

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 1 September 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 Redacted Version**

**Decision concerning the Prosecution's Requests for Redactions**

**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 “Prosecution’s Application pursuant to Rule 81 (2) and 81(4)” (“the Prosecution First Request”),<sup>1</sup> filed by the Prosecution on 21 August 2006, in which it requested the authorisation of the Chamber for redactions in REDACTED witness statements on which the Prosecution intends to rely at the confirmation hearing;

NOTING the “Prosecution’s Application pursuant to Rules 81 (2) and 81 (4)” (“the Prosecution Second Request”),<sup>2</sup> filed by the Prosecution on 23 August 2006, in which it requested the authorisation of the Chamber for redactions in REDACTED witness statements on which the Prosecution intends to rely at the confirmation hearing;

NOTING the “Decision on the Prosecution practice to provide to the Defence redacted versions of evidence and materials without authorisation by the Chamber”, issued by the single judge on 25 August 2006, in which *inter alia* the Prosecution (i) was ordered “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”; and (ii) was given “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”;

NOTING the “Prosecution’s Request for Authorisation of Redactions in Documents” (“the Prosecution Third Request”),<sup>3</sup> filed by the Prosecution on 28 August 2006, in which it requested the authorisation of the Chamber for redactions in REDACTED

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<sup>1</sup> ICC-01/04-01/06-341-Conf.

<sup>2</sup> ICC-01/04-01/06-347-Conf.

<sup>3</sup> ICC-01/04-01/06-357-Conf

documents on which the Prosecution intends to rely at the confirmation hearing or otherwise subject to inspection pursuant to rule 77 of the Rules of the Procedure and Evidence (“the Rules”);

**NOTING** the “Prosecution’s Application pursuant to Rules 81 (2) and (4)” (“the Prosecution Fourth Request”),<sup>4</sup> filed by the Prosecution on 28 August 2006, in which it requested the authorisation of the Chamber for redactions in certain witness statements and transcripts of interviews on which the Prosecution intends to rely at the confirmation hearing;

**NOTING** the “Prosecution’s Request for Authorization of Redactions in Documents Previously Disclosed to the Defence” (“the Prosecution Fifth Request”),<sup>5</sup> filed by the Prosecution on 29 August 2006, in which it requested the authorisation of the Chamber for redactions in forty-one documents previously disclosed to the Defence in redacted form without the prior authorisation of the Chamber;

**NOTING** the “Prosecution Application pursuant to Rules 81 (2) and 81 (4)” (“the Prosecution Sixth Request”),<sup>6</sup> filed by the Prosecution on 30 August 2006, and the corrigendum to Annexes 1 to 5 of the Prosecution Sixth Request filed by the Prosecution on 31 August 2006, whereby the Prosecution requests authorization for redactions to the transcript of interviews of certain witnesses for which the Prosecution had already requested the non-disclosure of their identity;

**NOTING** the “Decision on the Agenda of the Hearing of 1 September 2006” (“the Decision on the Agenda”),<sup>7</sup> issued by the single judge on 30 August 2006, and the

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<sup>4</sup> ICC-01/04-01/06-358-Conf.

<sup>5</sup> ICC-01/04-01/06-363-Conf-Exp.

<sup>6</sup> ICC-0104-01/06-367-Conf-Exp.

<sup>7</sup> ICC-01/04-01/06-368-Conf-Exp.

“Decision on the Supplementary Agenda of the Hearing of 1 September 2006”(“the Decision on the Supplementary Agenda”);<sup>8</sup>

**NOTING** the *ex parte* hearing of 1 September 2006, in which the single judge stressed the need for a thorough revision of the documents, the witness statements, and the transcripts of witness interviews contained in the various Prosecution’s requests for authorisation for redactions in order to ensure consistency and to adequately guarantee the protection of the relevant witnesses;

**NOTING** that at the *ex parte* hearing of 1 September 2006 the single judge decided:

- (i) that the Prosecution shall re-file by 4 September 2006:
  - a. annexes REDACTED to the Prosecution’s Third Request with proposed redactions as discussed in the hearing of 1 September 2006, and after the relevant documents have been thoroughly revised in light of the concerns raised by the single judge at the hearing;
  - b. annexes REDACTED to the Prosecution First Request with proposed redactions as discussed in the hearing of 1 September 2006, and after the relevant witness statements have been thoroughly revised in light of the concerns raised by the single judge at the hearing;
  - c. annexes REDACTED to the Prosecution Second Request with proposed redactions as discussed in the hearing of 1 September 2006, and after the relevant witness statements have been thoroughly revised in light of the concerns raised by the single judge at the hearing;

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<sup>8</sup> ICC-01/04-01/06-374-Conf-Exp.

- d. annexes REDACTED to the Prosecution Fourth Request with proposed redactions as discussed in the hearing of 1 September 2006, and after such annexes have been thoroughly revised in light of the concerns raised by the single judge at the hearing;
- (ii) that the Prosecution shall present as soon as practicable and no later than 11 September 2006 its observations on the questions posed in the Decision on the Supplementary Agenda in relation to the 29 annexes to the Prosecution Fifth Request;
  - (iii) that the Prosecution shall re-file by 11 September 2006:
    - a. annexes REDACTED to the Prosecution Fourth Request with proposed redactions (i) in light of the concerns highlighted by the single judge in the Decision on the Agenda and in the Decision on the Supplementary Agenda, and (ii) after such annexes have been thoroughly revised in light of the kind of concerns raised by the single judge at the hearing of 1 September 2006;
    - b. annexes REDACTED to the Prosecution Fourth Request with proposed redactions (i) in light of the concerns highlighted by the single judge in the present decision, and (ii) after such annexes have been thoroughly revised in light of the kind of concerns raised by the single judge at hearing of 1 September 2006;
    - c. annex REDACTED to the Prosecution Sixth Request with proposed redactions (i) in light of the concerns highlighted by the single judge in the Decision on the Supplementary Agenda, and (ii) after such annexes have been thoroughly revised in light of the kind of concerns raised by the single judge at the hearing of 1 September 2006;
    - d. the rest of the annexes to the Prosecution Sixth Request with proposed redactions after such annexes have been thoroughly

revised in light of the kind of concerns raised by the single judge at the hearing of 1 September 2006;

- (iv) that the hearing of 4 September 2006 shall be postponed, and that a new date shall be fixed after the Prosecution has refiled the documents, witness statements and transcripts of witness interviews referred to in (i), (ii) and (iii) above;

**NOTING** articles 57 (3) (c), 61 (3) (b), 67 (2) and 68 (1) of the Rome Statute (“the Statute”) and rules 76 to 83 of the Rules of Procedure and Evidence (“the Rules”);


**CONSIDERING** that highlighting the concerns of the single judge in relation to documents, witness statements and transcripts of witness interviews for which the Prosecution requests authorisation for redactions would expedite the ruling on the various Prosecution requests;

### **FOR THESE REASONS**

**DECIDE** that in addition to the concerns pointed out in the Decision on the Agenda and in the Decision on the Supplementary Agenda, the Prosecution, when revising annexes REDACTED to the Fourth Prosecution Request, should pay particular attention to the following paragraphs:

REDACTED

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



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

Dated this Friday 1 September 2006

At The Hague

The Netherlands