

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 26 September 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***

**Public Document**

**Decision on Request pursuant to Rule 103 (1) of the Statute**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

**Legal Representatives for Victims**

a/0001/06 to a/0003/06

Mr Luc Walley

Mr Franch Mulenda

**Counsel for the Defence**

Mr Jean Flamme

Ms Véronique Pandanzyla

**Office of Public Counsel for the  
Defence**

Ms Melinda Taylor

**PRE-TRIAL CHAMBER I** ("the Chamber") of the International Criminal Court ("the Court");

**NOTING** the "Request Submitted pursuant to Rule 103 (1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings (with Confidential Annex 2)" ("the Request"),<sup>1</sup> filed by the Women's Initiatives for Gender Justice ("the Women's Initiatives") on 8 September 2006, in which they apply for leave to submit observations as *amicus curiae* in the confirmation proceedings pursuant to article 61 of the Rome Statute ("the Statute") in the case against Thomas Lubanga Dyilo;

**NOTING** the "Defence Response to Request of the Women's Institute for Gender Justice to Participate as an Amicus Curiae", filed by the Defence on 19 September 2006, in which the Defence requests that the Chamber reject the Request;<sup>2</sup>

**NOTING** the "Prosecution's Response to Request Submitted pursuant to Rule 103 (1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings" ("the Prosecution Response"),<sup>3</sup> filed by the Prosecution on 25 September 2006, in which "the Prosecution requests the Pre-Trial Chamber to declare the 7 September 2006 Request inadmissible and to deny leave to the Applicant to file an *amicus curiae* brief and/or to participate in the Article 61 confirmation proceedings;"<sup>4</sup>

**NOTING** articles 57 and 61 of the Statute and rule 103 of the Rules of Procedure and Evidence ("the Rules");

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<sup>1</sup> ICC-01/04-01/06-403.

<sup>2</sup> ICC-01/04-01/06-442.

<sup>3</sup> ICC-01/04-01/06-478.

<sup>4</sup> The Prosecution Response, p. 9.

**CONSIDERING** that the subject-matter of the Request is the alleged gender based crimes committed in the territory of Democratic Republic of the Congo ("the DRC") after 1 July 2002;<sup>5</sup>

**CONSIDERING** that the letter from the Women's Initiatives to the Prosecution contained in Annex I to the Request states that (i) "the absence of charges for gender crimes against Thomas Lubanga Dyilo at this stage is undeniably due to ineffective investigations conducted by your office which were limited in scope, poorly directed and displayed a lack of commitment to gather the relevant information and evidence to enable gender based crimes to be brought against the first indictee at the ICC";<sup>6</sup> and (ii) in view of the Women's Initiative, "it is not too late for the OTP to correct its current investigatory oversight of these crimes and urges you to immediately open investigations into gender based crimes and pursue the leads and incidents outlined for you in the enclosed report;"<sup>7</sup>

**CONSIDERING** that the present case against Thomas Lubanga Dyilo is confined to the alleged enlistment, conscription and active use in military operations of children under the age of fifteen; and that, therefore, the Request has no link with the present case;

**CONSIDERING** that, in the view of the Chamber, the subject-matter of the Request can be dealt with only in relation to the ongoing investigation into the DRC situation and not as part of the proceedings in the present case against Thomas Lubanga Dyilo;

<sup>5</sup> See in particular ICC-01/04-01/06-403-Conf-Anx2, "Rape and Sexual Violence in Ituri, in the Oriental Province of the Democratic Republic of the Congo."

<sup>6</sup> ICC-01/04-01/06-403-Anx1-Corr, pp. 6 and 7.


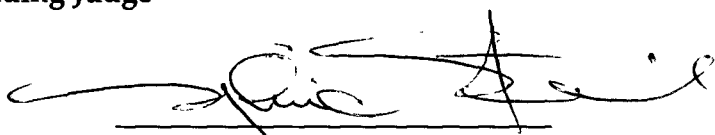
<sup>7</sup> ICC-01/04-01/06-403-Anx1-Corr, p. 7.

**FOR THESE REASONS**

**DECIDES** not to grant leave to the Women's Initiative for Gender Justice to submit observations under rule 103 of the Rules in the proceedings in the present case against Thomas Lubanga Dyilo;

**INVITES** the Women's Initiatives to re-file their request for leave to submit observations in the record of the DRC situation.

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

  
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**Judge Claude Jorda**  
Presiding Judge  
\_\_\_\_\_  
**Judge Akua Kuenyehia**  
\_\_\_\_\_  
**Judge Sylvia Steiner**

Dated this Tuesday 26 September 2006

At The Hague

The Netherlands