

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 4 October 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 vs. THOMAS LUBANGA DYILO**

**Public with Confidential - *Ex Parte* - Prosecution Only Annexes
Amended Provision of Summary Evidence to the Pre-Trial Chamber**

The Office of the Prosecutor

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

Legal Representatives of Victims

a/0001/06 to a/0003/06
Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Mr Jean Flamme
Ms Véronique Pandanzyla

**Office of Public Counsel
for the Defence**

Ms Melinda Taylor

Background

1. On Friday, 15 September 2006, the Single Judge of the Pre-Trial Chamber (Single Judge) issued the “First Decision on the Prosecution Request and Amended Requests for Redactions under Rule 81”¹ (First Decision).
2. In the First Decision, the Prosecution was ordered to inform the Chamber by Monday, “25 September 2006 at 10h00 whether it: (i) withdraws from the Prosecution List of Evidence any of the witness statement and investigators’ notes and reports of witness interviews included in Annex I to the present decision, along with the documents attached to those statement, transcripts, notes and reports; or (ii) assures the Chamber that the relevant witnesses, or some of those witnesses, have freely consented to the immediate disclosure of their identities to the Defence after having been adequately informed of the risks for their security inherent to such disclosure; or (iii) seeks the authorisation of the Chamber to rely on summary evidence of the above mentioned witness statements, transcripts of witness interviews and investigators’ notes and reports of witness interviews.”²
3. In respect of those materials the Prosecution decided to provide summaries, the First Decision gave the Prosecution until Monday, “25 September 2006 at 10h00 to file proposed summary evidence in a language which Thomas Lubanga Dyilo fully understands and speaks” witness statements, transcripts of witness interviews and investigator’s notes and reports of witness interviews, in which all

¹ First Decision on the Prosecution Request and Amended Requests for Redactions under Rule 81, public, 15 September 2006.

² See First Decision, at pages 9 and 10.

identifying information of the relevant witnesses shall be excluded and in which the following information shall be included: (i) a brief introduction of the relevance and probative value of the summary evidence without identifying the witness; (ii) any information on which the Prosecution intends to rely at the confirmation hearing, in particular the information included in the paragraphs referred to in the Prosecution Charging Document and List of Evidence; and (iii) any information that could be potentially exculpatory or otherwise material for the Defence's preparation of the confirmation hearing."

4. Furthermore, in the First Decision, the Single Judge gave the Prosecution until Monday, "25 September 2006 at 10h00 to re-file the documents attached to those witness statements, transcripts of witness interviews and investigator's notes and reports of witness interviews for which the Prosecution intends to request the authorisation of the Chamber to rely in summary evidence pursuant to the present decision. The redactions should be revised in light of the concerns raised by the single judge at the hearings held on 8 September 2006 and 12 September 2006."

Prosecution's decision on the alternatives

5. The Prosecution decided to provide summary evidence in respect of all witness statements, transcripts of witness interviews and investigator's notes and reports of the witnesses interviewed as detailed in Annex I attached to the First Decision.

Request for extension of time

6. On 22 September 2006, the Prosecution sought an extension of time in order to prepare adequately for the provision of summary evidence to the Pre-Trial Chamber.³ On 22 September 2006, the Pre-Trial Chamber granted the Prosecution's request and extended the deadline for provision of summary evidence to 29 September 2006 at 10h00.⁴

7. On 25 September 2006, the Prosecution filed the "Provision of Summary Evidence to the Pre-Trial Chamber"⁵ in which it sought authorization to disclose summaries of eight witness statements and transcripts taken pursuant to Article 55 (2) as well as authorization to make certain redactions to related documents. On 29 September 2006, the Prosecution filed a second, companion filing in which it sought authorization to disclose summaries of an additional thirteen witness statements and transcripts taken pursuant to Article 55 (2) with a request for certain redactions to related documents.⁶

8. On 29 September 2006, the Single Judge issued the "Decision convening an *ex parte* hearing for 3 October 2006".⁷ During the *ex parte* hearing on 3 October 2006, the Single Judge raised various concerns related to the Prosecution's application for summaries and redactions.

³ Request for Extension of Time, 22 September 2006.

⁴ Decision on the Prosecution's Application for Extension of Time, 22 September 2006.

⁵ Provision of Summary Evidence to the Pre-Trial Chamber, Public with Confidential – *Ex Parte* – Prosecution Only Annexes, filed on 25 September 2006.

⁶ Provision of Summary Evidence to the Pre-Trial Chamber, Public with Confidential – *Ex Parte* – Prosecution Only Annexes, filed on 29 September 2006.

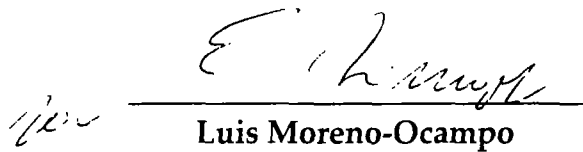
⁷ Decision convening an *ex parte* hearing for 3 October 2006, Public Document with Confidential and *ExParte* Only Available to Prosecution Annex 1, issued 29 September 2006.

Present Submission

9. Further to the *ex parte* hearing on 3 October 2006, the Single Judge requested that the Prosecution re-file its request with certain amendments. Accordingly, the Prosecution attaches twenty-one summaries to the present submission.⁸ The Prosecution also attaches a number of documents that are related to the witness statements and transcripts taken pursuant to Article 55(2) for which the Prosecution seeks redactions or authorization for complete non-disclosure.⁹

Request

10. The Prosecution requests authorization to disclose to the Defence the summaries of witness statements and transcripts, with pseudonyms to protect the identities of the witnesses, as annexed hereto.



Luis Moreno-Ocampo
Prosecutor

Dated this 4th day of October 2006
At The Hague, The Netherlands

⁸ They are attached as confidential – *ex parte* – Prosecution Only Annexes 1-21.

⁹ Please see a chart of related documents attached hereto as confidential – *ex parte* – Prosecution only Annex 22.