



**Q&A ON THE FIRST “CONFIRMATION OF CHARGES HEARING” AT
THE INTERNATIONAL CRIMINAL COURT
THE CASE OF THE PROSECUTOR V. THOMAS LUBANGA DYILO
9 November 2006**

What is a “confirmation of charges hearing”?

The purpose of the Court’s first ‘confirmation of charges hearing’ is for the Pre-Trial Chamber I (‘the Chamber’) to assess whether or not the charges on which the ICC Prosecutor intends to seek trial of the accused will be confirmed. The legal basis for the confirmation of charges hearing is contained in Article 61 of the Rome Statute.

Before the hearing itself, the Presiding Judge of the Chamber is to determine how the hearing will be conducted, establishing the order and the conditions under which the evidence is to be presented. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Thomas Lubanga Dyilo, the alleged President of the Union des Patriotes Congolais (UPC) and Commander-in-Chief of the UPC’s military wing, the Forces Patriotiques pour la Libération du Congo (FPLC), is the suspect. On 28 August 2006, Mr. Lubanga was formally charged by the ICC Prosecutor with enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities. At the confirmation hearing, the Prosecutor will be required to support each charge with sufficient evidence in order to establish substantial grounds to argue that Mr. Lubanga committed the crimes with which he is charged. The trial phase can only begin once the charges are confirmed.

When will the confirmation of charges hearing take place?

While the hearing was initially scheduled on 27 June 2006, it was postponed twice and will now take place on 9 November 2006. The hearing was postponed in order to allow adequate time for the disclosure of all relevant documents and for the Defense to prepare its response, as well as to ensure the effective implementation of security and protection mechanisms for witnesses and victims participating in the trial.

Who will be involved in the hearing?

The full bench of the Chamber – which is composed of Judge Claude Jorda (Presiding Judge), Judge Akua Kuenyehia and Judge Sylvia Steiner – will preside over the confirmation of charges hearing. The Office of the Prosecutor (OTP), the Defense and the Legal Representative of any participating victims will also take part in the hearing. The ICC Registry is responsible for courtroom services.

What are the charges to be confirmed?

Thomas Lubanga Dyilo is alleged to have committed the crimes of enlisting, conscripting and using children under 15 years of age to participate actively in hostilities in the Democratic Republic of the Congo (DRC). In his leadership positions with the UPC/FPLC, Mr. Lubanga allegedly coordinated the groups’ policy to recruit and enlist child soldiers and enabled its practical implementation.

Will victims be participating?

A number of victims have asked to participate in the proceedings in the DRC situation as a whole and in the Lubanga case specifically. These applicants have asked that their status as victims be recognized by the Court and that they be authorized to take part throughout the proceedings. So far, three victims have been authorized to participate in the Lubanga case.

How will the hearing proceed?

At the outset of the hearing, the Presiding Judge will ask the parties involved whether they have any objections or observations concerning the proper conduct of the proceedings. After this is done, no objections or observations on the proper conduct of the trial can be made.

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If objections or observations are stated at the hearing, that party will be invited to present its arguments. The other party will then have the right to reply. Should the objections raised or observations made relate to the proper conduct of the proceedings prior to the confirmation hearing, the Chamber can decide whether to join the issue(s) raised with the examination of the charges and the evidence, or to separate them. If the Chamber separates the issue(s) regarding the conduct of the trial from those relating to the examination of the charges, the Chamber shall adjourn the confirmation hearing and render a decision on the specific issue(s) raised.

If there are no objections or observations, or if they do not require separation from the examination of charges, the Prosecutor will submit evidence in support of the crimes in documentary, summary or oral form. The Defense will also have the opportunity to submit their contrary evidence disputing these charges or casting doubt on Mr. Lubanga's responsibility and involvement in the perpetration of the alleged crimes. The parties will then be permitted to make final observations. Finally, the Chamber will render a decision as to whether or not there are substantial grounds to argue that Mr. Lubanga committed the crimes with which he is charged.

What will the outcome of the hearing be?

The outcome of the hearing will be based on the merits of the above submissions of evidence and the parties' final observations. Based on the determination of substantial grounds, the Chamber then has three options:

- 1) Confirm the charges based on sufficient evidence and assign Mr. Lubanga to a Trial Chamber for trial on the charges as confirmed;
- 2) Decline to confirm those charges if it has been determined that there is not enough evidence;
- 3) Adjourn the hearing and request the Prosecutor to (i) consider providing further evidence or conducting further investigation with respect to a particular charge, or (ii) amend a charge to conform with the submitted supporting evidence.

If the Chamber declines to confirm a charge, the Prosecutor can subsequently resubmit the charge for confirmation based on additional supporting evidence. If, however, the charges have been confirmed by the Chamber and the case is committed to trial, the Prosecution may – after having notified the accused – still ask the Chamber for more time to amend the charges. An additional confirmation of charges hearing must be held if the Prosecution seeks to add charges or substitute confirmed charges for more serious charges.

If the Chamber confirms some of the charges but adjourns the hearing on other charges, the Chamber can decide whether to postpone the assignment of Mr. Lubanga to the Trial Chamber on the confirmed charges until the continuation of the hearing. Once the Chamber has made a decision on the confirmation of charges and on whether to assign Mr. Lubanga to the Trial Chamber, the Prosecutor, Mr. Lubanga and his counsel shall be notified of this decision and it will be transmitted to the ICC Presidency. The Presidency will then constitute a Trial Chamber to be responsible for the conduct of trial proceedings against Mr. Lubanga.

Can NGOs observe the hearing?

Yes, the hearing held at the ICC in The Hague is open to the general public.

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