

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04  
Date: 26 September 2007

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**Public Document**

**Decision on the Requests of the Legal Representative for Victims VPRS 1 to VPRS  
6 regarding "Prosecutor's Information on further Investigation"**

**The Office of the Prosecutor**  
Mr Luis Moreno-Ocampo  
Ms Fatou Bensouda  
Mr Ekkehard Withopf  
**Legal Representatives for Victims**  
**VPRS1 to VPRS6**  
Mr Emmanuel Daoud

**PRE-TRIAL CHAMBER I** of the International Criminal Court (the “Chamber” and the “Court”, respectively);

**NOTING** the “Prosecutor’s Information on Further Investigation” filed by the Prosecution on 28 June 2006;<sup>1</sup> whereby the Prosecutor informed the Chamber that he temporarily suspended the investigation in relation to other potential charges against Thomas Lubanga Dyilo; that accordingly he will not amend the charges during the present proceedings within the time frame set by articles 61(4) and 61(9) of the Rome Statute (“the Statute”); and that his decision does not exclude that he may continue his investigation into crimes allegedly committed by Thomas Lubanga Dyilo after the close of the present proceedings;

**NOTING** the “*Observations et demande de mesures spécifiques du représentant legal de VPRS 1, 4 et 5 sur le document ‘Prosecutor’s information on Further Investigation’ du 28 juin*” (“Request of VPRS 1, 4 and 5”) filed on 30 August 2006 by the legal representative for Victims VPRS 1 to VPRS 6;<sup>2</sup> whereby he considered that the Prosecutor’s decision to temporarily suspend the investigation is equivalent to a tacit decision not to prosecute under article 53(2)(c) of the Statute and requests the Chamber to:

- (i) review pursuant to article 53(3)(b) of the Statute the implicit decision of the Prosecutor not to prosecute;
- (ii) order the Prosecution to provide the Chamber with information and documents the Chamber will consider necessary to review his tacit decision not to prosecute under article 53(2)(c);
- (iii) request the Prosecutor, pursuant to regulation 48(1) of the Regulations to provide additional information and specific

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<sup>1</sup> ICC-01/04-01/06-170.

<sup>2</sup> ICC-01/04-213-Conf-Exp.

documents in order for the Chamber to take the necessary measures related to victims 1, 4 and 5 pursuant to article 57(3)(c) of the Statute;

- (iv) order appropriate measures under regulation 48(2) of the Regulations;

**NOTING** the *“Observations et demande de mesures spécifiques du représentant légal de VPRS 2, VPRS 3 et VPRS 6”* (“Request of VPRS 2, 3 and 6”) filed on 4 September 2006 by the legal representative for Victims VPRS 1 to VPRS 6<sup>3</sup>; requesting the Chamber to:

- (i) ask the Prosecution to inform the Chamber about the status of the investigations, especially with regard to the crimes committed against VPRS 2, 3 and 6;
- (ii) request the Prosecution to provide additional information and specific documents in order for the Chamber to take the necessary measures pursuant to regulation 48(2) of the Regulations and to preserve evidence related to VPRS 2, 3 and 6;

**NOTING** the *“Prosecution’s Response to “Observations et demande de mesures spécifiques du représentant légal de VPRS 1, 4 et 5 sur le document ‘Prosecutor’s information on Further Investigation’ du 28 juin”* filed by the Prosecution on 20 September 2006;<sup>4</sup>

**NOTING** the *“Prosecution’s Response to “Observations et demande de mesures spécifiques du représentant légal de VPRS 2, 3 et 6”* filed by the Prosecution on 25 September 2006;<sup>5</sup>

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<sup>3</sup> ICC-01/04-214-Conf-Exp.

<sup>4</sup> ICC-01/04-226-Conf-Exp.

<sup>5</sup> ICC-01/04-230-Conf-Exp.

**NOTING** articles 53, 54(3)(f), 57(3)(c) and 61(9) of the Statute and regulation 48 of the Regulations ;

**CONSIDERING** that VPRS 1, 4 and 5 were granted the status of victims allowing them to participate in the proceedings at the stage of investigation of the Situation in the Democratic Republic of Congo (“the DRC”);

**CONSIDERING** further that the Chamber did not grant to VPRS 1, 4 and 5 the status of victims authorized to participate in the case *The Prosecutor v. Thomas Lubanga Dyilo* as they have not provided sufficient evidence to allow the Chamber to consider that there are reasonable grounds to believe that the harm they have suffered is directly linked to the crimes contained in the arrest warrant against Thomas Lubanga Dyilo, or that they have suffered harm by intervening to help direct victims in the case or to prevent the latter from becoming victims because of the commission of these crimes;<sup>6</sup>

**CONSIDERING** that VPRS 2, 3 and 6 were also granted the status of victims allowing them to participate in the proceedings at the stage of investigation of the Situation in the DRC;

**CONSIDERING** that the Chamber has not granted to VPRS 2, 3 and 6 the status of victims authorised to participate in the case of *The Prosecutor v. Thomas Lubanga Dyilo* as they have not demonstrated any causal link between the harm they suffered and the crimes contained in the arrest warrant against Thomas Lubanga Dyilo;<sup>7</sup>

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<sup>6</sup> ICC-01/04-01/06-172-tEN.

<sup>7</sup> ICC-01/04-01/06-172-tEN.

**CONSIDERING** that paragraphs 1(c) and 2(c) of article 53 of the Statute state that the Prosecutor may decide not to initiate an investigation or not to prosecute if that would not serve the interests of justice; that under such circumstances, the Chamber may review the decision of the Prosecutor pursuant to article 53(3)(b) of the Statute; and that in such case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber;

**CONSIDERING** that to date, the Prosecutor did not take a decision not to investigate or not to prosecute, under paragraph 1(c) or 2(c) of article 53 of the Statute, in relation to the Situation in the DRC; and that the Prosecution continues to investigate in the DRC Situation;

**CONSIDERING**, further, that the Prosecution has declared that he has only temporarily suspended the investigation of further crimes allegedly committed by Thomas Lubanga Dyilo due to the precarious security conditions in the DRC, and in particular in the region of Ituri;<sup>8</sup>

**CONSIDERING** therefore that, since the Prosecutor has not taken any decision under article 53(1)(c) or (2)(c) of the Statute, the request made by the legal representative of the victims that the Chamber review, pursuant to article 53(3)(b) of the Statute, the decision of the Prosecutor regarding the investigation in the Situation in the DRC is not appropriate at the present stage and has no legal basis;

**CONSIDERING** that the legal representative of VPRS 1 to 6 is also asking that the Chamber, pursuant to regulation 48 of the Regulations, requests the Prosecution to provide it with specific or additional information or documents in order to exercise

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<sup>8</sup> ICC-01/04-226-Conf-Exp.

its function and responsibility in respect to preservation of evidence under article 57(3)(c) of the Statute;

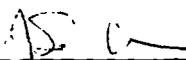
**CONSIDERING**, however, that under article 57(3)(c) of the Statute, the Chamber may exercise this authority “where necessary” and that at the present time there is no indication that the Prosecution, in conducting its investigation in the Situation in the DRC, has not taken the necessary measures to ensure the preservation of evidence, pursuant to article 54(3)(f) of the Statute;

**CONSIDERING** therefore, that the Chamber deems it not necessary, at this time, to exercise its authority under article 57(3)(c) of the Statute; and that thus, there is no reason to resort to regulation 48;

**FOR THESE REASONS,**

**REJECTS** the Request of VPRS 1, 4 and 5, and the Request of VPRS 2, 3 and 6.

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

  
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**Judge Akua Kuenyehia**  
**Presiding Judge**

  
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**Judge Anita Ušacka**

  
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**Judge Sylvia Steiner**

Dated this Wednesday 26 September 2007

At The Hague (the Netherlands)