

Newsletter

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Editorial

The confirmation of charges hearing before trial in the case of *The Prosecutor v. Thomas Lubanga Dyilo* is scheduled to start on 9 November. All participants to the proceedings will have a chance to be heard: the Prosecutor, the Defence and the victims. It is the first time in the history of international criminal law that victims will be able to assert their rights through their legal representatives.

In this issue of the ICC Newsletter, you will find articles related to the Lubanga case, including a question and answer section, and an introduction to the participants to the proceedings. I hope that this Newsletter will afford you a better understanding of the issues surrounding the proceedings. You will thus observe that the Court is fully committed to the principle of a fair and public trial, and it is in that light that the various parties in the proceedings will be given a chance to express their views. Arrangements will also be made to ensure that the people who were affected by the crimes being investigated by the Office of the Prosecutor are better informed about the activities being carried out at the Court's headquarters in The Hague.

Bruno Cathala, Registrar

Chronology of the Thomas Lubanga Dyilo case

To facilitate the understanding of the judicial process, the following are relevant moments of the case.

3 March 2004 The situation in the Democratic Republic of the Congo was referred to the Prosecutor of the ICC.

23 June 2004 The Prosecutor announced his decision to open an investigation in the situation in the DRC.

The Presidency of the ICC issued its decision on the composition of the Pre-Trial Chamber I (PTC I) to look at the situation in the DRC. The Chamber is constituted by Judge Akua Kuenyehia, Judge Claude Jorda (presiding) and Judge Sylvia Steiner.

12 January 2006 The Prosecutor submitted an application to the Chamber for the issuance of a warrant of arrest against Mr Thomas Lubanga Dyilo.

17 January 2006 PTC I granted status of participants to six victims in the proceedings at the stage of investigation of the situation in the DRC.

17 March 2006 PTC I made public the warrant of arrest. Mr Thomas Lubanga Dyilo was transferred from custody in the DRC to the ICC.

20 March 2006 Initial appearance of Mr Thomas Lubanga Dyilo before PTC I in public hearing.

Mr Jean Flamme from Belgium was appointed temporarily as duty counsel by the Registrar for Mr Thomas Lubanga Dyilo's initial appearance before the judges.

13 April 2006 Mr Lubanga decided to retain Mr Flamme as his permanent counsel.

26 July 2006 PTC I granted status of participants to three victims in the proceedings in the case of *The Prosecutor v. Mr Thomas Lubanga Dyilo*.

28 August 2006 PTC I received documents containing the charges and list of evidence against Mr Thomas Lubanga Dyilo.

5 October 2006 PTC I decided that the hearing of the confirmation of charges will take place on 9 November 2006.

20 October 2006 PTC I granted another individual applicant the status of victim.

A word from the Prosecutor

Thomas Lubanga Dyilo, alleged leader of one of Ituri's most dangerous militias, is alleged to have been involved in the commission of war crimes. The charges presented by my Office are enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities. He is currently detained in the ICC Detention Centre.

It is my hope that, beyond bringing Mr Lubanga Dyilo to justice, this case will help to draw the attention of the world to this illegal practice and stimulate co-operation to stop it. The lives and futures of thousands of children and their communities are being destroyed by these practices each year. The abuse of these children worldwide has gone largely unrecognised and unpunished for too long.

My Office plans to take a sequential approach to prosecution in the Democratic Republic of the Congo. The Lubanga Dyilo case is our first case, not our last and it can be reasonably anticipated that there are more to follow. My Office employs a policy of focused investigations and prosecutions. This does not exclude the continuation of investigations into other crimes allegedly committed by Mr Lubanga Dyilo after the current proceedings are closed.

Focused investigations will limit the length of trials. Shorter trials will also mean the more efficient use of resources. We expect our approach to contribute to limiting the number of witnesses needed for each trial. More importantly than streamlining the trial, this will reduce the risk of reprisals against witnesses, victims and their communities.

The Lubanga case is of historic magnitude for the fight against impunity and accountability for the commission of these crimes against children. This case will inevitably resonate far beyond the courtroom.

Luis Moreno-Ocampo
Chief Prosecutor of the ICC

Background to the case *The Prosecutor v. Thomas Lubanga Dyilo*

Thomas Lubanga Dyilo was born on 29 December, 1960 in Djiba, in the Democratic Republic of the Congo (DRC); a national of the DRC, he is the alleged founder of the *Union des Patriotes Congolais* (UPC) and the *Forces patriotiques pour la libération du Congo* (FPLC), the alleged former Commander-in-Chief of the FPLC and the alleged President of the UPC.

The warrant of arrest against Mr Lubanga was issued under seal on 10 February, 2006 and unsealed on 17 March, 2006, the same day as he was arrested in Kinshasa and transferred to the Court in The Hague.

His initial appearance was held on 20 March. The confirmation of charges hearing was first scheduled to take place in early June; however this hearing was twice postponed. The first postponement was requested by Chief Prosecutor Luis Moreno-Ocampo who explained that due to escalating violence in Ituri, ahead of the country's first democratic elections in over 40 years, the safety of witnesses and victims could not be guaranteed. The second postponement was decided to safeguard the rights of Mr Lubanga, ensuring that the requisite evidence was available to the Defence in time for it to prepare for the confirmation hearing. The hearing is now scheduled for 9 November.

The Charges to be confirmed:

Mr Thomas Lubanga Dyilo is charged on the basis of individual criminal responsibility (article 25 (3) (a) of the Rome Statute) with:

- (i) the war crime of enlisting children under the age of fifteen punishable under article 8 (2) (b) (xxvi) or article 8(2)(e)(vii) of the Statute;
- (ii) the war crime of conscription of children under the age of fifteen punishable under article 8 (2) (e) (b) (xxvi) or article 8 (2) (vii) of the Statute, and
- (iii) the war crime of using children under the age of fifteen to participate actively in hostilities punishable under article 8 (2) (b) (xxvi) or article 8 (2) (e) (vii) of the Statute.

The case is currently before Pre-trial Chamber I comprised of Judges Claude Jorda (presiding), Akua Kuenyehia and Sylvia Steiner.



Mr Thomas Lubanga Dyilo / ICC-CPI / Hans Hordijk

Excerpts from the warrant of arrest issued against Mr Lubanga by PTC I on 10 February 2006

"[...] there are reasonable grounds to believe that from July 2002 to December 2003 members of the FPLC carried out repeated acts of conscription into the FPLC of children under the age of fifteen who were trained in the FPLC training camps of Bule, Centrale, Mandro, Rwampara, Bogoro, Sota and Irumu";

"[...] there are reasonable grounds to believe that, during the relevant period, members of the FPLC repeatedly used children under the age of fifteen to participate actively in hostilities in Libi and Mbau in October 2002, in Largu at the beginning of 2003, in Lipri and Bogoro in February and March 2003, in Bunia in May 2003 and Djugu and Mongwalu in June 2003".

Videostream

Courtroom proceedings can be followed on the ICC website: www.icc-cpi.int
Please note there will be a 30 minute delay in transmission.

Q and A on the upcoming confirmation hearing

1. What is the 'confirmation hearing'?

The confirmation hearing is a public hearing at which ICC judges will decide whether or not to confirm the charges brought by the Prosecutor against Mr Thomas Lubanga Dyilo and commit him to trial.

In the presence of Mr Lubanga Dyilo and his defence counsel, the Prosecutor is required to support each specific charge with sufficient evidence to establish substantial grounds to believe that Mr Lubanga Dyilo committed the crimes with which he is charged. The Prosecutor can do this by means of documentary or summary evidence and/or call witnesses.

2. Why was the confirmation hearing postponed twice?

An initial postponement of the confirmation hearing (on 24 May) was decided by the Pre-Trial Chamber as a response to the time needed to implement measures for the protection of victim-witnesses in the Democratic Republic of the Congo.

The second postponement (on 20 September) was decided to safeguard the rights of Mr Lubanga Dyilo, ensuring that the requisite evidence was available to the Defence in time for it to prepare for the confirmation hearing.

3. What has happened since the transfer and initial appearance of Mr Lubanga Dyilo?

Since the transfer and initial appearance of Mr Lubanga Dyilo in March 2006, there has been substantial pre-trial activity. Multiple filings from the parties and related decisions from the Pre-Trial Chamber were related mostly to the disclosure of evidence and the consequences of such disclosure for the protection of victims and witnesses. Victims' participation requests were also the object of litigation. As this right recognised to victims is a new feature before international criminal tribunals, the procedural challenges it raises have to be faced for the first time ever.

With regard to the disclosure of evidence issue, multiple discussions led to the disclosure and inspection of almost 400 documents and more than 5,000 pages of information, including incriminatory and potentially exculpatory evidence.

Finally, the Defence's applications for release

entailed further judicial activity involving the Defence Counsel, the Office of the Prosecutor, the Representatives of the Victims and the relevant authorities in the DRC.

4. Did Mr Lubanga Dyilo choose his Defence Counsel?

Following Mr Lubanga Dyilo's arrest, Mr Jean Flamme from Belgium was appointed temporarily as duty counsel by the Registrar for Mr Lubanga Dyilo's initial appearance before the judges on 20 March 2006.

Following the initial appearance, the Registry provided Mr Lubanga Dyilo with a full list of counsel who satisfied the criteria to appear before the Court for the purpose of allowing him to choose his counsel. After thoroughly examining a number of curricula, Mr Lubanga Dyilo decided to retain Mr Flamme as his permanent counsel on 13 April 2006.

5. Who bears the costs of Mr Lubanga's Dyilo Counsel?

The Registrar, upon request by Mr Lubanga Dyilo, provisionally found him indigent on 31 March 2006, and therefore for the time being the Court bears the costs of his defence. This decision is subject to the verification by the Court of the information contained in Mr Lubanga Dyilo's request.

6. Can Mr Lubanga Dyilo's counsel challenge the charges during the confirmation hearing?

Yes, Mr Lubanga Dyilo's counsel can object to the charges.

7. Can Mr Lubanga Dyilo's Counsel present evidence during a confirmation hearing?

Yes, during the confirmation hearing, Mr Lubanga Dyilo's Counsel can present evidence as well as challenge the evidence presented by the Prosecutor.

8. What decisions can the Pre-Trial Chamber render?

The Pre-Trial Chamber can:

- Confirm the charges for which it has found sufficient evidence in which event the case will proceed to trial. Upon confirmation, the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings.
- Refuse to confirm charges for which it has

not found sufficient evidence. That decision does not prevent the Prosecutor from presenting a subsequent request for confirmation of the charges on the basis of additional evidence.

- Adjourn the hearing and request the Prosecutor to provide further evidence or conduct further investigations.
- Adjourn the hearing and request the Prosecutor to amend a charge if the evidence appears to establish a different crime than the one charged.

9. When will the Pre-Trial Chamber deliver a decision?

In accordance with Regulation 53 of the Regulations of the Court, the written decision of the Pre-Trial Chamber shall be delivered within 60 days of the date the confirmation hearing ends.

10. Can the Prosecutor withdraw or amend the charges against Mr Lubanga Dyilo?

If the charges are confirmed then before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw charges.

11. What will happen if the charges are confirmed?

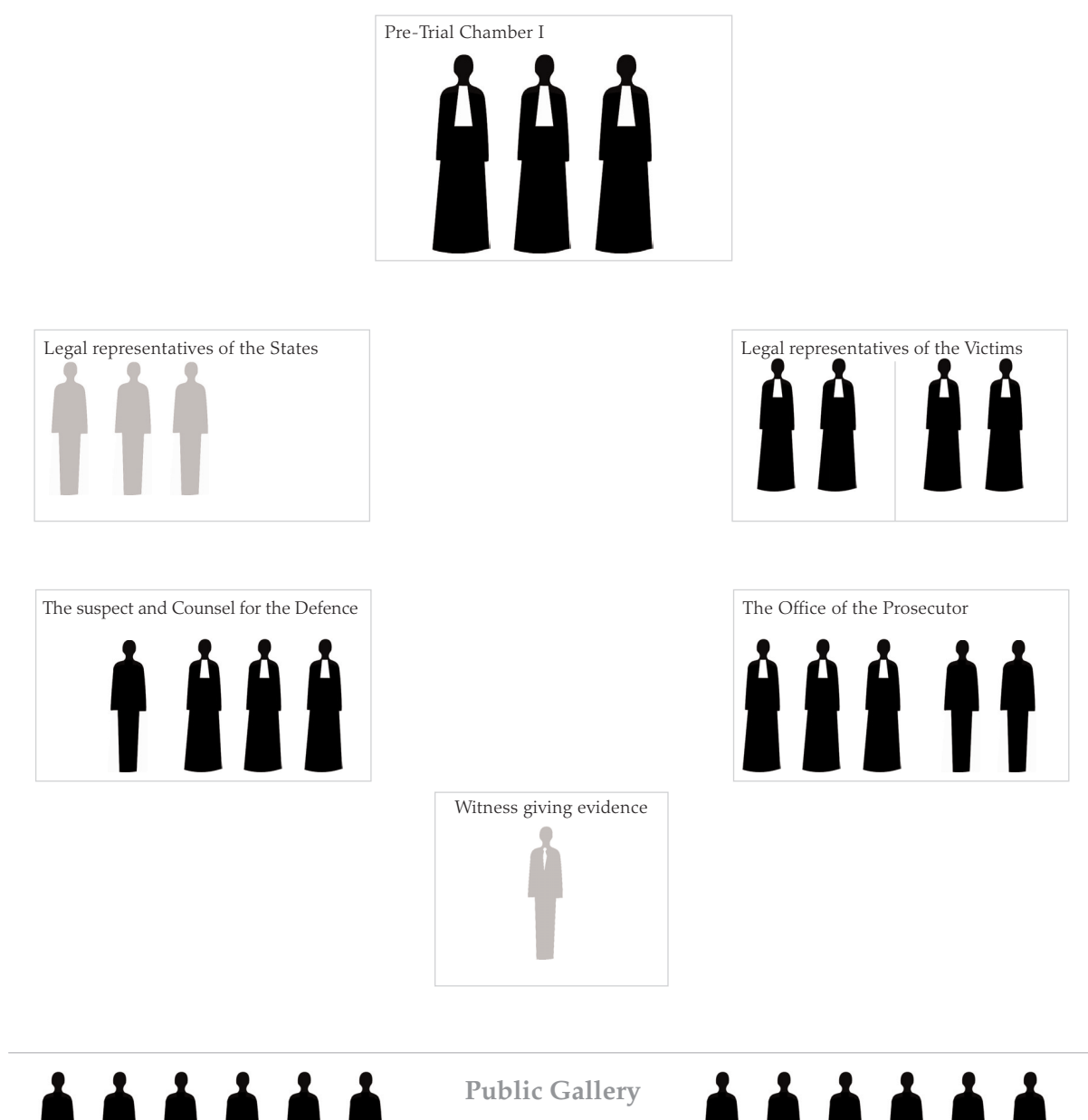
At the close of the confirmation hearing, if the Pre-Trial Chamber concludes that there is sufficient evidence to support the charges, the case of Mr Lubanga Dyilo will proceed to trial. Upon confirmation the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings. The Trial Chamber will confer with the participants and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings. The Chamber will also address a number of preliminary matters, including the language or languages to be used at trial.

12. Where is Mr Lubanga Dyilo detained?

Since his transfer from the DRC on 17 March 2006, Mr Lubanga Dyilo has been detained at the ICC detention centre within the Haaglanden Prison, in Scheveningen, The Hague.

In the Courtroom

As shown in the diagram, the courtroom provides benches for the three judges and for the participants to the proceedings: the Prosecutor, the Defence and the suspect, and the legal representatives of the victims authorised to participate in relation to the case of *The Prosecutor v. Mr Thomas Lubanga Dyilo*.



The Pre-Trial Chamber I

Following the referral to the Office of the Prosecutor of the situation in the Democratic Republic of the Congo, on 5 July 2004 the situation regarding the DRC was assigned to Pre-Trial Chamber I. The composition of the Chamber had been decided by the Presidency on 23 June.



Judge Claude Jorda (France)
Presiding Judge since 16 September 2004



Judge Akua Kuenyehia (Ghana)



Judge Sylvia Steiner (Brazil)

The Office of the Prosecutor's - Case Team

The Prosecution Division is one of the three functional Divisions of the structure of the Office of the Prosecutor (OTP). It has trial and appeals lawyers who present cases before the Judges. Mrs Fatou Bensouda, Deputy Prosecutor and Mr Ekkehard Withopf, Senior Trial Lawyer lead the Team in the case of Mr Lubanga Dyilo. You can read their profiles below.

Fatou Bensouda - Deputy Prosecutor



Mrs. Fatou Bensouda, a Gambian national, was elected Deputy Prosecutor by the Assembly of State Parties on 8 September 2004. She is in charge of the Prosecution Division at the Office of the Prosecutor.

Before joining the Court she was a Senior Legal Advisor and later Head of the Legal Advisory Unit of the International Criminal Tribunal for Rwanda. In the Gambia, Mrs. Bensouda held various positions, including Attorney General and the Minister of Justice. She was also the Gambian delegate for the meetings of the Preparatory Commission for the International Criminal Court.

Ekkehard Withopf - Senior Trial Lawyer

Ekkehard Withopf, a German lawyer, leads as the Senior Trial Attorney, the trial team in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. Mr Withopf took up office at the Office of the Prosecutor of the International Criminal Court in July 2004.

Before joining the Court, he was a lawyer in private practice, an Assistant Professor at the University of Würzburg, Judge at the



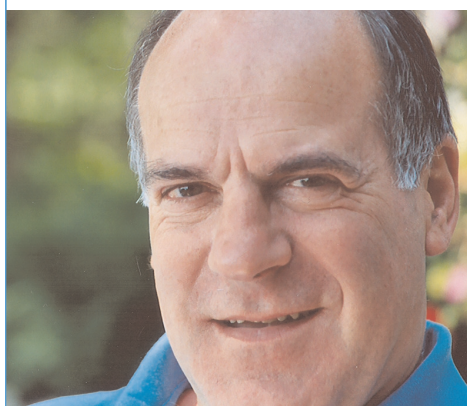
Würzburg and Nürnberg Regional Courts, and Public Prosecutor at the Office of the Federal Attorney General in Karlsruhe. From May 1999 to May 2004, Mr Withopf served as a Trial Attorney and subsequently as a Senior Trial Attorney at the International Criminal Tribunal for the former Yugoslavia (ICTY).

The Counsel for the Defence

The defence is a key component of any trial. It represents the interests of the suspect in the courtroom. The Rome Statute provides that everyone is presumed innocent until proved guilty. The Rules of Procedure and Evidence remit the Registrar with taking every measure necessary to ensure that the rights of the defence are fully respected, in the interests of a fair trial as defined in the Rome Statute.

As required under rule 21(2) of the Rules of Procedure and Evidence, the Registry has established a list of counsel. As of November 2006, 151 persons have been admitted and are eligible to act as counsel before the ICC.

Mr Jean Flamme - Defence Counsel



Mr Jean Flamme of Belgium was chosen by Mr Lubanga to be his defence counsel following his initial appearance.

An Attorney of the Ghent Bar since 1974, Mr Flamme specialises in criminal law and international criminal law, professional liability, insurance law, property and building law, commercial law and succession law. He is also a Deputy Judge at the Tribunal of Commerce of Ghent and co-founder of the International Criminal Bar.

In 2005, Mr Flamme worked as co-counsel in the Muvunyi case before the ICTR. From 1994 to 1998, Mr Flamme was Vice-President of *Avocats sans Frontières* Belgium and an expert on the organisation of co-operation in the judicial sector in Burundi for the Belgian Government.

He held the position of Secretary-General of *Avocats Sans Frontières*, Belgium between 1998 and 2000, and was co-author and developer of the projects *Justice pour Tous au Rwanda* and *Justice pour Tous au Burundi* which organised defence in national genocide and massacre trials. He is currently writing a book on the genocide in Rwanda called "Inyenzi".

Mr Flamme studied at Ghent State University Law School, where he received his *Licence en Droit* and *Licence en Notariat*. He went on to study common law at King's College London, Law School, during which time he undertook a number of internships with London law-firms. He was born in Ghent, Belgium on 31 January 1950.

Ms Veronique Pandanzyla - Legal Assistant

Ms Veronique Pandanzyla has been assigned to assist Mr Jean Flamme with the defence of Mr Thomas Lubanga Dyilo.

She has been legal adviser for the Ministry of Foreign Affairs of Belgium after which she became a member of the Belgian Bar Association. She has also had experience in international humanitarian law and international human rights law.

Graduated from the Faculty of Law of *l'Université Libre de Bruxelles* (ULB), she holds masters degree in public and private international law as well as in co-operation and development.

Mr Geoff Roberts - Case Manager

Mr Geoff Roberts has also been assigned to assist the defence team of Mr Thomas Lubanga Dyilo.

Mr Roberts is a member of the New York Bar Association. He has had experience in international criminal law, serving as legal assistant in the defence team of a case before the International Criminal Tribunal for the Former Yugoslavia (ICTY); and in his capacity of policy adviser for the Criminal Law Policy Unit of the Home Office in London, he was tasked with drawing up proposals for reforming the law of corporate manslaughter.

He holds a masters degree in International Criminal Law and Armed Conflict from Nottingham University. He completed his LL.B. in 2001 from King's College London, and also holds a *Maîtrise en Droit Privé* from *La Sorbonne* in Paris.

Legal representatives of the Victims

One of the innovations of the Statute and its Rules of Procedure and Evidence is the series of rights granted to victims. During proceedings, victims have the right to participate in proceedings by putting their views and concerns directly to the judges. As of today, four applicants have been granted the status of victims authorised to participate in relation to the case of *The Prosecutor v. Mr Thomas Lubanga Dyilo*. Their legal representatives are Mr Luc Walleyne and Mr Franck Mulenda, representing participants a/0001/06 to a/0003/06, and Ms Carine Bapita Buyangandu, representing participant a/0105/06.

Mr Luc Walleyne – Counsel



Mr Luc Walleyne (Belgium) has been a member of the Brussels Bar since 1972. He is a partner of the Brussels based law firm "Blanmailland & Partners".

He specialises in immigration and asylum law, humanitarian law, human rights and discrimination issues. He has represented a number of civilian parties in cases brought against national authorities, including a case against the 'casques bleus belges' concerning their alleged behaviour towards civilians in Somalia.

As part of the organisation 'Avocats sans Frontières' he has represented a number of accused before the International Criminal Tribunal for Rwanda (ICTR).

Mr Walleyne is a founding member of the International Criminal Bar and member of the victim rights working group of the CICC. He gained his law degree at the University of Leuven in 1971.

Mr Franck Mulenda - Counsel



Mr Mulenda (DRC) has been a member of the Kinshasa/Gombe Bar since 19 September 1986.

He trains lawyers in international criminal law and is a member of the Bar Council for the Research and Publications Commission. He has also worked for the Government of the Democratic Republic of the Congo as an expert in the Ministry for Human Rights.

He worked with the OHCHR as a national expert on the judicial sector audit which conducted a comprehensive evaluation of the judicial system. He was the co-ordinator of a legal assistance project on international crimes and serious human rights violations in the DRC for the Belgian organisation *Avocats Sans Frontières*. Mr Mulenda graduated from the Marien Ngouabi University of Brazzaville with a Licence in civil procedure in 1984, followed by a *Maîtrise* in criminal sciences in 1985.

Ms Carine Bapita Buyangandu - Counsel



Ms Bapita Buyangandu (DRC) has been a member of the Kinshasa and Kananga Bar Associations since August 1995.

Since 1996 she has been President of the NGO *Femmes et Enfants pour les Droits de l'Homme* (FEDHO) and she has also been Treasurer of the Kinshasa/Matete Bar Association. From 1998 to 1999 she worked as Human Rights Assistant for the Office of the United Nations High Commissioner for Human Rights in the DRC.

Ms Buyangandu studied at the University of Kinshasa, where she received her *Licence en Droit*.

Facilities and Resources for the Press



The Media Centre / ICC-CPI / Wim van Cappellen



The Media Centre entrance / ICC-CPI

Facilities and Resources for the Press

Journalists covering the confirmation hearing for the Lubanga Dyilo case will be able to use the press facilities and audio-visual resources provided by the International Criminal Court.

Proceedings can be followed either from the public gallery, where some seats will be available to journalists, or from the media centre's hot-desk area.

The Media Centre

The Court has set up a Media Centre for local and visiting media representatives. This media workspace is available on the second floor of the Court's D-Wing (accessed via Regulusweg) and is adjacent to the public galleries of the courtrooms.

Open to journalists from 8.30 a.m. until 6 p.m. from Monday to Friday the media centre is available for scheduled public hearings or other press events.

The area can seat up to 64 people and is equipped with: plasma TV screens; a Wi-Fi internet service; cards (plug + play) for those without Wi-Fi installation on their PC or laptop; 6 computers with internet access; and 7 telephones with direct access to the ICC Public Information Offices, free of charge. For external use, journalists are advised to purchase beforehand 0800 pre-paid phone cards available at newsagents and train stations. Phonecards cannot be obtained in the vicinity of, or at the ICC.

ICC Audio-Visual Materials

Live audio and video feeds from the courtroom, including language channels, with a 30 minute deferred video-link transmission are available at each table in the hot-desk area.

The Court also has a briefing room equipped with a 36 output, audio distribution box.

Parking facilities

Parking facilities are available for media representatives at the Regulusweg and Wegastraat car parks.

Latest Public Legal Filings

For an update of all public legal filings relating to situations and cases before the Court, please consult the ICC website at: www.icc-cpi.int/cases.html.

