

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 18 August 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

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 Urgent Request for *Ex Parte* Hearing

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

Pre-Trial Chamber I (“the Chamber”) of the International Criminal Court (“the Court”);

NOTING the “Recommandations of the Registrar on Protective Measures for Prosecution Witnesses” (“the Registry Recommendations”)¹, filed under seal and *ex parte* only available to the Registry on 24 July 2006;

NOTING the “Prosecution’s Request for Access to *Ex Parte* Filings”², filed by the Prosecution on 26 July 2006 under seal and *ex parte* only available to the Prosecution;

NOTING the “Decision on the Prosecution Request for Access to the Registry Recommendations” (“the Decision”)³, issued by Judge Sylvia Steiner, acting as single judge of Pre-Trial Chamber I, on 31 July 2006;

NOTING the “Prosecution’s Request for *Ex Parte* Hearing” (“the Prosecution First Request”)⁴, filed by the Prosecution on 14 August 2006 under seal and *ex parte* only available to the Prosecution, in which the Prosecution requests the single judge (i) “to urgently schedule an *ex parte* hearing with the Prosecution and the VWU in order to address in detail the VWU Recommendations” and (ii) to order the VWU to provide at the hearing “comprehensive information to the Single Judge and the Prosecution in respect of the status of the protective measures concerning REDACTED”⁵;

NOTING the “Prosecution’s Request for an extension of time limit” (“the Prosecution Second Request”)⁶, filed by the Prosecution on 16 August 2006, in which

¹ ICC-01/04-01/06-204-US-Exp.

² ICC-01/04-01/06-210-US-Exp.

³ ICC-01/04-01/06-224-US-Exp.

⁴ ICC-01/04-01/06-329-US-Exp.

⁵ ICC-01/04-01/06-329-US-Exp, p. 13.

⁶ ICC-01/04-01/06-333-Conf-Exp.

the Prosecution *inter alia* requests “that the Pre-Trial Chamber suspend, in regard to the Prosecution, the order prohibiting any direct contact with Applicants REDACTED”⁷;

NOTING articles 57 (3) (c) and 68 (1) of the Rome Statute (“the Statute”), and rules 81, 87 and 88 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that, when the meeting with the Victims and Witnesses Unit (the “VWU”) was held on 29 June 2006, the Chamber had no information on the identity and whereabouts of any of the REDACTED witnesses whom the Prosecution referred to the VWU on 14 June 2006; and that, for this reason, the information requested from the VWU at the meeting was of a general nature and did not refer to the protective measures available for any specific Prosecution witness;

CONSIDERING, however, that the Registry Recommendations, “contain the assessment of the feasibility and sufficiency of the available protective measures for the REDACTED witnesses referred by the Prosecution on 14 June 2006”⁸;

CONSIDERING further that, as stated in the Decision, “the assessment of the Victims and Witnesses Unit on the feasibility and sufficiency of the available protective measures for a given witness is a procedural pre-requisite for the Prosecution's filing, pursuant to rule 81(4) of the Rules, of a motion for the non-disclosure of the identity of that witness for the purpose of the confirmation hearing”⁹;

⁷ ICC-01/04-01/06-333-Conf-Exp, para. 7.

⁸ The Decision, p. 4.

⁹ The Decision, p. 3.

CONSIDERING that if the Prosecution does not agree with the assessment of the VWU concerning a specific witness, the Prosecution will have to explain the reasons for such a disagreement within the framework of a motion under rule 81 (4) of the Rules;

CONSIDERING that the Prosecution has not filed any motion under rule 81 (4) of the Rules requesting the non-disclosure of the identity of Prosecution witnesses for the purpose of the confirmation hearing after the "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence" was issued by the single judge on 19 May 2006¹⁰;

CONSIDERING, therefore, that in the absence of any motion under rule 81 (4) of the Rules, any hearing convened at the request of the Prosecution shall be confined to general issues relating to the Registry Recommendations;

CONSIDERING however, that a number of the concerns expressed by the Prosecution in the Prosecution First Request are not related to any specific witness; and that, in the view of the Chamber, an *ex parte* hearing with the Prosecution and the VWU is necessary, particularly in light of the 28 August 2006 deadline for any Prosecution motion under rule 81 (4) of the Rules for the non-disclosure of the identity of those Prosecution witnesses included in the Prosecution Charging Document and List of Evidence;

CONSIDERING that such a hearing is further justified by the urgent need to receive the most recent information from the VWU on the protective measures for REDACTED referred to in the Prosecution Request;

¹⁰ ICC-01/04-01/06-108.

CONSIDERING, further, that such a hearing will be an appropriate forum for the Prosecution to further elaborate on the arguments in support of the Prosecution Second Request in relation to the suspension *vis-à-vis* the Prosecution of the order prohibiting any direct contact with Applicants REDACTED;

FOR THESE REASONS

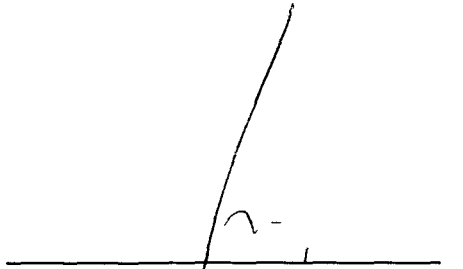
DECIDES to convene an *ex parte* hearing with the Prosecution and the Representatives of the VWU to be held in closed session on 23 August 2006 at 15h00.

DECIDES that the agenda of the hearing will be as follows:


- (1) issues of general nature arising from the Registry Recommendations of 24 July 2006;
- (2) status of the protective measures for REDACTED referred to in the First Prosecution Request;

- (3) Prosecution Second Request relating to the suspension *vis-à-vis* the Prosecution of the order prohibiting any direct contact with Applicants REDACTED.

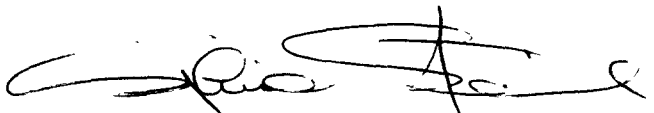
Done in English and French, the English version being authoritative.



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Done this Friday 18 August 2006

At The Hague

The Netherlands