

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 19 September 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

**Decision on a General Framework concerning Protective Measures for Prosecution
and Defence Witnesses**

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I, Judge Sylvia Steiner, judge at 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, in which the Victims and Witnesses Unit recommended the adoption of a number of general measures for the Protection of Prosecution and Defence witnesses;

NOTING the requests of the Prosecution under rule 81 (2) and (4) of the Rules of Procedure and Evidence ("the Rules") between 21 August 2006 and 29 August 2006;² and the amended requests of the Prosecution under rule 81 (2) and (4) between 4

¹ ICC-01/04-01/06-204-US-Exp.

² See: (i) the "Prosecution's Application pursuant to Rule 81 (2) and 81(4)" ("the Prosecution First Request"), ICC-01/04-01/06-341-Conf, filed by the Prosecution on 21 August 2006, in which it requested the authorisation of the Chamber for redactions in some witness statements on which the Prosecution intends to rely at the confirmation hearing; (ii) the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Second Request"), ICC-01/04-01/06-347-Conf, filed by the Prosecution on 23 August 2006, in which it requested the authorisation of the Chamber for redactions in certain witness statements on which the Prosecution intends to rely at the confirmation hearing; (iii) the "Prosecution's Request for Authorisation of Redactions in Documents" ("the Prosecution Third Request"), ICC-01/04-01/06-357-Conf, filed by the Prosecution on 28 August 2006, in which it requested the authorisation of the Chamber for redactions in some 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"); (iv) the "Prosecution's Application pursuant to Rules 81 (2) and (4)" ("the Prosecution Fourth Request"), filed by the Prosecution on 28 August 2006, ICC-01/04-01/06-358-Conf, in which it requested the authorisation of the Chamber for redactions in a number of witness statements and transcripts of interviews on which the Prosecution intends to rely at the confirmation hearing; (v) the "Prosecution's Request for Authorization of Redactions in Documents Previously Disclosed to the Defence" ("the Prosecution Fifth Request"), ICC-01/04-01/06-363-Conf-Exp, 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; and (vi) the "Prosecution Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Sixth Request"), ICC-0104-01/06-367-Conf-Exp, 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.

September 2006 and 12 September 2006 in compliance with the oral order of the single judge at the *ex parte* hearing on 1 September 2006;³

NOTING the hearing on 29 August 2006, in which the possible adoption of a number of general measures for the Protection of Prosecution and Defence witnesses for the purpose of the confirmation hearing were discussed with the Prosecution, the Defence and the representatives of the Victims and Witnesses Unit;

³ See: (i) "Prosecution's Amended Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution First Amended Request"), ICC-01/04-01/06-381-Conf, and the Addendum to such Application ("the Addendum to the First Amended Request"), ICC-01/04-01/06-382-Conf, both filed by the Prosecution on 4 September 2006, in which the Prosecution requested authorisation for additional redactions to six witness statements which were the subject of the Prosecution First Request and the Prosecution Second Request; (ii) the "Prosecution's Request for Authorisation of Revised Redactions in Documents" ("the Prosecution Second Amended Request"), ICC-01/04-01/06-384-Conf, filed by the Prosecution on 4 September 2006, in which the Prosecution requested revised redactions to the 14 documents that were the subject of the Prosecution Third Request; (iii) the "Re-submission of Confidential-*Ex Parte*-Prosecution Only Annex 9 to the 4 September 2006 Prosecution's Request for Authorisation of Revised Redactions in Documents" ("the Re-submission of Annex 9 to the Prosecution Second Amended Request"), ICC-01/04-01/06-391-Conf-Exp, filed by the Prosecution on 6 September 2006, in which the Prosecution re-submitted Annex 9 to the Prosecution Second Amended Request; (iv) the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Third Amended Request"), ICC-01/04-01/06-392-Conf, filed by the Prosecution on 6 September 2006, in which the Prosecution requested authorisation for additional redactions to certain witness statements which were the subject of the Prosecution First Request and the Prosecution Second Request; (v) the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Fourth Amended Request"), ICC-01/04-01/06-395-Conf, filed by the Prosecution on 7 September 2006, in which the Prosecution requested additional redactions to a number of witness statements, transcripts of witness interviews and documents which were the subject of the Prosecution Fourth Request; (vi) the "Prosecution's Request for Authorisation of Revised Redactions in Documents" ("the Prosecution Fifth Amended Request"), ICC-01/04-01/06-409-Conf-Exp, filed by the Prosecution on 11 September 2006, in which the Prosecution requested revised redactions to the documents that were the subject of the Prosecution Fifth Request; (vii) the "Prosecution's Application pursuant to Rules 81 (2) and 81(4)" ("the Prosecution Sixth Amended Request"), filed by the Prosecution on 11 September 2006, ICC-01/04-01/06-410-Conf, in which the Prosecution requested additional redactions to the remaining witness statements, transcripts of witness interviews and documents which were the subject of the Prosecution Fourth Request and the Prosecution Sixth Request; (viii) the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Amendment to the Prosecution First Amended Request"), ICC-01/04-01-06-431-Conf, filed by the Prosecution on 12 September 2006, in which the Prosecution requested additional redactions to the statement of one witness which was the subject of the Prosecution First Amended Request; and (ix) the "Prosecution's Application pursuant to Rules 81 (2) and 81 (4)" ("the Prosecution Amendment to the Prosecution Fourth Amended Request"), ICC-01/04-01/06-434-Conf-Exp, filed by the Prosecution on 13 September 2006, in which the Prosecution requested additional redactions to the statement of one witness which was the subject of the Prosecution Fourth Amended Request.

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

CONSIDERING that the recent deterioration of the security situation in some parts of the Democratic Republic of the Congo (“the DRC”) has had an impact on the range of protective measures currently available to and feasible for witnesses on whom the Prosecution or the Defence intends to rely at the confirmation hearing; that, in these circumstances, it is necessary to adopt several general measures for the protection of Prosecution and Defence witnesses in the context of the proceedings leading to and during the confirmation hearing; and that, in the event the charges are confirmed, the said general measures could also be applicable in those proceedings leading to the commencement of the trial;

CONSIDERING the submissions of the parties at the hearing on 29 August 2006, and in particular in relation to (i) the role of the Victims and Witness Unit in providing training and advice in all matters related to its areas of responsibility; (ii) the proper mechanism to contact witnesses accepted into the witness protection program run by the Victims and Witnesses Unit or on whom the other party intends to rely at the confirmation hearing; and (iii) the importance of enhancing cooperation in matters related to the protection of witnesses with the DRC, other States Parties, non-States Parties and intergovernmental organisations;

CONSIDERING that at the hearing on 29 August 2006 the Defence had no objection to providing the Chamber with the names of the members of the Defence team who have access to non-public information and/or materials concerning those witnesses on whom the Prosecution or the Defence intend to rely at the confirmation hearing; and that, in the view of the Chamber, the adoption of this measure *vis-à-vis* the

Prosecution will not be effective given the numerous persons that have access to such information and/or materials within the Office of the Prosecutor.

FOR THESE REASONS

ORDER:

- (i) the Defence to provide to the Pre-Trial Chamber a list of names of the members of the Defence team who have access to non-public information and/or materials concerning the witnesses on whom the Prosecution or the Defence intend to rely at the confirmation hearing;
- (ii) the Prosecution and the Defence to ensure that any member leaving the Prosecution and Defence teams returns to that team all non-public information and/or materials concerning those witnesses on whom the Prosecution and Defence intend to rely at the confirmation hearing;
- (iii) the Prosecution and the Defence to consult with, and to be trained by, the Victims and Witnesses Unit on all matters relating to that unit, and in particular in relation to (a) guidelines for investigators to minimise exposure to risk, and (b) measures available to ensure confidentiality, secure handling of documents and secure communications;
- (iv) the Registrar, acting under the authority of the President of the Court when so required under regulation 107 of the Regulations of the Court, to treat as a matter of urgency the negotiation of cooperation agreements and *ad hoc* arrangements on matters related to the protection of witnesses with the DRC, other States Parties and non-States Parties, MONUC and other intergovernmental organisations. These cooperation agreements and *ad hoc* arrangements shall in particular seek to enhance (a) national capacity to protect witnesses and

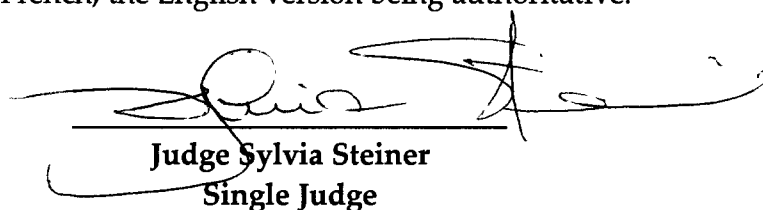
(b) cooperation with the Court in order to protect witnesses working within their structures or accepted within their national witness protection programmes (which could include *inter alia* redeployment outside risk areas);

DECIDE :

- (i) that all contact by the Prosecution and the Defence with witnesses on whom they intend to rely at the confirmation hearing and who have been accepted into the witness protection programme run by the Registry shall be arranged through the Victims and Witnesses Unit;
- (ii) that all contact by the Prosecution and the Defence with witnesses on whom the other party intends to rely at the confirmation hearing and who have been accepted into the witness protection programme run by the Victims and Witnesses Unit shall be (a) subject to the prior approval of the Chamber and (b) arranged through the Victims and Witnesses Unit;
- (iii) that all contact by the Prosecution and the Defence with witnesses on whom the other party intends to rely at the confirmation hearing, for whom non-disclosure of identity has not been granted and who are not part of the witness protection programme run by the Victims and Witnesses Unit, shall take place as follows:
 - a. no prior authorisation of the Chamber shall be required;
 - b. the party wishing to contact the witness shall inform the party which intends to rely on the relevant witness;

- c. the party which intends to rely on the relevant witness shall (i) ask the witness whether he/she agrees to be interviewed by the other party, and (ii) if the witness has no objection, give the other party the witness' contact details;
- d. the party wishing to contact the witness shall inform the party which intends to rely on the relevant witness of the time and place of any scheduled interview so as to allow the latter to be present at the beginning of the interview with the witness.

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



Judge Sylvia Steiner
Single Judge

Dated this Tuesday 19 September 2006

At The Hague

The Netherlands