

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 7 April 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 CONVENING A HEARING ON THE SYSTEM OF DISCLOSURE  
FOR THE PURPOSE OF THE CONFIRMATION HEARING**

**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 23 March 2006, by which the Prosecution and the Duty Counsel for the Defence had until 6 April 2006 to present their observations on what they consider the most appropriate system of disclosure of “(a) the evidence which they intend to use at the confirmation hearing and (b) the Exculpatory Evidence gathered by the prosecution before the confirmation hearing;”<sup>2</sup>

**NOTING** the “Decision Requesting further Observations from the Prosecution and the Duty Counsel for the Defence on the System of Disclosure”<sup>3</sup> (the “Second Decision on Disclosure”), issued by Judge Sylvia Steiner on 27 March 2006, in which the Prosecution and the Defence were requested to refer in their observations 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

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

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

<sup>3</sup> ICC-01/04-01/06-58.

defence according to articles 61 (3) and 67 (2) of the Statute, and rules 76 to 79 and 121";<sup>4</sup>

**NOTING** the "Prosecution's Observations on Disclosure"<sup>5</sup> (the "Prosecution's Observations") filed by the Prosecution on 6 April 2006 pursuant to the First Decision on Disclosure and the Second Decision on Disclosure;

**NOTING** the "Observations de la défense concernant le système de divulgation, requis par les décisions du 23 et 27 mars 2006"<sup>6</sup> (the "Duty Counsel's Observations") filed by Duty Counsel for the Defence on 6 April 2006 pursuant to the First Decision on Disclosure and the Second Decision on Disclosure;

**NOTING** the decision of Pre-Trial Chamber I of 22 March 2006<sup>7</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>8</sup>

**NOTING** articles 57 (3) (c), 61 (3) and 67 (2) of the Rome Statute (the "Statute"), rules 76 to 79 and 121 of the Rules and regulations 20 and 77 (5) of the Regulations of the Court (the "Regulations");

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<sup>4</sup> *Idem*, pp. 4-5.

<sup>5</sup> ICC-01/04-01/06-66.

<sup>6</sup> ICC-01/04-01/06-68.

<sup>7</sup> ICC-01/04-01/06-51.

<sup>8</sup> *Idem*, p. 4.

**CONSIDERING** the concerns raised by the Prosecution<sup>9</sup> and the Duty Counsel for the Defence<sup>10</sup> with regard to the interim system of disclosure;

**CONSIDERING** the need for a hearing to further address the matters which were the subject of the observations requested in the First Decision on Disclosure and the Second Decision on Disclosure;

**CONSIDERING** that the protection of victims and witnesses and the preservation of evidence of further or ongoing investigations require that the issues on restrictions on disclosure and redaction of statements raised on paragraph 10 of the Prosecution's Observations and on paragraphs 3 (2) (2) and 3 (2) (3) of the Duty Counsel's Observations be dealt with in closed session;

**CONSIDERING** that, according to regulation 77 (5) of the Regulations, "[t]he Office of Public Counsel for the defence shall also provide support and assistance to defence counsel and to the person entitled to legal assistance, including where appropriate: (a) [l]egal research and advice; and (b) [a]ppearing before a Chamber in respect of specific issues."

**FOR THESE REASONS**

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<sup>9</sup> The Prosecution's Observations, pp. 11- 15.

<sup>10</sup> The Duty Counsel's Observations, pp. 4-5.

**DECIDE** to convene a hearing with the Prosecution and the Defence to address the matters which were the subject of the observations requested in the First Decision on Disclosure and the Second Decision on Disclosure.

**DECIDE** that the hearing shall be held in public session on 24 April 2006 at 14.00 hours before the single judge in the case against Mr Thomas Lubanga Dyilo.

**DECIDE** that the issues on restrictions on disclosure and redaction of statements raised by the Prosecution and Duty Counsel for the Defence shall be dealt with in the hearing of 24 April 2006 in closed session.

**DECIDE** that an agenda with a set of specific questions to be addressed by the Prosecution and the Defence at the hearing shall be distributed to them by 21 April 2006.

**DECIDE** that the Registrar, or his representative, and a representative of the Court Management Section of the Registry shall attend the hearing and shall address *inter alia* the issues raised by the Prosecution<sup>11</sup> and the Duty Counsel for the Defence<sup>12</sup> with regard to the interim system of disclosure.

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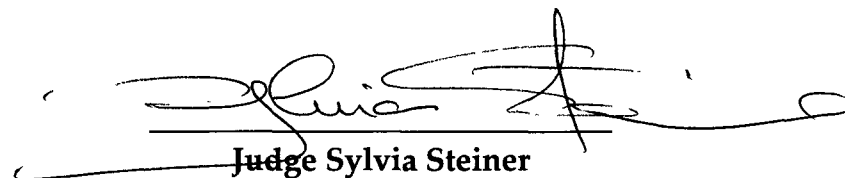
<sup>11</sup> The Prosecution's Observations, pp. 11-15.

<sup>12</sup> The Duty Counsel's Observations, pp. 4-5.

**INSTRUCT** the Registrar to ensure that a member of the Office of Public Counsel for the defence shall be available to assist the defence in the preparation of the hearing and during the hearing itself.

**INSTRUCT** the Registrar to ensure that a representative of the Victims and Witnesses Unit shall be present at the hearing.

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



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

Dated this Friday 7 April 2006

At The Hague

The Netherlands