

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/06  
Date: 12 January 2009

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

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

**Public**

**Prosecution's Response to "Observations de la Défense sur la « Requête de la  
Défense aux fins de cessation des poursuites » datée du 2 juin 2008"**

**Source: Office of the Prosecutor**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

**Counsel for the Defence**

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Louis Gilissen

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Ms Paolina Massida

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **Introduction**

The accused seeks an order from the Trial Chamber that the Prosecution may not investigate or prosecute him in the future for other crimes arising out of the circumstances underlying the pending charges. This request is meritless for three reasons. First, the mandate to investigate and, where the evidence warrants, to initiate charges and prosecute, is the Prosecutor's. The accused provides no authority for the proposition that the Trial Chamber may prohibit the Prosecutor from future investigations or prosecutions with respect to him. Second, the Trial Chamber does not have jurisdiction over the Situation and thus lacks the authority to issue the requested order. Its jurisdiction is limited to the determination of the charges against the accused in this case. Finally, even if the accused had a basis for complaint, it is premature; his remedy would lie if and when further charges are brought.

## **Procedural Background**

1. On 28 June 2006, the Prosecution informed the Pre-Trial Chamber and the accused that it was suspending further investigation against the accused. It elaborated that after "these proceedings" were concluded the Prosecution would re-evaluate the need to resume its investigation and, if the evidence supported it, apply for a new warrant of arrest or submit a new document containing the charges.<sup>1</sup> The accused did not object or demand that the investigation continue.
2. On 2 June 2008, the Defence filed a "Requête de la Défense aux fins de cessation des poursuites" before the Trial Chamber.<sup>2</sup>

---

<sup>1</sup> Prosecutor's Information on Further Investigation, ICC-01/04-01/06-170, 28 June 2006, paras. 7, 9 and 10.

<sup>2</sup> ICC-01/04-01/06-1366.

3. On 13 June 2008, the Trial Chamber stayed the proceedings.<sup>3</sup> It lifted the stay on 18 November 2008<sup>4</sup> and directed the Defence to renew any outstanding arguments in a new filing.<sup>5</sup>
4. On 6 January 2009, the Defence filed observations on its prior request, clarifying its view that it was unfair to require the accused to defend himself in the instant case without knowing whether he would be charged with other unidentified crimes arising out of the same circumstances. The Defence accordingly asked the Trial Chamber to enter an order in the *Situation in the DRC* that the accused may not be prosecuted on such new charges (“the Application”).<sup>6</sup>

### Submissions

5. There is no statutory basis for the remedy the accused seeks. Under the Statute, a subsequent prosecution may be brought if it is not based on conduct that formed the basis of crimes which have already been prosecuted.<sup>7</sup>
6. The requested order, which concerns the *Situation in the DRC*,<sup>8</sup> exceeds the jurisdiction of the Trial Chamber. The Trial Chamber has jurisdiction over the present case and is charged with adjudicating the criminal responsibility of the accused in respect of the confirmed charges.<sup>9</sup> Pre-Trial Chamber I, alone, has jurisdiction over future investigations and charges that may occur within the *Situation*.

---

<sup>3</sup> See ICC-01/04-01/06-1401, at para. 94. Paragraphs 3-6 of that decision detail the procedural history.

<sup>4</sup> ICC-01/04-01/06-T-98, pp. 3-4.

<sup>5</sup> ICC-01/04-01/06-T-99-ENG, 25 November 2008, p. 37.

<sup>6</sup> ICC-01/04-01/06-1581.

<sup>7</sup> Article 20(1).

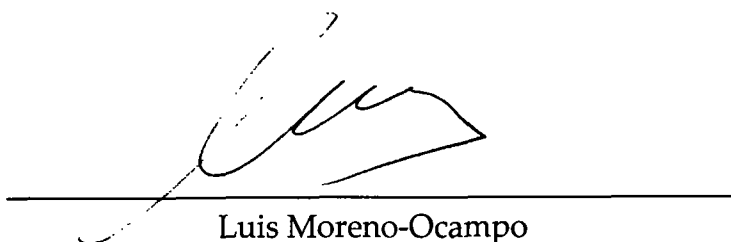
<sup>8</sup> Application, p. 5: “DIRE ET JUGER que, dans le cadre de la situation déferée par la RDC à la CPI, l’accusé ne pourra faire l’objet d’autres poursuites que celles circonscrites dans la Décision de confirmation des charges rendue dans la présente affaire.” (emphasis added).

<sup>9</sup> As the Appeals Chamber stated, “the parameters set forth in the charges define the issues to be determined at trial and limit the Trial Chamber’s authority to the determination of those issues.” – ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 63.

7. In any event, the possibility of a later investigation or subsequent charges does not impinge on the accused's ability to defend himself in this case. The accused does not contend that he is inadequately informed of the nature of the pending charges or unable to mount a defence to them. His complaint, instead, appears to be that in defending himself here he may take some action that could prejudice him in a subsequent case. His proper remedy, however, is not an order barring future investigations. Instead, if the accused is later charged with different crimes and believes that the charges unfairly resulted from his defence or that his conduct of the defence here prejudices his ability to defend himself, he may raise that claim in an application to dismiss those future charges.

### **Conclusion**

8. For the reasons set out above, the Prosecution requests that the Trial Chamber dismiss the application.



---

Luis Moreno-Ocampo

Prosecutor

Dated this 9<sup>th</sup> day of January 2009  
At The Hague, The Netherlands