

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 7 September 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 Document

**Decision on the Prosecution deadline of 12 September 2006 and the Defence
deadline of 12 September 2006**

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

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

NOTING the decision of Pre-Trial Chamber I at the first appearance of Thomas Lubanga Dyilo on 20 March 2006, according to which the confirmation hearing was initially scheduled for 27 June 2006¹;

NOTING the “Decision on the Final system of Disclosure and the Establishment of a Timetable”² (“Final Decision on the System of Disclosure”) issued by the single judge on 15 May 2006;

NOTING the “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Statute” (“the Decision Establishing General Principles”),³ issued by the single judge on 19 May 2006;

NOTING the “Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable Set in the Decision on the Final System of Disclosure”⁴ (“Decision on the Postponement of the Confirmation Hearing”), issued by the single judge on 24 May 2006, which rescheduled the confirmation hearing for 28 September 2006;

NOTING the “Prosecution’s Application pursuant to Rule 81 (2) and 81(4)” (“the Prosecution First Request”),⁵ filed by the Prosecution on 21 August 2006, in which it requested leave of the Chamber to redact certain witness statements on which the Prosecution intends to rely at the confirmation hearing;

¹ ICC-01/04-01/06-T-3-EN, page 8.

² ICC-01/04-01/06-102.

³ ICC-01/04-01/06-108.

⁴ ICC-01/04-01/06-126.

⁵ ICC-01/04-01/06-341-Conf.

NOTING the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Second Request"),⁶ filed by the Prosecution on 23 August 2006, in which it requested leave of the Chamber to redact certain 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;

NOTING the "Final Decision on the E-Court Protocol for the Provision of Evidence, Material and Witness Information on Electronic Version for their Presentation During the Confirmation Hearing"⁷ ("Final Decision on the E-Court Protocol") issued by the single judge on 28 August 2006;

NOTING the "Submission of the Document Containing the Charges pursuant to Article 61 (3) (a) and of the List of Evidence pursuant to Rule 121 (3)",⁸ filed by the Prosecution on 28 August 2006, which included the Prosecution Charging Document and List of Evidence;

NOTING the "Prosecution's Request for Authorisation of Redactions in Documents" ("the Prosecution Third Request"),⁹ filed by the Prosecution on 28 August 2006, in which it requested leave of the Chamber to redact certain documents on which the Prosecution intends to rely at the confirmation hearing or otherwise subject to

⁶ ICC-01/04-01/06-347-Conf.

⁷ ICC-01/04-01/06-360.

⁸ ICC-01/04-01/06-356.

⁹ ICC-01/04-01/06-357-Conf.

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”),¹⁰ filed by the Prosecution on 28 August 2006, in which it requested leave of the Chamber to redact several 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”),¹¹ filed by the Prosecution on 29 August 2006, in which it requested leave of the Chamber to redact forty-one documents previously disclosed to the Defence in redacted form without prior authorisation of the Chamber;

NOTING the “Prosecution Application pursuant to Rules 81 (2) and 81 (4)” (“the Prosecution Sixth Request”),¹² 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, in which the Prosecution requested leave to redact the transcript of interviews of certain witnesses whose identity the Prosecution had previously requested not be disclosed;

NOTING the “Decision on the Agenda of the Hearing of 1 September 2006” (“the Decision on the Agenda”),¹³ issued by the single judge on 30 August 2006 and the “Decision on the Supplementary Agenda of the Hearing of 1 September 2006” (“the

¹⁰ ICC-01/04-01/06-358-Conf.

¹¹ ICC-01/04-01/06-363-Conf-Exp.

¹² ICC-01/04-01/06-367-Conf-Exp.

¹³ ICC-01/04-01/06-368-Conf-Exp.

Decision on the Supplementary Agenda”),¹⁴ issued by the single judge on 31 August 2006 in which a second *ex parte* hearing with the Prosecution and the representatives of the Victims and Witnesses Unit was convened for 4 September 2006;

NOTING the *ex parte* hearing with the Prosecution and the representatives of the Victims and Witnesses Unit held in closed session on 1 September 2006, at which the single judge (i) ordered the Prosecution to refile the annexes to the Prosecution Requests and to address the questions posed and the concerns raised by the single judge; and (ii) decided to postpone the *ex parte* hearing of 4 September 2006 and to set a new date for that hearing only once the Prosecution has complied with the order for re-filing by 11 September 2006;

NOTING the “Decision on the Prosecution Request for Extension of Time, Clarification and Provision of Information”,¹⁵ issued by the single judge on 1 September 2006, and the “Decision concerning the Prosecution’s Requests for Redactions”, issued by the single judge on 1 September 2006;¹⁶

NOTING the Defence’s submission during the Status conference held on 5 September 2006, concerning its difficulties to comply with the deadline of 12 September 2006; to which the Prosecution has also recognized,

PURSUANT to articles 57 (3) (c), 61, 67 and 68 of the Rome Statute (“the Statute”); rules 15, 76 to 83, 121 and 131 of the Rules of Procedure and Evidence (“the Rules”); regulation 26 of the Regulations of the Court (“the Regulations”); and regulation 21 of the Regulations of the Registry;

¹⁴ ICC-01/04-01/06-374-Conf-Exp.

¹⁵ ICC-01/04-01/06-376-Corr.

¹⁶ ICC-01/04-01/06-377-Conf-Exp

CONSIDERING that, according to the Decision on the Postponement of the Confirmation Hearing, the confirmation hearing in the present case is scheduled for 28 September 2006; that, according to rule 121 (4) and (5) of the Rules, the Prosecution has until 12 September 2006, to provide to the Defence and to file with the Registry: (i) a document containing the amended charges, if any, together with the list of evidence that the Prosecution intends to bring in support of those charges at the hearing; and (ii) a list of the new evidence, if any, on which the Prosecution intends to rely at the confirmation hearing (“the Prosecution List of Additional Evidence”); and that none of the circumstances referred to in the present decision justify any amendment to that time limit;

CONSIDERING however that, according to the Decision on the Postponement of the Confirmation Hearing and rule 121 (6) of the Rules, the Defence has until 12 September 2006 to file the Defence List of Evidence, as well as any request for leave to redact the evidence included in that list;

CONSIDERING that, on 28 August 2006, the Defence had access to (i) the Prosecution Charging Document and List of Evidence and (ii) the evidence referred to in that document for which the Prosecution did not request leave to make redactions; and that, by 7 September 2006 at the latest, the Defence will have access to an electronic version of that evidence with the particulars provided for in the Final Decision on the E-Court Protocol;

CONSIDERING that at the *ex parte* hearing on 1 September 2006, the single judge (i) stressed the need for a thorough revision of the documents by the Prosecution, the witness statements, and the transcripts of witness interviews contained in the various Prosecution’s requests for leave to make redactions for the purpose of ensuring consistency and adequately guaranteeing the protection of the relevant witnesses;

and (ii) decided that, these documents, witness statements and transcripts of witness statements should be thoroughly revised by the Prosecution in the light of the concerns raised by the single judge at the hearing on 1 September 2006,

CONSIDERING that at the *ex parte* hearing of 1 September 2006, the single judge also decided that a new date will be set once the Prosecution has refiled, by 11 September 2006, the documents, witness statements and transcripts of witness interviews;

CONSIDERING that, according to the Final Decision on the E-Court Protocol, the Defence will have access only to an electronic version of that evidence with the particulars provided for in the Final Decision on the E-Court Protocol within four days of the notification of the decision of the single judge on the Prosecution Requests;

CONSIDERING that, by the 12 September 2006, the Defence will not yet have access to an important part of the evidence contained in the Prosecution Charging Document and List of Evidence; and that, under these conditions, maintaining the 12 September deadline for the Filing of the Defence List of Evidence will be contrary to the rights of Thomas Lubanga Dyilo to a fair trial;

FOR THESE REASONS

DECIDES that the Prosecution has until 12 September 2006 to file:

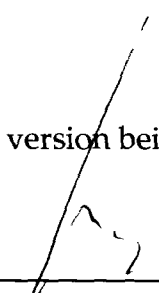
- (i) a document containing the amended charges, if any, together with the list of evidence that the Prosecution intends to bring in support of those charges at the hearing;
- (ii) a list of the new evidence, if any, on which the Prosecution intends to rely at the confirmation hearing (“the Prosecution List of Additional Evidence”);
- (iii) any request for leave to make redactions in any evidence on which the Prosecution intends to rely at the confirmation hearing and which was not included in the Prosecution Charging Document and List of evidence filed on 28 August 2006;

DECIDES to suspend the 12 September 2006 time limit for the filing of the Defence List of Evidence;

DECIDES that at the status conference on 19 September 2006 at 1400 the following matters will be dealt with, in addition to those matters related to the *inter partes* disclosure process and the process of filing with the Registry the evidence on which the parties intend to rely at the confirmation hearing:

- (i) the new deadline for the presentation of the Defence List of Evidence;
and
- (ii) the consequences of this new deadline for the starting date of the confirmation hearing.

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



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Dated this Thursday 7 September 2006

At The Hague

The Netherlands