesses,
17 or have them examined. You may also request that witnesses are called in
18 your defence. You are also entitled to raise defences and to present
19 other evidence admissible under the Statute.

20 You may in all cases, and free of any cost, benefit from the
21 assistance of a competent interpreter and such translations as are
22 necessary to meet the requirements of fairness. You see, although you
23 speak French well and understand it, it is not necessarily the case that
24 because you understand a working language of the Court that you may not
25 need to benefit from translations or interpretation to understand the

1 documents and arguments which will be presented at this court.

2 You will not be compelled to testify or to confess guilt or to
3 remain silent without such silence being considered in the determination
4 of guilt or innocence. These are matters which you may wish to discuss
5 with your defender.

6 You may make an unsworn oral or written statement in your
7 defence. You cannot have imposed on you any reversal of the burden of
8 proof or any onus of rebuttal. Your defender will explain these matters
9 to you.

10 Disclosure of defence evidence in the possession of the
11 Prosecutor must also be made available to you.

12 Now, on behalf of my colleagues, I would like to address the
13 matter of the conditions in which you have been detained, arrested and
14 surrendered. I would like to have your opinion regarding the conditions
15 of your detention, of your arrest, and of your surrender. Is there
16 anything that you would like to tell us or any observations you would
17 like to make regarding the lengthy journey which you took from Kinshasa
18 to the Netherlands?

19 Please do not forget to use the microphone if you wish to take
20 the floor.

21 MR. LUBANGA DYILO (interpretation): Thank you, President, for
22 offering me the floor. We were handed over to the court in Kinshasa in
23 the morning of Friday. We travelled to the Netherlands and arrived here
24 safe -- safely, where we were welcomed, would I say, correctly, as it
25 should be done.

1 PRESIDING JUDGE JORDA (interpretation): In the provisions which
2 govern the International Criminal Court, I would like to remind your
3 defender that there are also Regulations 97 to 106 of the Regulations of
4 the Court. That is quite a number of provisions which -- which cover
5 contact which you may have with the diplomatic and consulatory
6 authorities of your country. I thought it would be useful to remind you
7 of that.

8 I'd now like to turn to the matter of your counsel.

9 Mr. Jean Flamme, I would like to welcome you here, as would my
10 colleagues.

11 I would like to remind you that Mr. Jean Flamme need not be your
12 definitive, permanent counsel. We note that for the time being, Mr. Jean
13 Flamme does indeed meet the criteria which are necessary for a counsel to
14 be entered on the list of Defence counsel administered by the Court.
15 That is to say he meets the criteria which are necessary to represent you
16 before this Court. But I would like to remind you that it is up to you
17 to choose your strategy and to choose your counsel. This is one of your
18 rights.

19 This brings me now to another provision which is important. Have
20 you been informed of the crimes with which you are charged, and would you
21 like the arrest warrant regarding you to be read? I know that you
22 arrived very late in the night of Friday to Saturday, and you were tired
23 at that time. If you so wish, I can ask the court officer to read the
24 warrant in full. It is not particularly long, and of course the Chamber
25 is quite willing to have the Warrant of Arrest read. Perhaps you would

1 like to consult with your Defence counsel, Mr. Jean Flamme, on these
2 matters.

3 You may take the floor, Mr. Flamme.

4 MR. FLAMME (interpretation): My client does not feel it is
5 necessary for the Warrant of Arrest to be read.

6 PRESIDING JUDGE JORDA (interpretation): May I just clarify
7 whether the arrest warrant has been read to him?

8 MR. FLAMME (interpretation): Yes, President.

9 PRESIDING JUDGE JORDA (interpretation): By virtue of Article 60
10 of the Statute, Mr. Lubanga Dyilo, you may, during this hearing or after
11 this hearing, request interim release pending trial. Of course, the
12 Chamber will not give an answer, a ruling, immediately, but you may make
13 such a request. If you wish to make such a request, the Prosecutor may
14 be asked to present his observations on this matter.

15 Would you like to make use of this right at this point in time?

16 Perhaps, Mr. Jean Flamme, you would like to consult your client.

17 MR. FLAMME (interpretation): I myself have not had a lot of
18 time. I was assigned on short notice and arrived on Sunday morning here.
19 I was able to visit Mr. Lubanga in prison promptly, but we have not yet
20 been able to discuss the matter of requesting interim release. We will,
21 however, discuss this matter in some detail, and we will take a decision
22 on this matter in the coming days.

23 PRESIDING JUDGE JORDA (interpretation): Thank you, Mr. Flamme.

24 I would like to continue going through the statutory provisions.

25 We should set the date of the confirmation of charges hearing. As you

1 said, you have had very little notice, Mr. Jean Flamme, and -- however,
2 you know that today this is a -- the first appearance of Mr. Lubanga to
3 ensure that a number of his rights have indeed been respected. The
4 public also should know this. But there will be a hearing to confirm the
5 charges in the future. There will be a large number of options open to
6 your client and to you, if you are his Defence counsel, before
7 proceedings will take place before a Chamber, another Chamber, one other
8 than this.

9 To meet the formality which is set by the text, the Chamber has
10 decided to provide you with a certain amount of time to prepare for the
11 confirmation of charges hearing, and therefore sets the date of the 27th
12 of June, 2006.

13 I would ask the Prosecutor also to take note of this date.

14 Of course, as you know and as indicated in the texts which apply,
15 the hearing may be postponed. For the time being the three Judges of
16 this Chamber have decided that three months are necessary for you to
17 become familiar with the documents and materials underpinning this case.
18 In the interim, one Judge from amongst the Judges on this Bench will
19 ensure that -- will ensure disclosure of documents and materials from the
20 Prosecutor to the Defence, and vice versa, to ensure that this take place
21 on an equitable basis.

22 I think that that is all that I wanted to say. I would like to
23 now turn to the Prosecutor and remind him that under Article 67(2) of the
24 Statute he must disclose to the Defence exculpatory evidence and
25 materials regarding Thomas Lubanga Dyilo.

1 I now turn to Mr. Withopf and Ms. Bensouda to ask them if they
2 would like to make any observations to the Chamber. Please feel free to
3 take the floor.

4 MS. BENSOUDA: Mr. President, your Honours, at this stage we do
5 not wish to make any observations. Thank you.

6 PRESIDING JUDGE JORDA (interpretation): Are there any other
7 observations on the Defence's side?

8 MR. FLAMME (interpretation): Yes, President. We have a few
9 observations which are rather important, sufficiently important for me to
10 file a motion today, which I have not had an opportunity file with the
11 Registry yet, but I have been informed that I would be able to lodge it
12 at the end of this hearing. It is concerning the following: We have to
13 realise that my client has been deprived of his liberty since August
14 2003. He has been confined to forced residence in Kinshasa, and
15 following that he was incarcerated on the date which is in the record.
16 If I remember correctly, in March 2005.

17 I questioned my client concerning the conditions in which he was
18 arrested and deprived of his liberty and incarcerated. I was informed
19 that this arrest was not under any specific warrant and that no hearing
20 was held such as should have been held according to national and
21 international standards, and therefore he was kept incarcerated for
22 approximately one year without having right -- access to any trial and
23 without having been informed of any of the charges held against him.

24 In the record that I have been given yesterday is a decision of
25 the Chamber which is very important, dated 10 February of this year. The

1 decision concerns the international arrest warrant before the ICC for
2 Mr. Lubanga, and it also states, and this is the main point of my motion,
3 that the Court has jurisdiction and that the case is permissible before
4 the Court.

5 Prior to this, on the 24th of February, another decision was
6 issued deciding to keep under seal a number of documents in the record
7 which had been put to the Chamber by the Prosecutor. In order to be
8 granted this arrest warrant and concerning the admissibility of the case,
9 your decision has been extensively motivated and reasoned. I have been
10 informed that my client has been able -- or not been able to be notified
11 of this important decision yet, but it is important in the procedure, as
12 the Statute states in view -- that this decision recognises the
13 admissibility and jurisdiction of the Court, that this decision can be
14 appealed of, but the time limit to appeal this type of decision in the
15 Statute is five days. So I don't know whether I should have taken this
16 decision with my client as soon as I had any knowledge of the content of
17 the decision and of the elements on which the decision is based.

18 So I do not know if my client wants to appeal the decision, but
19 my motion has two aims. Firstly, to receive authorisation for myself and
20 my client first to see the -- the grounds for the decision and to know if
21 you require postponements of the time limit in the Statute to enable us
22 to appeal the decision so that we can consider the decision knowing all
23 the facts.

24 That was my request. Thank you.

25 PRESIDING JUDGE JORDA (interpretation): Will you make this

1 request in writing, Mr. Flamme?

2 MR. FLAMME (interpretation): Yes. I have already filed it in
3 writing and will file with the Registry after the hearing.

4 PRESIDING JUDGE JORDA (interpretation): We won't take a decision
5 immediately, but I would like to ask the Prosecution if you already have
6 some observations on the two points that have been raised. So first to
7 be able to see the file, the case, and the record on Mr. Lubanga Dyilo
8 and then whether we can prolong the time limit for appeal, or do you want
9 to first wait for the motion to be filed by Mr. Flamme?

10 MS. BENSOUDA: Mr. President, just a few minutes -- I think about
11 five minutes before the commencement of these proceedings, learned
12 counsel on the other side informed us that he intends to file this --
13 this document. We have not yet received it, and we prefer to wait for
14 the filing, and we will prefer to also respond in writing.

15 PRESIDING JUDGE JORDA (interpretation): Very well. Mr. Flamme,
16 you just filed the request a few minutes ago. The Prosecutor would
17 prefer to wait, and I believe that the Judges would also prefer to wait,
18 especially because you want a decision on the extension of the time
19 limit, which is a very delicate question. I would like, therefore, to
20 ask you to present as soon as possible the request which you want to make
21 and to file it with the Registry tomorrow, if possible, and after
22 tomorrow if not -- how long do you need, Mr. Flamme?

23 MR. FLAMME (interpretation): Well, we already have the request,
24 President. It exists. We have signed it, and I have just given a copy
25 of it to the Prosecution, which has not had time to look at it yet, but I

1 can file it now.

2 PRESIDING JUDGE JORDA (interpretation): Well, I would like you
3 to file it with the Registry now if possible. Thank you.

4 I would like to ask Mr. Thomas Lubanga Dyilo if you have anything
5 to add. Microphone, please.

6 MR. LUBANGA DYILO (interpretation): Thank you for the floor. I
7 do not have anything to add.

8 PRESIDING JUDGE JORDA (interpretation): Thank you. I'd like to
9 now ask my colleagues if they have anything to add. No. The Prosecution
10 doesn't have anything to add either, so this ends this initial appearance
11 of the case on the docket, the Prosecutor against Thomas Lubanga Dyilo.

12 I'd like to ask security to wait for the Judges to exit before
13 you make Mr. Thomas Lubanga Dyilo exit. Thank you.

14 THE USHER: All rise.

15 The hearing adjourned 4.31 p.m.

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