

## Developments in ICC Lubanga Case

\*\* On 19 March 2005, Thomas Lubanga Dyilo was arrested and detained by the DRC authorities, together with the other leaders of Ituri-based military groups. Arrest warrant, dated 19 March 2005, issued by a DRC court, was based on charges of genocide and crimes against humanity pursuant to the DRC Military Criminal Court. (Referred to in 10 February 2006 Decision)

\*\* On 29 March 2005, another arrest warrant was issued by the DRC authorities against Thomas Lubanga Dyilo, alleging crimes of murder, illegal detention and torture. (Referred to in 10 February 2006 Decision)

19 April, 2005, the Prosecutor filed a request for measures under Article 56, as “an investigation presented a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial.” The Prosecutor requested “the adoption of specific measures to ensure the efficiency and integrity of the proceedings and to protect the rights of the trial”. The Prosecutor requested a consultation hearing with the PTC to determine appropriate measures. (This request is not available to the public, but was announced in an ICC Press Release: [http://www.icc-cpi.int/pressrelease\\_details&id=104&l=en.html](http://www.icc-cpi.int/pressrelease_details&id=104&l=en.html) and referred to in the Decision of 21 April and 26 April.

21 April 2005, PTC I decided to convene, without delay, close consultation with the Prosecutor as it considered that a unique investigative opportunity existed. In its decision, PTC I noted both the referral by the DRC President of 3 March 2004 and the affirmation of the Prosecutor that no information had been received from States in response to his letters of notification of 22 and 23 June 2004 to States who could exercise jurisdiction over the concerned crimes. PTC I also noted that the Prosecutor’s had only temporary access to some items submitted for forensic examination and that the items may not subsequently be available for the purposes of a trial. PTC I also considered that the alleged incidents described by the Prosecutor appeared prima facie to fall under the Court’s jurisdiction. A closed hearing took place the same day. See the website of the ICC: [http://www.icc-cpi.int/library/cases/ICC\\_01-04\\_19\\_e.pdf](http://www.icc-cpi.int/library/cases/ICC_01-04_19_e.pdf)

26 April 2005, PTC I decided to authorize the Prosecutor to request the NFI to carry out forensic investigations with regards to the opportunity identified in the Decision of 21 April. PTC I also decided that the NFI should produce a confidential report to be provided to the Registrar, and that the NFI should reply in writing (and provided to the Registrar) to any additional questions and observations submitted by the Prosecutor or the Defence. PTC I also ordered the Registrar to incorporate any NFI document in the record of the DRC situation confidentially and to notify PTC I accordingly, and to appoint an ad-hoc Counsel to safeguard the rights of the defence in relation to that request. PTC I also ordered the Registrar to notify the Prosecutor and the ad hoc counsel that they may submit any written questions and observations concerning the NFI report within a period of fifteen days. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-21\\_e.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-21_e.pdf)

20 May 2005, the NFI corresponds with the Prosecutor, requesting additional information from the Prosecutor and seeks approval of its investigation plan. (This letter is not available to the public but is referred to in the Decision of 1 June 2005).

23 May 2005, the Registry registered a "Report to PTC I in accordance with rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court". (This Report is not made public but was referred to in the decision of 17 January 2005)

26 May 2005, Pre-Trial Chamber I received applications for participation of victims in the DRC proceedings. (This information was released on 1 June

2005: [http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC\\_En.pdf](http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC_En.pdf))

27 May 2005, the Chamber issued the "Order Requesting Additional Information" concerning the request for non-disclosure of the identity of the applicants seeking to participate in the proceedings (This Decision is not made public but was referred to in the decision of 12 July 2005 and announced by the Court on 1 June:

[http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC\\_En.pdf](http://www.icc-cpi.int/library/cases/20050526ordonnanceRDC_En.pdf))

On 1 June, 2005, PTC I had made a decision regarding the involvement of the Prosecutor in the forensic examinations to be informed by the NFI. In this redacted decision, the Chamber refers to its Decision of 26 April and to the 20 June correspondence from the NFI to the Prosecutor. Since it had been decided in the Decision of 26 April 2005 that the Prosecutor would not be involved in the work of the NFI, PTC I concludes that it is up to PTC I to give final approval to the Investigation Plan by the NFI. Further, the Chamber decided to approve the investigation plan by the NFI (as examined by the Prosecutor's forensic coordinator) and to authorize the Prosecutor to provide additional information requested by the NFI. Both the investigation plan and the information to be provided to the NFI remain confidential.

ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-35\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-35_En.pdf) )

On 10 June, 2005, the Registry registered in the record the "Answers to the questions asked in the annex to the Order of Pre-Trial Chamber I of 27 May" submitted by the legal representative. (This document is not made public but was referred to in the decision of 17 January 2005).

On 14 June, 2005, the Registry registered in the record: a letter from the President of FIDH, submitting the applications for participation of six victims; a mandate authorizing Emmanuel Daoud to represent them; the applications and the memorandum in support of the applications. (These documents are not made public but was referred to in the decision of 17 January 2005)

On 14 June, PTC I issued a decision (Decision inviting certain NGO representatives to submit observations on the protection of victims and human rights organisations active in the east of the DRC (Rule 103)) convening a hearing on 8th July 2005 concerning the protection of victims in the situation. (This Decision is not available to the public, but was

announced on the Court's website: [http://www.icc-cpi.int/cases/current\\_situations/DRC/s\\_decisions/RDC050805&l=en.html](http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html) and referred to in the January 17, 2006, Decision).

21 June 2005, FIDH filed a response to the order of PTC I of 27 May 2005. The Registrar notified that this response had been filed with the Registry after the expiry of the ten-day deadline set by the order of 27 May. (This response is not made public but was referred to in the decision of 12 July 2005 and of 17 January 2006)

23 June 2005, a party (not defined to the public) asked PTC I for an extension of the deadline set by the order of 27 May. (This response is not made public but was referred to in the decision of 12 July 2005).

24 June 2005, the FIDH filed a request to extend a deadline. (Document not public but referred to in Decision of 17 January 2005)

28 June 2005, an order by PTC I calling a hearing was registered. (Order not public but referred to in Decision of 17 January 2005)

On 7 July 2005, Mr Joseph Tshimanga gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel. This followed the decision by Pre-Trial Chamber I of 26 April 2005 to appoint an ad hoc counsel for defence.

ICC website: [http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-55\\_Fr.pdf](http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-55_Fr.pdf)

On 8 July 2005, Pre-Trial Chamber I convened a hearing concerning the protection of victims in the situation in the DRC. The hearing was held in closed session and the decisions regarding this hearing are not being made public. "At the hearing, those making observations provided redacted copies of two Annexes to the Prosecutor and the Ad Hoc Counsel for the Defence." (This information was provided by the Court on its website ([http://www.icc-cpi.int/cases/current\\_situations/DRC/s\\_decisions/RDC050805&l=en.html](http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&l=en.html)))

11 July 2005, a letter from FIDH was registered, informing PTC that the FIDH President would be unable to attend 12 July hearing. (Letter not public but referred to in Decision of 17 January 2005).

On 12 July, Pre-Trial Chamber I decided to accept the filing of a (confidential) response from a party (not defined to the public) to a request for more information made by the Chamber on 27 May 2005, although the delay had not been in accordance with Regulations 31 and 33 of the Regulations of the Court. The decision was based on the fact that the Regulations presuppose the existence of an electronic filing system that is not yet in place.

ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-62-tEnglish.pdf>

On 12 July 2005, Mr Emmanuel Daoud gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel). Mr

Daoud is acting as legal representative for victims (according to rule 90 of the Rules of Procedure and Evidence).

ICC website: [http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-57\\_Fr.pdf](http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-57_Fr.pdf)

On 12 July, a confidential hearing took place with PTC I. (Referred to in Decision of 17 January 2005).

13 July 2005, solemn undertaking of Mr Daoud was registered.

14 July 2005, the Registrar registered the PTC I's 12 July Decision regarding the request to extend a deadline. (Registration referred to in Decision of 17 January 2005, document available on ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-62-tEnglish.pdf>).

On 14 July 2005, PTC I issued a decision not to provide the Prosecutor with an unredacted version of "the two Annexes" (content of Annexes not public but information was provided by the Court on its website ([http://www.icc-cpi.int/cases/current\\_situations/DRC/s\\_decisions/RDC050805&language=en.html](http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&language=en.html))).

On 14 July 2005, PTC I decided to appoint Judge Steiner as single judge in the case of the DRC, during the Court's recess (22 July 2005 through 18 August 2005). ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-60\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-60_En.pdf)

On 18 July 2005, VWU observations on protection of witnesses and victims in the DRC were registered in the record. (Observations not public but referred to in Decision of 17 January 2005)

On 18 July 2005, Registry registered the reply from the VPRS to the confidential hearing of 12 July, together with a supplementary brief to the hearing by Mr. Daoud. (Documents not public but referred to in Decision of 17 January 2005.)

On 19 July 2005, Another copy of supplementary brief by FIDH to the hearing of 12 July was registered in the record. (Brief not public but referred to in Decision of 17 January 2005).

On 21 July 2005, material presented at the 12 July hearing was registered in the record. (Material not public but referred to in Decision of 17 January 2005).

On 21 July 2005, PTC took a decision on protective measures requested by (confidential) applicants (of victims for participation in the proceedings). The Chamber weighed the reasons for redacting documents to protect victims against the need for the Prosecutor and the Defence to meaningfully reply to the applications. The Chamber decided to appoint someone (name not public in the Decision) to represent and protect the interests of the Defence during the application proceedings and to provide the Prosecutor with an unredacted copy and the ad hoc Counsel with a redacted copy of the applications. The Chamber gave both the Prosecutor and the ad hoc Counsel until 15

August to respond to the Applications and ordered all organs of the Court to abstain from any direct contact with the applicants and only contact them through their legal representative.

ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-73\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-73_English.pdf)

28 July 2005, the NFI report was produced. (This submission is not available to the public, but is referred to in the Decisions of 5 October and of 9 November).

On 1 August 2005, the Registry appointed Mr. Tjarda Van Der Spoel as ad hoc counsel for the defence, following the decision of 26 April. ICC Website; [http://www.icc-cpi.int/library/cases/ICC-01-04-76\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-76_English.pdf)

4 August 2005, the NFI report was filed. (This submission is not available to the public, but is referred to in the Decisions of 5 October and of 9 November).

On 5 August 2005, PTC I took a decision regarding the hearing on 8 July, dealing with the following requests by a party at the hearing (not defined to the public): the opportunity to review the written responses of the Prosecutor and the Ad hoc counsel for the Defence to the hearing and to present their views in writing before any final decision of the Chamber regarding confidentiality of “the two Annexes”. The same party had also offered to address in writing any issues raised by the Prosecutor and the Defence in their respective responses. The Chamber decided that the concerned party had had sufficient opportunity to present observations at the hearing and that the Rules do not provide for such a written response. The Chamber stated that it cannot decide in abstracto on the question of whether local actors assisting the Court at its request are legally entitled to protective measures, but that the Prosecutor is prepared to protect local actors whenever concrete threats are linked to such assistance requested by the Prosecutor, even if such actors were not legally entitled to protective measures. The Chamber also stated that all Court organs should have a “consistent approach to the issue of protection of local actors assisting any organs of the Court at its specific request”. ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-79English.pdf>

On 5 August 2005, PTC I decided to provide the Prosecutor (but not the ad-hoc counsel with a non-redacted version of “the two Annexes (see below, 8 July decision) (This decision was not made public but information was provided by the Court on its website ([http://www.icc-cpi.int/cases/current\\_situations/DRC/s\\_decisions/RDC050805&I=en.html](http://www.icc-cpi.int/cases/current_situations/DRC/s_decisions/RDC050805&I=en.html)))

On 11 August 2005, the Registry registered a response by the Ad Hoc Defence counsel to the application of 26 May. The response challenged FIDH’s standing to “file any document on behalf of the victims”. It also argued that the allegations of abduction and enslavement did not seem sufficiently sound to constitute crimes within the jurisdiction of the Court. The Response did not challenge the applicability of Article 68(3) or the possibility of victims’ participation in the investigation stage. (Response not public but referred to in Decision of 17 January 2005).

12 August 2005, The Prosecution applied for an extension for 15 additional days of a deadline in relation to the NFI report. (This submission is not available to the public, but is referred to in the Decision of 12 August 2005)

12 August 2005, PTC I rejected the application of the Prosecution of the same day on the basis that the reasons provided by the Prosecution did not “suffice to show good cause” in accordance with regulation 35, para. 2, of the Regulations of the Court. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-83\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-CPI-01-04-83_En.pdf)

On 15 August 2005, The Prosecutions’s reply to the 26 May applications was registered in the record. (Reply not public but referred to in Decision of 17 January 2005).

18 August 2005, Mr Tjarda Van Der Spoel gave his solemn undertaking before the Court, in accordance with Article 5 of the Draft Code of Professional Conduct for Counsel. Mr Van Der Spoel is acting as ad hoc counsel for the defence (according to rule 90 of the Rules of Procedure and Evidence).

ICC website: <http://www.icc-cpi.int/library/cases/ICC-01-04-85.pdf>

22 August 2005, The Ad Hoc Counsel for the Defence, filed a submission following the Decision of 26 April (regarding the Prosecutor’s request for measures under Article 56) in which the Counsel: made some preliminary remarks on issues of jurisdiction and admissibility; challenged the existence of a unique investigative opportunity concerning the NFI examinations; requested the adoption of additional measures; and submitted some additional questions to the NFI regarding its report. (This submission is not available to the public, but is referred to in the Decision of 9 November).

23 August 2005, the Prosecutor filed observations on the NFI report, whereby he submitted that the observations of the Ad Hoc Counsel for the Defence exceeded “the scope of the submission as determined by the Pre-Trial Chamber’s [I] Decision”. The Prosecutor also requested translation of the Dutch portions of the NFI report. The Prosecution requested PTC I to allow its forensic expert access to certain items and to examine them. The Prosecution also submitted that some parts of the NFI report was handwritten and illegible and that the Prosecution was not able to address the NFI Report properly “in light of the particularities” of the report. (This submission is not available to the public, but is referred to in the Decisions of 5 October and 9 November).

29 September 2005, correspondence of the NFI (of 20 September) was filed. The NFI responded to “most of” the Prosecutor’s observations of 23 August and expressed that it awaited further guidance from PTCI. It informed that its report had been made available to the Registry in English, and than only some forms which the investigators used to ensure the quality of the research, were in Dutch. (This submission is not available to the public, but this information is included in the Decisions of 5 October and 9 November).

5 October 2005, the PTC decided to hold closed consultations (on 11 October), based on the observations of the Prosecutor of 23 August 2005 and the correspondence of the

NFI of 20 September, as well as the fact that parts of the NFI report were in Dutch and handwritten. The agenda for the closed consultations included the request for involvement of the Prosecution's Forensic Expert (and the interest of the defence), a confidential request by the Prosecution, and the schedule for the completion of the activities of the NFI.

A redacted version of the Decision is available to the public. [http://www.icc-cpi.int/library/cases/ICC-01-04-90\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-90_English.pdf)

11 October 2005, closed consultations took place. The Ad hoc counsel for the Defence raised questions regarding jurisdiction and admissibility and PTC I requested the Prosecution to submit, within three weeks, comments on these questions. (This consultation was not available to the public, but this information is included in the Decision of 9 November).

31 October 2005, the Prosecution's Response on issues of jurisdiction and admissibility, as requested during the close consultations, was filed. (This submission is not available to the public, but this information is included in the Decision of 9 November).

4 November 2005, Completion of internal translation into English of the sections of the NFI Report that were in provided in Dutch (see Decision of 9 November), as requested by PTC I.

On 9 November 2005, PTC I issued a redacted version of a decision regarding the report of the NFI. Here, PTC I rejected the submission by the Ad Hoc Counsel for the Defence of 22 August and 11 October (see below). When rejecting this, PTC I considered: the fact that an Ad Hoc Defence Counsel (without an accused) has no procedural standing to challenge jurisdiction or admissibility (under Article 19(2) of the Statute); that a unique investigative opportunity had indeed arisen due to the Prosecutor's only temporary access to some items submitted for forensic examination; and that, prior to 4 November, the Prosecutor had been unable to fully address the NFI Report due to the fact that some parts of the NFI report were provided only in Dutch (while the Ad Hoc Counsel for the Defence reads Dutch). PTC I also recalled that the Prosecution had 15 days to further address the English translation of the NFI as of 4 November. It also ordered the Prosecution to notify PTC I of its intention to proceed with certain examination and accordingly informed the NFI that the Chamber would instruct it as to when and how to produce its final report, once the 15-days deadline has expired ([http://www.icc-cpi.int/library/cases/ICC-01-04-93\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-93_English.pdf))

On 10 November 2005, PTC I filed a decision ordering the Prosecution to inform the Chamber if it still requests to "proceed with further comparative examinations" and informing the NFI that the Chamber (upon expiry of the Prosecutor's fifteen-day deadline) will instruct the NFI regarding timing and content of its final report. (This decision is not available to the public, but this information is included in the Decision of 28 November).

On 21 November 2005, the Prosecution filed additional questions and observations on the NFI Report and maintained its request to proceed with certain (not defined to the

public) further comparative examination while its request for certain (not defined to the public) forensic examination remains.

(This submission is not available to the public, but this information is included in the Decision of 28 November).

On 28 November, PTC I (assigned to the situation of the Democratic Republic of Congo) issued a redacted version of a decision regarding the report of the NFI (filed on 4 August 2005). The PTC ordered the NFI to proceed with further certain (not defined to be public) comparative examination and to produce a final report (in English and French) within sixty days, including: answers to the questions posed by the Prosecution (on 23 August and 21

November) and by the Ad hoc Counsel (on 22 August); and conclusions of the further certain (not defined to the public) comparative examination.

See redacted version of the Decision on the ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-96\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-96_En.pdf)

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9 January 2006, the Prosecutor filed a memorandum to the Presidency seeking “administrative relief” to prevent any future challenges by any party to the “appearance of impartiality of the judges of the Pre-Trial Division” (referring to Article 41(2), which addresses issues of impartiality and disqualification of judges). The memorandum itself was not made public, but the OTP stated in the document that it would be appropriate for the judges to request a copy thereof from the Presidency to be informed about the content of the request and the relief sought.

(This is referred to in the 10 January Notice, but the memorandum is not available to the public).

10 January 2006, PTC I issued a notice of the OTP request of 9 January 2006 to the Presidency. An identical notice was issued for the situation of the Uganda by PTC II.

See the ICC’s website: [http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-75\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-75_En.pdf)

\*\*On 13 January 2006, the OTP requested the issuing of an arrest warrant against Mr. Lubanga and the authorization to make and transmit the cooperation request for arrest and surrender to the relevant State authorities. (Request not available to the public but referred to in, among other, the Decision of 10 February 2006).

On 17 January 2006, PTC I took a decision, allowing six victims (referred to as VPRS 1 to 6) to participate in the investigation stage of the DRC situation, by presenting views and concerns, filing documents and requesting the Chamber to order specific measures (the applicants would not be given access to confidential documents). The judges based this on their conclusion that the applicants’ interests were indeed affected in the investigation stage, and that this stage amounts to ‘proceedings’ in which victims would have the right to participate (under Article 68(3)).

PTC I considered OTP’s Reply (reg. on 15 August 2005) which challenged the participation of victims at the investigation stage based on the arguments that the



investigation stage does not amount to ‘proceedings’ (making a distinction between ‘investigations’ and ‘proceedings’) and that such participation in this early stage is inappropriate. The OTP also submitted that the applicants had failed to show that their personal interests were affected at this stage. According to the Decision, the Prosecutor had not challenged the status of the applicants as victims.

The issues addressed by the PTC I in this decision were: whether, in the light of Article 68(3), proceedings exist during the investigation stage (assessing terminology and context of the relevant provisions of the Statute and the Rules in English and French, as well as the object and purpose of the Statute’s victims participation regime); the conditions under which Article 68(3) is to be applied at this stage of a situation (assessing the appropriateness of the participation per se and the criterion of ‘personal interest’); and, the way in which victims may participate (addressing the scope and sequence of a ‘situation’ vis-à-vis a ‘case’ in relation to the definition of victims). Regarding the latter, the PTC I noted that no DRC case has been initiated through the issuance of an arrest warrant, thus it is still looking at the DRC situation as a whole. However, once the DRC situation has developed into cases, the Chamber would automatically (without a need for victims to reapply) re-consider the applicants’ status in relation to the incidents amounting to the specific cases. The Chamber noted the positive obligation for the Court to enable victims’ concrete and effective participation by allowing them to present their views and concerns and to examine them. The Chamber linked the right to participate in this stage with the need to identify the persons allegedly responsible and the effect that the investigations can have on future orders for reparation.

PTC I also decided that with regards to specific proceedings, the Chamber will decide whether the applicants may participate, depending on: how a proceeding is initiated; the level of confidentiality; and the personal interests of the victims. The applicants would also be able to request specific proceedings, to be ruled upon by PTC I on a case-by-case basis.

When considering whether the applicants amount to ‘victims’ for the purposes of participation in the proceedings, the Chamber applied Rule 85 by answering four questions (natural persons? harm suffered? do the alleged crimes fall within the ICC jurisdiction (based on referral/initiation of investigation and jurisdiction *rationae temporis* and *loci*)? causal link between crimes and harm suffered by the Applicant?). Regarding the last question, the Chamber assessed whether “there are grounds to believe that the harm suffered is the result of the commission of crimes falling within the jurisdiction of the Court”, without having to determine the precise nature of the casual link and the identity of the person responsible. PTC I referred to ‘grounds to believe’ as a ‘low threshold’, with the expectation of becoming more restrictive after an arrest warrant has been issued.

PTC I stressed that it is for the victims to provide the relevant information needed for the Chamber to assess whether there are grounds to believe that the criteria of Rule 85 have been met. It was noted that the application forms used were not standard forms

produced by the ICC, but FIDH forms submitted by the FIDH with the consent of the applicants. Nevertheless, they did contain the required information.

In considering each respective application and the harm suffered, including emotional harm and economic loss, the Chamber referred to international principles and guidelines, as well as jurisprudence from regional courts of human rights. The Chamber noted, with regards to each respective application, that there would be grounds to believe that the crimes described in the applications would fall within the jurisdiction of the Court, pursuant to Articles 6-8, and in particular Articles 7 and 8.

See the ICC Website: (currently only in French:  
[http://www.icc-cpi.int/library/cases/ICC-01-04-101\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-101_French.pdf))

\*\*On 20 January 2006, PTC I invited the OTP to submit materials, in support of its 13 January request, and convened a hearing on the application to be held on 2 February 2006. (Decision not available to the public but referred to in the Decision of 10 February 2006).

On 23 January, 2006, the Prosecutor applied for leave to appeal the 17 January Decision, submitting that the Decision involved an issue that affects the fair and expeditious conduct of the proceedings and that an immediate resolution by the Appeals Chamber would materially advance the proceedings. The Prosecutor challenged the appropriateness of PTC I to conclude that there are 'grounds to believe' that crimes within the jurisdiction of the Court have occurred, without any application by the OTP for an arrest warrant or request for confirmation of charges. The Prosecutor noted the importance of ensuring that participation is implemented in a manner which does not expose victims to risks and that participation should not result in a modification of the nature and scope of the functions of the organs of the Court. Further, the Prosecutor submitted that the Decision contains elements capable of compromising basic principles of the Statute and the Court's duty to exercise jurisdiction effectively and impartially.

While the Application focused on the reasons why the specific requirements for interlocutory appeal are met, the Prosecution submitted that some of the issues that the appeal would cover are mentioned in the application.

The Prosecutor submitted that the Decision will affect the fair conduct of the proceedings and that it goes to the core of the Court's functions, including having far-reaching consequences for the Court's investigative activities. The Prosecutor bases this on the argument that (by allowing external factors, incl. materials collected outside the framework of the Prosecution's investigation without fully testing the reliability thereof, by creating imbalance between victims and any future accused persons, and by prejudging the existence of crimes) the victims' participation as set out in the Decision significantly affects: the fairness, impartiality and integrity of the proceedings, including the fairness of the proceedings vis-à-vis future accused persons (as the cases have not been formed, the accused are not able to react to victims' interventions through counsel); the independence, objectivity and impartiality of the Prosecution; and the privacy and security of victims and witnesses. The Prosecutor also expressed concerns about the

lack of adequate guidelines and limitations, and that this precedent could open the door to improperly motivated requests for participation and abuse of the process. The Prosecution also submitted that the fair conduct of the proceedings is affected by the Chamber's use of the 'grounds to believe' test in the 17 January Decision as it attributes to the Chamber inquiry functions (without being equipped with the necessary tools and resources) not provided to it in the Statute, and as the Chamber is expecting to make findings of fact as to the existence of crimes based on this test, possibly prejudging later determinations of crimes.

The Prosecutor submitted that the Decision will significantly affect the expeditious (timely and efficient) conduct of the proceedings. It was submitted that the Decision creates a serious burden for all organs of the Court since the class of 'situation victims' as defined in the 17 January 2006 Decision could result in hundreds of thousands individuals having the right to participate in the investigations stage. The OTP argued that the Decision would impact on proceedings since: responding to victims' interventions would divert OTP's resources from investigations; the foreseen evidence management activities would add a heavy burden on the Chamber; and the Registrar would be burdened with additional and broadened functions pertaining to notice, legal assistance, representation and support in the investigation stage.

The Prosecutor submitted that immediate resolution by the Appeals Chamber will materially advance the proceedings across the situation and avoid substantial delay to any ongoing proceedings: to avoid later nullification of pre-trial proceedings held under the Decision; to foster judicial economy by avoiding unnecessary implementation of the onerous terms of the Decision; and to provide the required certainty allowing all organs to plan in an organized manner. The Prosecutor submitted that the Decision affects proceedings of an entire situation and should not be addressed in an appeal in a particular case. The OTP also submitted that the Decision impacts other, present and future, proceedings before this and other Pre-Trial Chambers. See the ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-103\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-103_English.pdf)

\*\*On 25 January 2006, the OTP responded to the invitation of 20 January 2006 to submit additional materials. (Submission not available to the public but referred to in the Decision of 10 February 2006).

On 27 January 2006, the Legal Representative of victims VPRS 1 - 6 submitted its observations to the 23 January application by the Prosecutor, requesting the Chamber to reject the application on the ground that it did not fall within the scope of the provision providing for leave to an interlocutory appeal (as it did not involve an issue that significantly affects the fair and expeditious conduct and which, by being addressed by the Appeals Chamber, may materially advance the proceedings). The Observations points

out: the overly general nature of the OTP's reply; the attempt of the Prosecutor to restrict victims' rights in a general and abstract manner (in advance of certain decisions being taken) rather than in this particular case; the fact that the dangers evoked by the Prosecutor are not significant in the present state of the proceedings; and that the Prosecutor failed to take many provisions on victims participation into account.

Regarding the effect on the fair and expeditious conduct of the proceedings or the outcome of the trial, the Observations submitted that presentation of victims' views and concerns could not violate the principle of fairness or affect the balance of criminal trials and that: the Prosecutor did not provide specific facts; that a fair and impartial trial is conditional on victims participation and that the relevant Chamber sets the conditions therefore; that the Chamber did appoint ad hoc counsel for the defence, notified and duly informed the counsel and the Prosecution who were able to respond; and that the Chamber assessed and addressed any adverse impact on the investigations by distinguishing between the situation stage and the case stage and by denying the victims access to confidential documents. Further, it was submitted that, since the interest of victims is different from the Prosecution and the defence, and since no accused have been identified, there is no contradiction between this participation and the right of the defence. It was also submitted that while the Statute provides for participation in all stages of the proceedings, the Statute, the Rules of Procedure and Evidence and the Chamber's criteria define a system to prevent the Court from being submerged, together with the responsibility of the Chamber to organise the participation of victims. The Observations also submitted that; the Prosecutor has failed to demonstrate how the Decision would lead to endangering victims' security and protection, while it also stated that the protection system adopted by the Chamber on 21 July 2005 has been effective.

Regarding whether a decision by the Appeals Chamber would materially advance the proceedings and the submission by the Prosecutor that intervention by the Appeals Chamber would provide certainty for all organs, the Legal Representative states that the scope of victims' rights is clear from the Decision.

See the ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-105\\_tEnglish.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-105_tEnglish.pdf)

\*\*On 27 January 2006, the OTP submitted, in response to the invitation of 20 January 2006, that the invitation does not impose any procedural obligation to submit further materials. (Submission not available to the public but referred to in the Decision of 10 February 2006).

On 30 January 2006, the Prosecution applied for leave to reply to the 27 January Observations, submitting that exceptional circumstances apply considering the significant issues at stake, capable of affecting proceeding beyond the limits of the present case.

See the ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-107\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-107_English.pdf)

\*\*On 31 January 2006, PTC I informed the OTP about the agenda for the 2 February hearing. (Agenda was not available to the public but information about this was made public on 22 March 2006).

On 1 February 2006, the Pre-Trial Chamber granted the Prosecutor leave to reply to the 27 January Observations, amongst other considering that this was a new issue to this stage.

See the ICC Website: <http://www.icc-cpi.int/library/cases/ICC-01-04-110-tEnglish.pdf>

On 1 February 2006, the 'NFI Additional Report' (from 30 January 2006) was filed by the Registry. (Report not public, but referred to in Decision of 8 February 2006).

\*\*On 2 February 2006, a closed hearing was held with the Prosecution dealing with the 13 January 2006 Application. The Prosecution responded to questions from the Chamber regarding, jurisdiction and admissibility (in particular about the existence of any DRC investigations into the subject crimes and the gravity and scale of the subject crimes); the past and current role of Mr Lubanga; the scope of ongoing OTP investigations in the DRC situation; the international or non-international character of the armed conflict in Ituri; the prosecution's request to disclose the existence of an arrest warrant to certain entities; the request of authorization for the prosecution to make and transmit a request for arrest and surrender; and information about Mr. Lubanga's assets and properties. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48_English.pdf)

On 6 February 2006, PTC I issued the Prosecutor's Reply to the 27 January Observations submitting that this exchange between the Prosecution and the Victims Representative (for VPRS 1 – 6) further confirms the need for the Appeals Chamber to review the 17 January Decision, due to the different views on fundamental provisions of the Rome Statute, and that the Observations of 27 January failed to counter the Prosecution's arguments of 23 January.

The Prosecutor submitted that the observations misconstrue the legal test for interlocutory appeal, misrepresent the Prosecutions position and misstate the terms of the 17 January Decision, in addition to addressing the merits of the appeal not relevant for the decision of granting leave for appeal.

Regarding the Observations' reference to OTP's general and abstract terms and hypothetical risks prematurely addressed, the Prosecution submitted that its submissions flow naturally from the broad scope and far-reaching nature of the Decision in relation to fair and expeditious conduct of the proceedings and that the relevant provision refers to how a decision 'affects' proceedings, i.e. future consequences. The Prosecution also notes that its arguments regarding rights of the defence, as well as regarding prejudgment arising from the test in the 17 January Decisions flow directly from the Decision, and that the issue of victims participation is current, and concerns effects with immediate impact on the fairness and expeditiousness of the proceedings.

Regarding fair and expeditious conduct of proceedings the Prosecution submitted that the Observations of 27 January did not effectively contradict the OTP's submissions but rather addressed the correctness of the 17 January decision and the merits of a future appeal, while the issue at hand is whether the conditions for an interlocutory appeal are met. With regards to three areas, the Prosecutor briefly addressed the 27 January Observations: victims' access to confidential information (the terms of the Decision were misstated since access to sensitive information in some circumstances is indeed envisioned in the Decision); ability to appeal interlocutory decisions prior to the trial

stage (equality of arms is one element of fairness and the analogy with the ad-hoc tribunals is, here, false due to the structural differences in dealing with proceedings flowing from an investigation); the potential large number of victims seeking participation (based on 'common sense', a Decision enabling 'situation victims' to participate throughout the entire investigation will lead to a larger number than if it were limited to 'case victims' participating in specific cases); consequences of the Decision for the Court's ability to protect persons (the additional burden on the VWU's can be enormous and the Observations confirm the Prosecution's argument on this point that the number of persons to be protected increases exponentially); relevance of the outcome of the trial (the Observations misinterpreted the Decision of PTC II regarding the cumulative nature of Article 82(1)(d)).

Regarding whether intervention by Appeals Chamber would materially advance the proceedings, the Prosecution argues that the Decision leaves a number of parameters in the discretion of the Pre-Trial Chamber. Further, that discussion and guidance from the Appeals Chamber would indeed advance the proceedings by providing certainty, and if not addressed now, may be challenged in final appeals.

See the ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-111\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-111_English.pdf)

On 8 February 2006, PTC I granted the Prosecution and the Ad Hoc Counsel for the defence 15 days to present their final observations on the NFI Additional Report (filed on 1 February 2006). In taking this decision, PTC I considered the fact that the proceedings related to the NFI's examination were confidential and that they had no impact on the personal interests of participants VPRS 1 – 6. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-112\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-112_English.pdf)

\*\*On 10 February 2006, PTC I decided to initiate the case against Mr Lubanga and to issue an arrest warrant (in a separate, until otherwise provided, sealed document) for Mr Lubanga's alleged responsibility for the following war crimes: enlistment and conscription of children under the age of fifteen and for using them to participate actively in hostilities.

The preliminary observations of PTC I addressed the "reasonable grounds to believe" standard and that this would often, but not only, be reached on the basis of the specific evidence and information provided in the OTP's application. PTC I concluded that the Chamber does not need to agree with the Prosecutor's legal characterization of the relevant conduct to issue the arrest warrant; and it concluded that an initial determination of jurisdiction and admissibility of the case is a prerequisite for the arrest warrant, without prejudice to subsequent determinations on jurisdiction or admissibility.

Regarding jurisdiction, using the three conditions set out in the 17 January decision, PTC I concluded that there are reasonable grounds to believe that the alleged crimes fall under article 8 of the statute, and that the conditions of temporary and territorial jurisdiction were met.

Regarding admissibility, the Chamber used a two-tiered test. One, relating to national efforts concerning the case at hand (considering that no national proceedings

encompassing the accused and the conduct concerned are taking place and that the Government has declared itself unable to undertake the necessary investigations and prosecutions of the alleged crimes in this situation); Two, the gravity threshold (considering: the systematic/large scale nature of conduct and the social alarm caused in the international community; the position/senior leadership of the accused; and the responsibility of the accused).

PTC I concluded that there were reasonable grounds to believe that continuous war crimes, within the jurisdiction of the Court had been committed (and that the conflict in Ituri was either of a non-international or an international character), that Mr Lubanga has incurred criminal liability for such crimes and exercised de facto authority according to the modes of liability in the Statute and that the arrest appeared to be necessary.

It was also decided that PTC I should prepare a cooperation request seeking arrest and surrender and that the Registrar should transmit such request to the DRC authorities and that, prior to the transmittal of this cooperation request, the Registrar could (if necessary) inform certain DRC authorities and others involved of the existence of the arrest warrant.

Further, that the Chamber should prepare cooperation requests for all States Parties regarding tracing and seizure of Mr Lubanga's property and assets to be transmitted once the arrest warrant is unsealed. PTC I also requested the OTP to transmit to the Chamber and the Registrar, in accordance with confidentiality obligations, information about risks to victims or witnesses in connection with transmission of these cooperation requests.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_French.pdf)

See also ICC website (in Annex): [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf)

\*\*On 16 February 2006. PTC I filed the Prosecution's final observation on the NFI Report of 1 February 2006, requesting clarifications from the NFI. (Observations not available to the public but referred to in the Decision of 8 March 2006).

\*\*On 20 February 2006. PTC I filed the final submission of the Ad Hoc Defence Counsel on the NFI Report of 1 February 2006, requesting some clarifications on the Report. (Submission not available to the public but referred to in the Decision of 8 March 2006).

\*\*On 24 February 2006, PTC I took a decision addressing the treatment of documents in the case against Mr Lubanga.

See ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf)

\*\*On 24 February 2006, the cooperation request to the DRC authorities for the arrest and surrender of Mr Lubanga was filed. (Request not available to the public but referred to in the Decision of 17 March 2006).

\*\*On 24 February 2006, Judge Steiner was designated single judge of PTC I from 25 February to 9 March 2006.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-117\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-117_French.pdf)

\*\*On 8 March 2006, PTC I ordered the Registrar to notify the Netherlands Forensic Institute (NFI) of certain documents and ordered the NFI to answer within 15 days to certain requests for clarification, seeking to finalise the proceedings relating to the NFI's examination.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-122\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-122_En.pdf)

\*\*On 14 March, the Registrar notified the DRC authorities of the 10 February Decision. (Notification not available to the public but referred to in the ICC Press Release of 17 March 2006 <http://www.icc-cpi.int/press/pressreleases/132.html> and in the Decision of 17 March 2006).

\*\*On 14 March 2006, the Presidency issued a decision regarding the constitution of the Pre-Trial Chambers noting the election of six judges of 26 January 2006 and deciding that PTC I continues to consist of Judge Claude Jorda, Judge Akua Kuenyehia and Judge Sylvia Steiner (PTC II: Judge Mauro Politi, Judge Fatoumata Dembele Diarra and Judge Ekatarina Trendafilova; PTC

III: Judge Hans Peter Kaul, Judge Sylvia Steiner and Judge Ekatarina Trendafilova).

See the ICC's website: <http://www.icc-cpi.int/library/organs/presidency/ICC-CPI-01-06.pdf>

\*\*On 14 March 2006, Judge Steiner was designated single judge of PTC I from 15 – 22 March 2006.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-123\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-123_French.pdf)

\*\*On 16 March 2006, a Decision to convene a closed meeting on 17 March with the Registrar and the prosecutor was filed to deal with the Prosecution's request regarding the unsealing of the arrest warrant of Mr Lubanga. (Decision not available to the public but referred to in the Decision of 17 March 2006).

\*\*On 17 March 2006, PTC I unsealed the arrest warrant of 10 February 2006. This was upon the request of the Prosecution to unseal the arrest warrant immediately after (and not before) the aircraft carrying Mr Lubanga has left the DRC. PTC I considered that arrest and surrender had been executed by the DRC authorities and that Mr Lubanga was under the custody of Court officials.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-37\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-37_English.pdf)

\*\*On 17 March 2006, a meeting was held with the Registrar and the Prosecutor to deal, inter alia, with the Prosecution's request regarding the unsealing of the arrest warrant for Mr Lubanga. (Meeting not available to the public but referred to in the Decision of 17 March 2006).



\*\*On 17 March 2006, PTC I ordered the scheduling of the first appearance of Mr Lubanga to be held in a public hearing on Monday 20 March 2006. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-38\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-38_English.pdf)

\*\*On 17 March 2006, the OTP issued a Press Release about the issuing of the arrest warrant against Mr. Lubanga (founder and president of the Union des patriots congolais – the UPC – and commander-in-chief of its military wing – the FPLC) informing that the OTP had submitted an application for the issuance of an arrest warrant on 12 January 2006 alleging involvement in the commission of war crimes (conscripting and enlisting children under the age of fifteen and using them to participate actively in the hostilities). The Press Release informs that this warrant is one in a series and that the OTP is currently investigating various crimes by a number of armed groups in the Ituri region, and that ongoing investigations will lead to other warrants being sought. The OTP stated that its independent investigations take place in conjunction with activities seeking to prevent and put an end to the commission of crimes in the region. It also states that the investigations have identified several groups responsible for the violence and that the FPLC emerged as one of the militias which had committed the worst crimes. The OTP states that Mr Lubanga exercised de-facto authority and controlled, among other things, the commission of the alleged crimes listed in the arrest warrant.

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\*\*On 20 March 2006, Mr Jean Flamme was appointed counsel for Mr Lubanga. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-40\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-40_French.pdf)

\*\*On 20 March 2006, Mr Jean Flamme gave his solemn undertaking before the Court, in accordance with Articles 5 and 22.3 of the Code of Professional Conduct for Counsel, to serve as counsel for Mr Lubanga.

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\*\*On 20 March 2006, Mr Lubanga appeared for his first appearance before the PTC I in the first public hearing of the Court. PTC I verified the identity of Mr Lubanga and concluded itself that Mr Lubanga had been informed of the alleged crimes and of his rights. The duty counsel of Mr Lubanga informed PTC I of the intention to request the extension of the deadline to appeal the 10 February Decision and to request access to all documents from the Prosecutor relating to the charges. The date for the confirmation of charges hearing was set for 27 June 2006. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-T-3\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-T-3_English.pdf)

\*\*On 20 March 2006, the Duty Counsel for the Defence requested: i) an extension to the five days time line for the appeal of the decision with respect to jurisdiction and admissibility; and, ii) access to the complete file of the Prosecution against the accused

(more specifically: the 13 January 2006 request of the OTP of; the 20 January 2006 Decision; the file annexed to the 13 January 2006 Request of the OTP; the Prosecution's submissions of 25 and 27 January; the Transcripts of the 2 February 2006 Hearing). See ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-45\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-45_French.pdf)

\*\*On 20 March 2006, PTC I decided to unseal certain documents in the record of the Lubanga case, and to keep certain documents under seal.  
See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-42\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-42_English.pdf)

\*\*On 20 March 2006, PTC I took a decision requesting the Prosecution to provide the Chamber with a list of non-public documents filed by the OTP in the DRC situation and suggestions on how they should be treated.  
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\*\*On 20 March 2006, PTC I issued an order authorizing photographs at the first public hearing on 20 March. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-44\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-44_English.pdf)

\*\*On 22 March 2006, PTC I decided to unseal, reclassify and/or file as a public redacted version certain documents in the record of the Lubanga case. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-46\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-46_English.pdf)

\*\*On 22 March 2006, PTC I issued a redacted decision concerning the 2 February 2006 hearing. The Decision outlines the issues that were to be discussed in the hearing relating to the Prosecution's application for the arrest warrant for Mr Lubanga, including; issues relating to jurisdiction and admissibility; the scope of ongoing investigations in the DRC situation; the international or non-international character of the armed conflict in Ituri; the prosecution's request to disclose the existence of an arrest warrant to certain entities; the request of authorization for the prosecution to make and transmit a request for arrest and surrender; and information about Mr. Lubanga's assets and properties.  
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\*\*On 22 March 2006, PTC I decided that it was not competent to deal with the application of 20 March 2006 by Mr. Lubanga's Counsel for an extension of a time limit and that the Appeals Chamber is the competent instance to decide whether the defence can challenge any matter concerning jurisdiction and admissibility dealt with in the 10 February decision, including the issue of the extension of the five-day time limit. The PTC I also granted the Prosecution two days to present its observations on the Counsel's application for access to all documents relating to the arrest warrant.  
See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-50\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-50_English.pdf)

\*\*On 22 March 2006, PTC I issued a decision appointing Judge Sylvia Steiner as the only Judge in charge of the functions of the Chamber with regards to the case against Thomas Lubanga Dyilo. In this decision, PTC I considered that the appointment of a single Judge to the case will allow the Chamber to work in a more appropriate and efficient manner. See ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-51\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-51_French.pdf)

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On 17 March 2006, PTC I unsealed the arrest warrant of 10 February 2006. This was upon the request of the Prosecution to unseal the arrest warrant immediately after (and not before) the aircraft carrying Mr Lubanga has left the DRC. PTC I considered that arrest and surrender had been executed by the DRC authorities and that Mr Lubanga was under the custody of Court officials.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-37\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-37_English.pdf)

On 16 March 2006, a Decision to convene a closed meeting on 17 March with the Registrar and the prosecutor was filed to deal with the Prosecution's request regarding the unsealing of the arrest warrant of Mr Lubanga. (Decision not available to the public but referred to in the Decision of 17 March 2006).

On 14 March 2006, Judge Steiner was designated single judge of PTC I from 15 – 22 March 2006.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-123\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-123_French.pdf)

On 14 March 2006, the Presidency issued a decision regarding the constitution of the Pre-Trial Chambers noting the election of six judges of 26 January 2006 and deciding that PTC I continues to consist of Judge Claude Jorda, Judge Akua Kuenyehia and Judge Sylvia Steiner (PTC II: Judge Mauro Politi, Judge Fatoumata Dembele Diarra and Judge Ekatarina Trendafilova; PTC

III: Judge Hans Peter Kaul, Judge Sylvia Steiner and Judge Ekatarina Trendafilova).

See the ICC's website: <http://www.icc-cpi.int/library/organs/presidency/ICC-CPI-01-06.pdf>

On 14 March, the Registrar notified the DRC authorities of the 10 February Decision. (Notification not available to the public but referred to in the ICC Press Release of 17 March 2006 <http://www.icc-cpi.int/press/pressreleases/132.html> and in the Decision of 17 March 2006).

On 8 March 2006, PTC I ordered the Registrar to notify the Netherlands Forensic Institute (NFI) of certain documents and ordered the NFI to answer within 15 days to certain requests for clarification, seeking to finalise the proceedings relating to the NFI's examination.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-122\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-122_En.pdf)

On 24 February 2006, Judge Steiner was designated single judge of PTC I from 25 February to 9 March 2006.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-117\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-117_French.pdf)

On 24 February 2006, the cooperation request to the DRC authorities for the arrest and surrender of Mr Lubanga was filed. (Request not available to the public but referred to in the Decision of 17 March 2006).

On 24 February 2006, PTC I took a decision addressing the treatment of documents in the case against Mr Lubanga.

See ICC Website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf)

On 20 February 2006, PTC I filed the final submission of the Ad Hoc Defence Counsel on the NFI Report of 1 February 2006, requesting some clarifications on the Report. (Submission not available to the public but referred to in the Decision of 8 March 2006).

On 16 February 2006, PTC I filed the Prosecution's final observation on the NFI Report of 1 February 2006, requesting clarifications from the NFI. (Observations not available to the public but referred to in the Decision of 8 March 2006).

On 10 February 2006, PTC I decided to initiate the case against Mr Lubanga and to issue an arrest warrant (in a separate, until otherwise provided, sealed document) for Mr Lubanga's alleged responsibility for the following war crimes: enlistment and conscription of children under the age of fifteen and for using them to participate actively in hostilities.

The preliminary observations of PTC I addressed the "reasonable grounds to believe" standard and that this would often, but not only, be reached on the basis of the specific evidence and information provided in the OTP's application. PTC I concluded that the Chamber does not need to agree with the Prosecutor's legal characterization of the relevant conduct to issue the arrest warrant; and it concluded that an initial determination of jurisdiction and admissibility of the case is a prerequisite for the arrest warrant, without prejudice to subsequent determinations on jurisdiction or admissibility.

Regarding jurisdiction, using the three conditions set out in the 17 January decision, PTC I concluded that there are reasonable grounds to believe that the alleged crimes fall under article 8 of the statute, and that the conditions of temporary and territorial jurisdiction were met.

Regarding admissibility, the Chamber used a two-tiered test. One, relating to national efforts concerning the case at hand (considering that no national proceedings encompassing the accused and the conduct concerned are taking place and that the Government has declared itself unable to undertake the necessary investigations and prosecutions of the alleged crimes in this situation); Two, the gravity threshold

(considering: the systematic/large scale nature of conduct and the social alarm caused in the international community; the position/senior leadership of the accused; and the responsibility of the accused).

PTC I concluded that there were reasonable grounds to believe that continuous war crimes, within the jurisdiction of the Court had been committed (and that the conflict in Ituri was either of a non-international or an international character), that Mr Lubanga has incurred criminal liability for such crimes and exercised de facto authority according to the modes of liability in the Statute and that the arrest appeared to be necessary.

It was also decided that PTC I should prepare a cooperation request seeking arrest and surrender and that the Registrar should transmit such request to the DRC authorities and that, prior to the transmittal of this cooperation request, the Registrar could (if necessary) inform certain DRC authorities and others involved of the existence of the arrest warrant.

Further, that the Chamber should prepare cooperation requests for all States Parties regarding tracing and seizure of Mr Lubanga's property and assets to be transmitted once the arrest warrant is unsealed. PTC I also requested the OTP to transmit to the Chamber and the Registrar, in accordance with confidentiality obligations, information about risks to victims or witnesses in connection with transmission of these cooperation requests.

See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_French.pdf)

See also ICC website (in Annex): [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-8-US-Corr_English.pdf)

On 2 February 2006, a closed hearing was held with the Prosecution dealing with the 13 January 2006 Application. The Prosecution responded to questions from the Chamber regarding, jurisdiction and admissibility (in particular about the existence of any DRC investigations into the subject crimes and the gravity and scale of the subject crimes); the past and current role of Mr Lubanga; the scope of ongoing OTP investigations in the DRC situation; the international or non-international character of the armed conflict in Ituri; the prosecution's request to disclose the existence of an arrest warrant to certain entities; the request of authorization for the prosecution to make and transmit a request for arrest and surrender; and information about Mr. Lubanga's assets and properties. See ICC website: [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-48_English.pdf)

On 31 January 2006, PTC I informed the OTP about the agenda for the 2 February hearing. (Agenda was not available to the public but information about this was made public on 22 March 2006).

On 27 January 2006, the OTP submitted, in response to the invitation of 20 January 2006, that the invitation does not impose any procedural obligation to submit further materials. (Submission not available to the public but referred to in the Decision of 10 February 2006).

On 25 January 2006, the OTP responded to the invitation of 20 January 2006 to submit additional materials. (Submission not available to the public but referred to in the Decision of 10 February 2006).

On 20 January 2006, PTC I invited the OTP to submit materials, in support of its 13 January request, and convened a hearing on the application to be held on 2 February 2006. (Decision not available to the public but referred to in the Decision of 10 February 2006).

On 13 January 2006, the OTP requested the issuing of an arrest warrant against Mr. Lubanga and the authorization to make and transmit the cooperation request for arrest and surrender to the relevant State authorities. (Request not available to the public but referred to in, among other, the Decision of 10 February 2006).