

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 27 March 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 Document**

**DECISION REQUESTING FURTHER OBSERVATIONS FROM THE  
PROSECUTION AND THE DUTY COUNSEL FOR THE DEFENCE ON THE  
SYSTEM OF DISCLOSURE**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Ekkehard Withopf, Senior Trial Lawyer

**Duty Counsel for the Defence**

Mr Jean Flamme

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

**NOTING** the “Decision Requesting Observations of the Prosecution and the Duty Counsel for the Defence on the System of Disclosure and Establishing an Interim System of Disclosure” (the “First Decision on Disclosure”),<sup>1</sup> issued by judge Sylvia Steiner on 24 March 2006, in which:

- (a) The prosecution and the Duty Counsel for the Defence are given until 6 April 2006 to present their observations on what they consider to be the most appropriate system of disclosure of the evidence that they intend to use at trial and of the evidence gathered by the prosecution before the confirmation hearing;
- (b) An interim system of disclosure is established to make it possible for the prosecution, pending a decision on the system of disclosure which will ultimately be followed, to start disclosing to the defence (i) the evidence that the prosecution might have already decided to rely on at the confirmation hearing, and (ii) the evidence currently in the possession or control of the prosecution which it might have already identified as exculpatory evidence within the meaning of article 67 (2) of the Rome Statute (the “Statute”);<sup>2</sup>

**NOTING** the “Prosecution’s Response to Requête du conseil de permanence de prorogation du délai d’appel et de communication du dossier du Bureau du Procureur” (the “Prosecution’s Response”),<sup>3</sup> filed by the prosecution on 24 March 2006, in which it is stated that (i) “the Prosecution wishes to inform the Pre-Trial

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<sup>1</sup> ICC-01/04-01/06-54.

<sup>2</sup> *Idem*, p. 5-7.

<sup>3</sup> ICC-01/04-01/06-55.

Chamber that the Duty Counsel for the Defence by letter dated 23 March 2006 to the Prosecution has requested inspection of materials pursuant to Rule 77 of the Rules of Procedure and Evidence”, and (ii) that the prosecution “will satisfy this request within the boundaries as detailed in Rule 77 of the Rules of Procedure and Evidence”;<sup>4</sup>

**NOTING** the decision of Pre-Trial Chamber I of 22 March 2006<sup>5</sup> designating Judge Sylvia Steiner as single judge in the case against Mr Thomas Lubanga Dyilo responsible, under article 57 (2) of the Statute, for exercising the functions of the Chamber in that case, including those functions provided for in rule 121 (2) (b) of the Rules of Procedure and Evidence (the “Rules”);<sup>6</sup>

**NOTING** articles 57 (3) (c), 61 (3) and 67 (2) of the Statute, rules 15, 76 to 83 and 121 of the Rules of Procedure and Evidence and regulation 21 of the Regulations of the Registry (the “Regulations”);

**CONSIDERING** that, according to the prosecution, the letter sent by the Duty Counsel for the Defence refers to rule 77 of the Rules, which, in addition to the evidence in the possession or control of the prosecution “intended for use by the Prosecutor as evidence for the purpose of the confirmation hearing”, also refers to evidence in the possession or control of the prosecution that (i) is material to the preparation of the defence for the confirmation hearing, (ii) has been obtained from the person against whom a warrant of arrest or a summons to appear has been issued or (iii) belongs to such a person;

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<sup>4</sup> *Idem*, p. 4, footnote 9.

<sup>5</sup> ICC-01/04-01/06-51.

<sup>6</sup> *Idem*, p. 4.

**CONSIDERING** that the consistency of the process of disclosure of any type of evidence or materials, which, for the purpose of the confirmation hearing, must be disclosed pursuant to the articles 61 (3) and 67 (2) of the Statute and rules 76 to 79 and 121 of the Rules, is fundamental to ensure the preservation of evidence, effectiveness of the disclosure process, protection of victims and witnesses and proper safeguarding of the rights of Mr Thomas Lubanga Dyilo;

**CONSIDERING** that, pending a decision on the system of disclosure which will ultimately be followed, the interim system of disclosure provided for in the First Decision on Disclosure must apply to any evidence or material that the prosecution might be prepared to disclose to the defence before the above-mentioned pending decision is taken, including those referred to in the letter of the Duty Counsel for the Defence of 23 March 2006;

**CONSIDERING** that, according to the interim system set out in the First Decision on Disclosure, any disclosure by the prosecution to the defence must be channelled through the Registry as the organ of the Court which, under rule 15 (1) of the Rules, is responsible for keeping "a database containing all the particulars of each case brought before the Court", and that accordingly any request by the defence pursuant to articles 61 (3) and 67 (2) and rules 76, 77 and 121 of the Rules must be channelled through the Registry and filed in the record of the case against Mr Thomas Lubanga Dyilo;

#### **FOR THESE REASONS**

**DECIDE** that the observations of the prosecution and the Duty Counsel for the Defence pursuant to the First Decision on Disclosure and the present decision shall refer to:

- (i) The scope and boundaries of the disclosure obligation imposed upon the prosecution and the defence by rules 76 to 79 and 121 of the Rules which are in addition to the prosecution's disclosure obligations pursuant to article 61 (3) of the Statute (referred to as Incriminating Evidence in the First Decision on Disclosure) and article 67 (2) of the Statute (referred to as Exculpatory Evidence in the First Decision on Disclosure);
- (ii) The most appropriate system for the disclosure of any type of evidence or material, that, for the purpose of the confirmation hearing, must be disclosed by either the prosecution or the defence according to articles 61 (3) and 67 (2) of the Statute, and rules 76 to 79 and 121;

**DECIDE** that the prosecution and the Duty Counsel for the Defence shall file their observations pursuant to the First Decision on Disclosure and the present decision by 6 April 2006 at 4 p.m.;

**DECIDE** that, pending a decision on the system of disclosure which will ultimately be followed, the interim system of disclosure provided for in the First Decision on Disclosure shall be followed in order to make it possible for the prosecution to start disclosing to the defence any evidence or material that the prosecution might be prepared to disclose to the defence before the above-mentioned pending decision is taken, including those referred to in the letter of the Duty Counsel for the Defence of 23 March 2006;

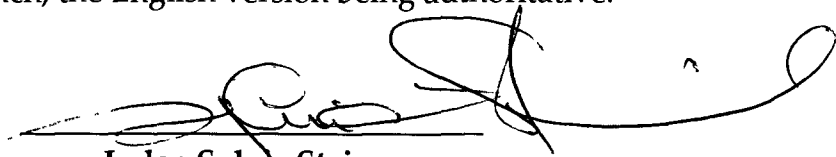
**DECIDE** that, pursuant to the First Decision on Disclosure and the present decision, the prosecution, pending a decision on the system of disclosure which will ultimately be followed, shall include in each filing a list identifying any evidence or material included in such filing and indicating the specific provision of the Statute or the Rules pursuant to which such evidence or material is filed;

**INSTRUCT** the Registrar, pursuant to the First Decision on Disclosure and the present decision, to organise the index of the record of the case against Mr Thomas Lubanga Dyilo so as to set out in separate sections, pending a decision on the system of disclosure which will ultimately be followed, (a) all evidence submitted by the prosecution pursuant to article 61 (3) (b) of the Statute, (b) all evidence submitted by the prosecution pursuant to article 67 (2) of the Statute, and (c) all evidence or materials submitted by the prosecution pursuant to rule 77 of the Rules;

**REQUEST** the Duty Counsel for the Defence to file with the Registry a copy of his letter of 23 March 2006 referred to in footnote 9 of the Prosecution's Response;

**REQUEST** the Duty Counsel for the Defence to file with the Registry any request that he might decide to make pursuant to articles 61 (3) and 67 (2) and rules 76, 77 and 121 of the Rules while the interim system of disclosure provided for in the First Decision on Disclosure is applicable.

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



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

Dated this Monday 27 March 2006

At The Hague

The Netherlands