

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 25 August 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

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

**URGENT
Public Document**

**Decision on the Prosecution practice to provide to the Defence redacted versions
of evidence and materials without authorisation by the Chamber**

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence
Mr Jean Flamme
Ms Véronique Pandanzyla

Legal 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”),¹ issued by the single judge on 15 May 2006;

NOTING the “Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur”² (“the Defence Conclusions”) filed by the Defence on 24 July 2006;

NOTING the “Prosecution’s Response to Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur”³ (“the Prosecution Response”) filed by the Prosecution on 28 July 2006;

NOTING the “Request to file a Reply to the Prosecution’s Response to Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur”⁴ (“the Defence Request”), filed by the Defence on 1 August 2006;

NOTING the “Decision on the Defence Request to File a Reply to the Prosecution’s Response to the “Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur”⁵, issued by the Chamber on 2 August 2006;

¹ ICC-01/04-01/06-102.

² ICC-01/04-01/06-203.

³ ICC-01/04-01/06-214.

⁴ ICC-01/04-01/06-229.

⁵ ICC-01/04-01/06-236.

NOTING the “Reply to the Prosecution's Response to Conclusion de la défense quant aux divulgations de documents expurgés par le Procureur”⁶ filed by the Defence on 15 August 2006;

NOTING the final Prosecution and Defence submissions at the status conference⁷ presided over by the single judge on 24 August 2006, in which the Prosecution confirmed that to date it has disclosed to the Defence forty-one documents in a redacted format;

NOTING articles 61 and 67 of the Rome Statute (“the Statute”) and rules 76 and 77 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that, as established in the Decision on the Final System of Disclosure, a core component of the right to a fair trial enshrined in article 67 (1) of the Statute is timely access of the Defence to the evidence and materials referred to in articles 61 (3)(b) and 67 (2) of the Statute and rules 76 and 77 of the Rules;

CONSIDERING therefore that pursuant to articles 61 (3) (b), 61 (6), and 67 (1) and (2) of the Statute and rules 76 and 77 of the Rules, the Defence has the right to access unredacted versions of (i) the evidence on which the Prosecution intends to rely at the confirmation hearing and (ii) the materials in the possession or control of the Prosecution which are potentially exculpatory, have been obtained or belonged to Thomas Lubanga Dyilo or are otherwise material to the Defence preparation for the confirmation hearing;

⁶ ICC-01/04-01/06-332.

⁷ ICC-01/04-01/06-T-13-EN.

CONSIDERING further that the Chamber is the ultimate guarantor of the Defence's timely access to the said evidence and materials because it is the ultimate guarantor of the respect for all other aspects of Thomas Lubanga Dyilo's right to a fair trial; and that, for this reason, redactions in the said evidence and materials are the exception and not the general rule, are permissible only on a case-by-case basis and are subject to the approval of the Chamber;

CONSIDERING that the Prosecution proposes that when the Defence receives the unauthorised redacted versions of the said documents and materials, the Defence should submit a motion showing good cause for lifting the redactions in any given specific document;

CONSIDERING that, in the view of the single judge, such proposal is contrary to Thomas Lubanga Dyilo's right to a fair trial as enshrined in the Statute and the Rules because it amounts to an unpermissible shift of the burden of proof from the Prosecution - which must convince the Chamber of the need to authorise any redactions - to the Defence.

FOR THESE REASONS

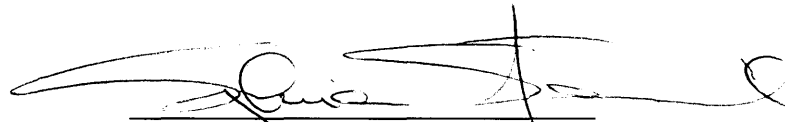
DECIDE that the Prosecution shall cease disclosing redacted documents to the Defence without previous authorisation by the Chamber;

ORDER the Prosecution to file *ex parte* only available to the Prosecution by 29 August 2006 the originals of the forty-one redacted documents which the Prosecution has already disclosed to the Defence, redactions not previously authorised by the Chamber;

DECIDE that the issue of authorisation of the redactions by the Prosecution in the said forty-one documents shall be dealt with in the *ex parte* hearing with the Prosecution and the Victims and Witnesses Unit in closed session on 30 August 2006 at 14.00 hours;

DECIDE to give the Prosecution until 29 August 2006 at 16.00 hours to file applications for authorisation for redactions in evidence other than witness statements included in the Prosecution Charging Document and List of Evidence; and that any such application shall also be dealt with at the *ex parte* hearing on 30 August 2006.

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



Judge Sylvia Steiner
Single Judge

Dated this Friday 25 August 2006

At The Hague

The Netherlands