



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

LUBANGA
INFORMAL WEEKLY SUMMARY
12 - 16 JULY 2010



Situation Case	Democratic Republic of Congo 01/04-01/06 The Prosecutor vs. Thomas Lubanga Dyilo	<u>Thomas Lubanga Dyilo</u> : born in 1960 in Djiba, Ituri district, Eastern Province; National of the DR C; Alleged founder of <i>Union des Patriotes Congolais</i> (UPC) and <i>the Forces patriotiques pour la libération du Congo</i> (FPLC); Alleged former Commander-in-Chief of the FPLC, since September 2002 and at least until the end of 2003; Alleged president of the UPC.
Hearing Chamber	Trial Proceedings Trial Chamber I: Presiding Judge Fulford, Judge Odio Benito and Judge Blattmann	
Parties	OTP: Ms. Bensouda, Mr. Sachdeva, Ms. Samson, Ms. Struyven and team; Defense: Ms. Mabilie, Mr. Desalliers, Mr. Biju-Duval and team	Alleged crimes: <u>Thomas Lubanga Dyilo</u> is allegedly responsible, as co-perpetrator, of war crimes
Participants	103 victims represented by Legal Representatives of Victims and OPCV	<ul style="list-style-type: none">• Enlisting and conscripting of children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an international armed conflict from early September 2002 to 2 June 2003 (punishable under article 8(2)(b)(xxvi) of the Rome Statute);• Enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 2 June 2003 to 13 August 2003 (punishable under article 8(2)(e)(vii) of the Rome Statute).
Start of Trial	26 January 2009 Beginning of Defense case: 27.01.2010	

Following the stay of the proceedings, only one hearing took place this week on 15 July 2010. The status conference dealt with two issues: (1) the OTP's application for leave to appeal the stay of the proceedings and (2) the detention of accused Mr. Lubanga. At the end of the hearing, the Trial Chamber handed down 3 important decisions:

- (1) The Chamber granted the OTP's application for leave to appeal the decision staying the proceedings.
- (2) The Chamber ordered the unrestricted release of Lubanga.
- (3) The Chamber issued oral warnings against Prosecutor Ocampo and Deputy Prosecutor Bensouda.

STAY OF PROCEEDINGS

Defence position:

Speaking for the Defense, Mr. Biju-Duval had no objections regarding the OTP's application for leave to appeal the 8 July decision staying the proceedings.

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OTP position

The OTP on the other side questioned the proportionality of the Chamber's decision of 08 July 2010. The OTP argued that, even if the Prosecutor had failed to comply with the Chamber's orders, its current decision to stay the process was not proportionate.

DETENTION OF THE ACCUSED

OPCV position

Consulted for her opinion by the Chamber, Ms. Massidda, from the **Office of Public Counsel for Victims**, stated that the stay of proceedings would not justify and should not lead to the release of accused Mr. Lubanga for several reasons. His return to Court cannot be guaranteed; he poses a security threat to those witnesses and victims in DRC whose identity he had learnt; also the charges of very serious character against him still stand. Therefore, his detention should continue.

Defence position

Shortly summarizing the argumentation of the Chamber's 08 July ruling, Ms. Mabilie explained that the **Defense** considered the ruling as definite and that, therefore, Mr. Lubanga is not to be detained for longer. Referring to articles 68 and 64 of the Rome Statute and stressing that the accused is in detention since March 2006, she argued that (un-)conditional release is a must.

OTP position

The OTP explained they had interpreted the Chamber's ruling from 08 July as "conditional" so that, if and when the identity of intermediary 143 had been disclosed to the Defense, the stay of the proceedings would be ended. The OTP assumed the Chamber took issue only with the non-disclosure of 143's identity.

Judge Fulford corrected the OTP. For the Chamber the stay of proceedings is unconditional. Although it did take issue with the OTP's non-disclosure, the Chamber is more concerned with the Chief Prosecutor's role that he himself chose to take. Therefore, the stay is imposed for more than one reason.

The OTP stressed that the trial should not be dismissed and that the accused should not be released since his return to the Court could not be guaranteed.

DECISIONS OF THE TRIAL CHAMBER

At the end of the hearing, the Chamber handed down three oral decisions.

(1) The Chamber **granted the Prosecutor's application for leave to appeal** the decision to stay the proceedings.

(2) The Chamber **ordered the unrestricted release** of Mr. Lubanga in five days - under the condition that the order is only to be executed, if within a five day time limit no appeal is filed to the Appeals Chamber. Should no appeal be filed during that time, the accused shall be released. The Chamber explained that the current stay of proceedings is undistinguishable from the situation in 2008; that the compliance with Court orders by the OTP remains uncertain; that the continuation of the trial is uncertain and depending on the Appeals Chamber.

(3) The Chamber **issued oral warnings** (Rule 171 RPE) against Mr. Moreno-Ocampo and Ms. Bensouda for non-compliance with Court orders. The issue of sanctions shall await the outcome of the appeal.

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