

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 2 August 2006

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single Judge**

**Registrar: Mr Bruno Cathala**

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

**Public Redacted Version**

**DECISION ON THE PROSECUTION AMENDED APPLICATION PURSUANT  
TO RULE 81 (2)**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Ekkehard Withopf, Senior Trial Lawyer

**Counsel for the Defence**

Mr Jean Flamme  
Ms Véronique Pandanzyla

**The Representatives of Victims a/0001/06  
to a/0003/06**

Mr Luc Walley  
Mr Franck Mulenda

**Office of Public Counsel for the Defence**

Ms Melinda Taylor

**I, Judge Sylvia Steiner**, judge at the International Criminal Court (“the Court”);

**NOTING** the “Decision on the Final System of Disclosure and the Establishment of a Timetable” (“the Decision on the Final System of Disclosure”),<sup>1</sup> issued by the single judge on 15 May 2006; the “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Statute” (“the Decision Establishing General Principles”),<sup>2</sup> issued by the single judge on 19 May 2006; the “Decision on the Prosecution Motion for Reconsideration and, in the Alternative, Leave to Appeal” (“the Decision on the Prosecution Motion for Reconsideration and Leave to Appeal”),<sup>3</sup> issued by the single judge on 23 June 2006; and the “Decision on the New Version of the Draft Protocol on the Presentation of Evidence Prepared Jointly by the Office of the Prosecutor, the Defence and the Registry” (“the Decision on the Draft Protocol on the Presentation of Evidence”),<sup>4</sup> issued by the single judge on 28 July 2006,

**NOTING** the “Prosecutor’s Information on Further Investigation” (“the Prosecution Information”),<sup>5</sup> filed by the Prosecution on 28 June 2006, in which the Prosecution informed the Chamber that REDACTED,<sup>6</sup> and REDACTED<sup>7</sup>;

**NOTING** the “Prosecution’s Application pursuant to Rule 81 (2) with Further Details” (“the Prosecution Application”),<sup>8</sup> filed by the Prosecution on 19 June 2006, in

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<sup>1</sup> ICC-01/04-01/06-102.

<sup>2</sup> ICC-01/04-01/06-108.

<sup>3</sup> ICC-01/04-01-06-165-Conf-Exp.

<sup>4</sup> ICC-01/04-01/06-213.

<sup>5</sup> ICC-01/04-01/06-169-Conf-Exp.

<sup>6</sup> The Prosecution Information, para. 7.

<sup>7</sup> The Prosecution Information, para. 7.

which the Prosecution, pursuant to rule 81 (2) of the Rules of Procedure and Evidence (“the Rules”), seeks authorisation from the Pre-Trial Chamber to redact information contained in REDACTED witness statements which, if disclosed to Thomas LUBANGA DYILO, could prejudice ongoing and/or further investigations;<sup>9</sup>

**NOTING** the *ex parte* and *in camera* hearing with the Prosecution on 28 June 2006;

**NOTING** the “Prosecution’s Amended Application pursuant to rule 81 (2) with Further Details” (“the Prosecution Amended Application”),<sup>10</sup> filed by the Prosecution on 18 July 2006, in which the Prosecution, “[f]ollowing the 28 June 2006 hearing and the request and comments made by the Single Judge”,<sup>11</sup> amended the redactions for which it seeks authorisation from the single judge;<sup>12</sup>

**NOTING** the “Decision Inviting the Prosecution to Revise Proposed Redactions in relation to the Prosecution Amended Application pursuant to Rule 81 (2) of the Rules of Procedure and Evidence” (“the Decision Inviting the Prosecution to Revise Proposed Redactions”),<sup>13</sup> issued by the single judge on 31 July 2006, in which the single judge invited the Prosecution to revise the proposed redactions in certain paragraphs of the witness statements attached to the Prosecution Amended Application;<sup>14</sup>

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<sup>8</sup> ICC-01/04-01/06-153-Conf-Exp-AnxA and ICC-01/04-01/06-153-Conf-Exp-AnxREDACTED to ICC-01/04-01/06-153-Conf-Exp-AnxREDACTED.

<sup>9</sup> The Prosecution Application, para. 7.

<sup>10</sup> ICC-01/04-01/06-198-Conf-Exp-AnxA and ICC-01/04-01/06-198-Conf-Exp-AnxREDACTED to ICC-01/04-01/06-198-Conf-Exp-AnxREDACTED.

<sup>11</sup> The Prosecution Amended Application, para. 10.

<sup>12</sup> The Prosecution Amended Application, paras. 11 to 16.

<sup>13</sup> ICC-01/04-01/06-222.

<sup>14</sup> The Decision Inviting the Prosecution to Revise Proposed Redactions, p. 3.

**NOTING** the “Prosecution’s Response to the Single Judge’s Decision Inviting the Prosecution to Revise Proposed Redactions in relation to Prosecution Amended Application pursuant to Rule 81 (2) of the Rules of Procedure and Evidence”(“the Prosecution Response”),<sup>15</sup> filed by the Prosecution on 1 August 2006, in which the Prosecution, in response to the Decision Inviting the Prosecution to Revise Proposed Redactions, further amended the redactions for which it seeks authorisation from the single judge;<sup>16</sup>

**NOTING** rule 81 (2) of the Rules;

**CONSIDERING** that, according to rule 81 (2) of the Rules, the single judge may authorise, in order not to prejudice further or ongoing investigations, the non-disclosure of materials or information to the Defence which in principle had to be disclosed by the Prosecution in accordance with its disclosure obligations; and that, if such authorisation is given by the Chamber, the Prosecution “may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused;”

**CONSIDERING** that the Prosecution Application and the Prosecution Amended Application refer to statements of witnesses on which the Prosecution intends to rely at the confirmation hearing; that there is a need to authorise a number of redactions in the said statements in order not to prejudice further investigations; and therefore that, unless there is prior adequate disclosure to Thomas Lubanga Dyilo, the Prosecution cannot rely on those parts of the statements for which non-disclosure is authorised in the present decision;

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<sup>15</sup> ICC-01/04-01/06-230-Conf-Exp and ICC-01/04-01/06-230-Conf-Exp-AnxREDACTED to ICC-01/04-01/06-230-Conf-Exp-AnxREDACTED.

<sup>16</sup> The Prosecution Response, pp. 2 and 3.

**CONSIDERING** that the Prosecution has informed the Chamber that REDACTED<sup>17</sup>; and that, therefore, in this context, the term “ongoing investigation” for the purpose of rule 81 (2) of the Rules must be understood as referring to the ongoing investigation against Thomas Lubanga Dyilo in relation to the current case against him as set out in the warrant of arrest issued for him on 10 February 2006;

**CONSIDERING** that according to the Decision on the Final System of Disclosure<sup>18</sup>, the Decision Establishing General Principles,<sup>19</sup> and the Decision on the Prosecution Motion for Reconsideration and Leave to Appeal,<sup>20</sup> the ongoing investigation in the current case against Thomas Lubanga Dyilo must be brought to an end by the time the confirmation hearing starts, barring exceptional circumstances that might justify later isolated acts of investigation; and that as a result any redaction authorised to protect information related to the ongoing investigation in the current case against Thomas Lubanga Dyilo can only be of temporary nature and shall not be maintained beyond the 15-day time limit provided for in rule 121 (4) and (5) of the Rules;

**CONSIDERING**, nevertheless, that no redaction proposed by the Prosecution is based on the need to protect information related to the ongoing investigation in the current case against Thomas Lubanga Dyilo;

**CONSIDERING** that all witness statements attached to the Prosecution Application and the Prosecution Amended Application were taken directly by the staff members of the Office of the Prosecutor; and that no redaction has been proposed relating to the identity of the staff members of the Office of the Prosecutor who created the relevant documents by taking the statements;

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<sup>17</sup> The Prosecution Information, para. 7.

<sup>18</sup> The Decision on the Final System of Disclosure, paras. 130 and 131.

<sup>19</sup> The Decision Establishing General Principles, para. 39-41.

<sup>20</sup> The Decision on the Prosecution Motion for Reconsideration and Leave to Appeal, paras 35 -42.

**CONSIDERING** that the question of whether the Prosecution and the Defence must provide the name of the author, author's organisation, recipient and recipient's organisation of any document on which they intend to rely at the confirmation hearing is a matter that, according to the Decision on the Draft Protocol on the Presentation of Evidence, shall be part of the agenda of the status conference scheduled for 17 August 2006;<sup>21</sup>

**CONSIDERING** that the Prosecution has proposed certain redactions relating to Prosecution lead sources; that such redactions are consistent with the aim of preserving further investigations; and that none of them refer to prior signed statements given by the Prosecution witnesses to those lead sources;

**CONSIDERING** further that several redactions requested in the Prosecution Application and in the Prosecution Amended Application cannot be authorised because the single judge considers that they affect to excerpts that

- (i) could be seen as potentially exculpatory, or
- (ii) do not identify the nature of the incidents which the Prosecution is currently investigating and which at the same time could be relevant for determining the contextual elements of the crimes contained in the arrest warrant against Thomas Lubanga Dyilo.

**FOR THESE REASONS,**

**DECIDE** that, except for those redactions proposed in relation to the paragraphs referred to below, the redactions proposed in the Prosecution Amended Application

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<sup>21</sup> The Decision on the Draft Protocol on the Presentation of Evidence, p. 4.

of 13 July 2006 as amended by the Prosecution Response of 1 August 2006 are authorised.

**DECIDE that:**

- (i) redactions in paragraph 126 of Annex REDACTED are authorised as follows:  
« REDACTED »
- (ii) redactions in paragraph 200 of Annex REDACTED are authorised as follows:  
« REDACTED »
- (iii) redactions in paragraph 201 of Annex REDACTED are authorised as follows:  
« REDACTED »
- (iv) redactions in paragraph 203 of Annex REDACTED are authorised as follows:  
“REDACTED»
- (v) redactions in paragraph 204 of Annex REDACTED are authorised as follows:  
« REDACTED »
- (vi) redactions in paragraph 206 of Annex REDACTED are authorised as follows:  
« REDACTED »
- (vii) redactions in paragraph 346 of Annex REDACTED are authorised as follows:

“REDACTED.»

(viii) redactions in paragraph 350 of Annex REDACTED are authorised as follows:

« REDACTED »

(ix) redactions in paragraph 130 of Annex REDACTED are authorised as follows:

« REDACTED »

(x) redactions in paragraph 146 of Annex REDACTED are authorised as follows:

“REDACTED »

(xi) redactions in paragraph 220 of Annex REDACTED are authorised as follows:

« REDACTED »

(xii) redactions in paragraph 241 of Annex REDACTED are authorised as follows:

« REDACTED. »

(xiii) redactions in paragraph 242 of Annex REDACTED are authorised as follows:

« REDACTED »

(xiv) redactions in paragraph 248 of Annex REDACTED are authorised as follows:

« REDACTED »



(xv) redactions in paragraph 26 of Annex REDACTED are authorized as follows:

« REDACTED.»

(xvi) redactions in paragraph 135 of Annex REDACTED are authorised as follows:

« REDACTED »

(xvii) redactions in paragraph 136 of Annex REDACTED are authorised as follows:

« REDACTED »


(xviii) redactions in paragraph 192 of Annex REDACTED are authorised as follows:

“REDACTED »

(xix) redactions in paragraph 101 of Annex REDACTED are authorised as follows:

« REDACTED. »

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



**Judge Sylvia Steiner**  
**Single Judge**

Dated this Wednesday 2 August 2006

At The Hague

The Netherlands