

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 20 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

**Second Decision on the Prosecution Requests and Amended Requests for
Redactions under Rule 81**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
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**The Representatives of Victims a/0001/06
to a/0003/06**

Mr Luc Walley
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Office of Public Counsel for the Defence
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I, Judge Sylvia Steiner, judge at the International Criminal Court (“the Court”);

NOTING the decision of Pre-Trial Chamber I (“the Chamber”) during 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; 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”), issued by the single judge on 19 May 2006;³ 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” (“Decision on the Postponement of the Confirmation Hearing”), issued by the single judge on 24 May 2006;⁴ and the “Decision on the Prosecution deadline of 12 September 2006 and the Defence deadline of 12 September 2006”, issued by the Chamber on 7 September 2006;⁵

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. In this decision the single judge stated *inter alia* that the assessment of the Victims and Witnesses Unit on the availability and feasibility of the protective measures for a given witness constitutes a pre-requisite for any motion for non-disclosure of identity under rule 81 (4) of the Rules of Procedure and Evidence (“the Rules”);

⁴ ICC-01/04-01/06-126. In this decision the confirmation hearing was rescheduled for 28 September 2006.

⁵ ICC-01/04-01/06-407. In this decision the 12 September 2006 deadline for the filing of the Defence List of Evidence was suspended and the issue of the new deadline for the presentation of the Defence List of Evidence was included in the agenda of the status conference to be held on 19 September 2006;

NOTING the requests of the Prosecution under rule 81 (2) and (4) between 21 August 2006 and 29 August 2006;⁶

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;⁷ and 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" ("Final Decision on the E-Court Protocol") issued by the single judge on 28 August 2006;⁸

⁶ 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.

⁷ ICC-01/04-01/06-355. In this decision the Prosecution *inter alia* (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";

⁸ ICC-01/04-01/06-360.

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)”,⁹ filed by the Prosecution on 28 August 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, whereby the single judge (i) ordered the Prosecution to re-file the annexes to the Prosecution First Request, the Prosecution Second Request, the Prosecution Third Request, the Prosecution Fourth Request and the Prosecution Sixth Request, and to address the questions posed and the concerns raised in the Decision on the Supplementary Agenda in relation to the Prosecution Fifth Request; and (ii) decided to postpone the *ex parte* hearing of 4 September 2006 and to set a new date for such a hearing only after 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”,¹⁰ 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;¹¹

NOTING the amended requests of the Prosecution under rule 81 (2) and (4) between 4 September 2006 and 12 September 2006 in compliance with the oral order of the single judge at the *ex parte* hearing of 1 September 2006;¹²

⁹ ICC-01/04-01/06-356.

¹⁰ ICC-01/04-01/06-376-Corr.

¹¹ ICC-01/04-01/06-377-Conf-Exp

¹² 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

NOTING the “Decision concerning the compliance by the Prosecution with the pre-requisites to file rule 81 (4) motions” (“the Decision concerning the Prosecution Compliance”), issued by the single judge on 5 September 2006;¹³ the “Prosecution’s Response to the Decision concerning the compliance by the Prosecution with the pre-requisites to file rule 81 (4) motions”,¹⁴ filed by the Prosecution on 7 September 2006, in which the Prosecution informed the single judge that, as required by the Decision on the Prosecution Compliance, it had referred two witnesses to the Victims and Witnesses Unit; and the “Submission of the Registrar on Assessments of the

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;

¹³ ICC-01/04-01/06-389. In this decision the single judge ordered the Prosecution to refer to the Victims and Witnesses Unit all those witnesses for which the Prosecution has filed a rule 81 (4) motion without having first received the assessment of the Victims and Witnesses Unit on the availability and feasibility of protective measures.

¹⁴ ICC-01/04-01/06-399-Conf.

feasibility and availability of protective measures in terms of the order of Pre-Trial Chamber I on 5 September 2006”,¹⁵ filed by the Registry on 11 September 2006;

NOTING the *ex parte* hearings with the Prosecution and the representatives of the Victims and Witnesses Unit held by the single judge on 8 September 2006 and 12 September 2006 on the Prosecution amended requests filed by the Prosecution between 4 and 12 September 2006;

NOTING the “Decision Inviting the Prosecution to Revise Proposed Redactions under Rule 81”, filed by the single judge on 15 September 2006 (“the Decision Inviting the Prosecution”),¹⁶ in which the single judge invited the Prosecution to revise the redactions proposed by the Prosecution in relation to certain witness statements and related documents;

NOTING the “Prosecution’s Application pursuant to Rules 81 (2) and 81 (4) with Further Details” (“the Prosecution’s First Response to the Decision Inviting the Prosecution”),¹⁷ the “Prosecution’s Application pursuant to Rules 81 (2) and 81 (4) of the Rules with Further Details” (“the Prosecution’s Second Response to the Decision Inviting the Prosecution”),¹⁸ and the “Prosecution’s Amended Application pursuant to Rules 81 (2) and 81 (4) with Further Details” (“the Prosecution’s Third Response to the Decision Inviting the Prosecution”),¹⁹ filed by the Prosecution on 18, 19 and 20 September 2006, in which the Prosecution addressed the concerns pointed out by the single judge in the Decision Inviting the Prosecution;

¹⁵ ICC-01/04-01/06-411-Conf-Exp.

¹⁶ ICC-01/04-01/06-438.

¹⁷ ICC-01/04-01/06-441-Conf-Exp-AnxA.

¹⁸ ICC-01/04-01/06-446-Conf-Exp-AnxA.

¹⁹ ICC-01/04-01/06-451-Conf-Exp-AnxA.

NOTING articles 57 (3) (c), 61, 67, 68 and 69 of the Rome Statute (“the Statute”); and rules 81, 87 and 88 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that, despite the considerable amount of material and the fact that the filings were made by the Prosecution in the last seven days of the three-month period pursuant to the Decision on the Postponement of the Confirmation Hearing, the single judge has carefully examined the redactions proposed by the Prosecution in each of the hundreds of documents, witness statements and transcripts of witness interviews contained in the Prosecution requests and the Prosecution amended requests filed under rule 81 (2) and (4) of the Rules between 21 August and 12 September 2006; and that, as a result of that examination, several *ex parte* hearings for which agendas were submitted in advance to the Prosecution and the representatives of the Victims and Witnesses Unit have been held since 1 September 2006 on the said requests and amended requests;

CONSIDERING that the only restrictions to the disclosure obligations of the Prosecution and Defence expressly provided for in the Statute and the Rules are those in rules 81 and 82 of the Rules;

CONSIDERING that, according to rule 81 (1) of the Rules, “reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure”;

CONSIDERING that, according to rule 81 (2) of the Rules, so as not to prejudice further or ongoing investigations, the single judge may authorise the non-disclosure of materials or information to the Defence which in principle the Prosecution is required to disclose in accordance with its disclosure obligations; and that none of

redactions proposed by the Prosecution under rule 81 (2) of the Rules is based on the need to protect information related to the ongoing investigation in the current case against Thomas Lubanga Dyilo;

CONSIDERING that according to rule 81(4) of the Rules, the single judge shall “take the necessary steps to ensure confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial”; and that the notion of “witness” in rule 81 (4) of the Rules must be understood as including not only those witnesses on whom the Prosecution intends to rely at the confirmation hearing but also those on whom the Prosecution may decide to rely at trial if the charges against Thomas Lubanga Dyilo are confirmed;

CONSIDERING that all the Prosecution requests and all amended requests refer to documents and to statements and transcripts of the interviews of witnesses on whom the Prosecution intends to rely at the confirmation hearing; and that most of them were taken in the context of the investigation of the Prosecution of the DRC situation and prior to the unsealing of the warrant of arrest for Thomas Lubanga Dyilo;

CONSIDERING the “Recommendations of the Registrar on Protective Measures for Prosecution Witnesses”²⁰ according to which the longer the time between the disclosure of the identity of the witnesses and the time when the witnesses are to testify, the greater the danger is for the witnesses²¹, and that, in the view of the

²⁰ ICC-01/04-01/06-204-US-Exp

²¹ See also for example Recommendation No.R (97) 13 adopted by the Committee of Ministers of the Council of Europe on 17 September 1997 stating that the following measures could be adopted to ensure a “balance in democratic society between the prevention of disorder or crime and the safeguarding of the right of the accused to a fair trial : (...) Revealing the identity of witnesses at the latest possible stage of the proceedings and/or releasing only selected details”

Registrar, among other protective measures, the non-disclosure of the identity of some of the witnesses prior to the commencement of the trial is a protective measure that could minimise the risk to the safety of the relevant witness;

CONSIDERING that there is a need to authorise several redactions in several of the documents, witness statements and transcripts of witness interviews contained in the Prosecution requests and amended requests so as:

- (i) not to prejudice further investigations, which *inter alia* includes protecting the identity of:
 - a. Prosecution sources when the relevant organisation has expressly requested that its identity not be revealed to the Defence at this stage of the proceedings, and when the person supplying the document to such an organisation or the contact person(s) of such organization in the DRC currently resides in a risk area;
 - b. Prosecution sources when the individual who transmitted the document to the Prosecution currently resides in a area of risk;
 - c. Persons who are believed not to be Prosecution sources, are referred to in handwritten notes which are not part of the content of the relevant documents, and are currently leaving, or may be currently leaving, in areas of risk;
- (ii) to protect the identities of certain witnesses on whom the Prosecution intends to rely at the confirmation hearing;
- (iii) to protect the identities of the other witnesses on whom the Prosecution may decide to rely at trial in the present case if the charges against Thomas Lubanga Dyilo are confirmed; and/or
- (iv) to protect the identity of alleged victims of the crimes which are part of the present case against Thomas Lubanga Dyilo;

CONSIDERING that none of the redactions authorised in the present decision seem to affect any potentially exculpatory information;

CONSIDERING that the Prosecution proposed redactions to certain documents on which it intends to rely at the confirmation hearing, on the one hand, are necessary for the preservation of further investigations and/or the protection of victims and Prosecution witnesses, and, on the other hand, make the document at face value wholly irrelevant in the present case, which is confined to the alleged enlistment, conscription and active use in military operation of children under the age of fifteen; and that there is therefore no need to authorise any redaction to the said documents because, according to article 69 (4) of the Statute, they cannot be admitted into evidence for the purpose of the confirmation hearing;

CONSIDERING further that, without prior adequate disclosure to Thomas Lubanga Dyilo, the Prosecution cannot rely on those parts of the documents, witness statements and transcripts of witness interviews for which redactions are authorised in the present decision; and that the probative value of the unredacted parts of the said documents, witness statements and transcripts of witness interviews may be diminished as a result of the redactions proposed by the Prosecution and authorised by the Chamber;

CONSIDERING that at the *ex parte* hearing of 1 September 2006, the Prosecution informed the Single Judge that: (i) it has not included in the Fifth Prosecution Request of 29 August 2006 two documents which the Prosecution has disclosed to the Defence in a redacted form without the previous authorisation of the Chamber, and (ii) that the reason for that exclusion is that the provider of the document, pursuant to article 54 (3) (c) of the Statute, required the redactions as a condition to

consenting to the use of the document as evidence at the confirmation hearing; and that the Prosecution must continue doing its utmost to obtain the agreement of the provider on the transmission to the Defence of the unredacted version of the said two documents;

FOR THESE REASONS

DECIDE to authorise the redactions proposed by the Prosecution to:

- (i) the statement of REDACTED as re-filed in ICC-01/04-01/06-Conf-Exp-392-Anx4;
- (ii) the statement of REDACTED as re-filed in ICC-01/04-01/06-392-Conf-Exp-Anx6;
- (iii) the investigator's report of the interview of REDACTED as re-filed in ICC-1/04-01/06-392-Conf-Exp-Anx8;
- (iv) the statement of REDACTED as re-filed in ICC-01/04-01/06-441-Conf-Exp-Anx1;
- (v) the first statement of REDACTED as re-filed in ICC-01/04-01/06-441-Conf-Exp-Anx3;
- (vi) the second statement of REDACTED as re-filed in ICC-01/04-01/06-441-Conf-Exp-Anx4;
- (vii) The documents related to the second statement of REDACTED as refiled in ICC-01/04-01/06-441-Conf-Exp-Anx4, except for those subsequently re-filed in annexes 2, 3 and 4 of ICC-01/04-01/06-446-Conf-Exp;

- (viii) The remaining documents related to the second statement of REDACTED as refiled in ICC-01/04-01/06-446-Conf-Exp-Anx2, ICC-01/04-01/06-446-Conf-Exp-Anx3 and ICC-01/04-01/06-446-Conf-Exp-Anx4;
- (ix) the statement of Witness REDACTED as re-filed in ICC-01/04-01/06-446-Conf-Exp-Anx1;
- (x) the statement of REDACTED as re-filed in ICC-01/04-01/06-451-Conf-Exp-Anx1;
- (xi) the statement of REDACTED as re-filed in ICC-1/04-01/06-451-Conf-Exp-Anx2;

ORDER the Prosecution REDACTED

DECIDE to authorise the redactions proposed by the Prosecution to the documents contained in:

- (i) ICC-01/04-01/06-409-Conf-Exp-Anx2; page 3 of ICC-01/04-01/06-409-Conf-Exp-Anx4; ICC-01/04-01/06-409-Conf-Exp-Anx5; ICC-01/04-01/06-409-Conf-Exp-Anx6; ICC-01/04-01/06-409-Conf-Exp-Anx7; ICC-01/04-01/06-409-Conf-Exp-Anx8; ICC-01/04-01/06-409-Conf-Exp-Anx12; ICC-01/04-01/06-409-Conf-Exp-Anx26; ICC-01/04-01/06-409-Conf-Exp-Anx27; ICC-01/04-01/06-409-Conf-Exp-Anx28 and ICC-01/04-01/06-409-Conf-Exp-Anx29 insofar as (i) the Prosecution states that these documents are incriminating evidence; (ii) the redactions cover only information which identifies the Prosecution source; (iii) the Prosecution source is an organisation which has expressly requested that its identity not be

revealed to the Defence at this stage of the proceedings; and (iv) the person supplying the document to that organisation or being the contact person(s) of such organization in the DRC currently resides in a risk area;

- (ii) ICC-01/04-01/06-409-Conf-Exp-Anx21; and ICC-01/04-01/06-409-Conf-Exp-Anx22 because (i) the Prosecution has stated that they constitute incriminating evidence; (ii) the documents constitute a compilation of newspaper articles which are in the public domain; (iii) the proposed redactions do not affect the content of the documents because they cover only the name of the individual who transmitted those documents to the Prosecution; and (iv) the individual is currently living in a risk area;
- (iii) ICC-01/04-01/06-384-Conf-Exp-Anx1; ICC-01/04-01/06-384-Conf-Exp-Anx2; ICC-01/04-01/06-409-Conf-Exp-Anx9; and ICC-01/04-01/06-409-Conf-Exp-Anx23 because (i) the Prosecution states that the document constitutes incriminating evidence; and (ii) the redactions are limited to references to the names and telephone numbers of certain persons which are not part of the content of the documents; (iii) the relevant persons are believed not to have transmitted the documents to the Prosecution; and (iv) there are grounds to believe that those persons may be residing in risk areas.
- (iv) ICC-01/04-01/06-384-Conf-Exp-Anx4; ICC-01/04-01/06-409-Conf-Exp-Anx16; ICC-01/04-01/06-409-Conf-Exp-Anx18; ICC-01/04-01/06-409-Conf-Exp-Anx19; ICC-01/04-01/06-409-Conf-Exp-Anx20; and ICC-01/04-01/06-409-Conf-Exp-Anx25 because (i) the Prosecution states that the document constitutes incriminating evidence; and (ii) the redactions are limited to the initials and identifying information of Prosecution witnesses who are believed to be currently located in risk areas;

- (v) ICC-01/04-01/06-384-Conf-Exp-Anx3 because (i) the Prosecution states that the document constitutes incriminating evidence; and (ii) the redactions are limited to the names and identifying information of alleged victims of crimes included in the present case against Thomas Lubanga Dyilo who are believed to be currently located in risk areas;
- (vi) ICC-01/04-01/06-384-Conf-Exp-Anx5; and ICC-01/04-01/06-384-Conf-Exp-Anx6 because (i) the Prosecution states that the document constitutes incriminating evidence; and (ii) the redactions are limited to:
- a. the names and identifying information of alleged victims of crimes included in the present case against Thomas Lubanga Dyilo who are believed to be currently located in risk areas; and
 - b. identifying information of the Prosecution source which is an organisation which has expressly requested that its identity not be revealed to the Defence at this stage of the proceedings and the person(s) supplying the document to that organisation or being the contact person(s) of such organization in the DRC currently resides in a risk area;
- (vii) ICC-01/04-01/06-409-Conf-Exp1; ICC-01/04-01/06-409-Conf-Exp13; ICC-01/04-01/06-409-Conf-Exp-Anx14; ICC-01/04-01/06-409-Conf-Exp 17; and ICC-01/04-01/06-Conf-Exp-Anx24 because (i) the Prosecution does not intend to rely in any of these documents at the confirmation hearing; (ii) in the view of the single judge, none of the documents seem to have any potentially exculpatory information, and thus the proposed redactions to such documents do not affect any potentially exculpatory information; and (iii) the redactions are limited to:

- a. the Prosecution source, which is an organisation which has expressly requested that its identity not be revealed to the Defence at this stage of the proceedings, and the person supplying the document to that organisation or being the contact person(s) of such organization in the DRC currently resides in a risk area;
 - b. the Prosecution source, which are individuals who transmitted those documents to the Prosecution and are currently living in a risk area; or
 - c. the initials and identifying information of Prosecution witnesses who are believed to be currently located in risk areas;
- (viii) ICC-01/04-01/06-409-Conf-Exp-Anx10; and ICC-01/04-01-06-409-Conf-Exp-Anx11 because they affect only one handwritten note by a member of the Prosecution made for organisational purposes;

DECIDE to authorise the Prosecution's proposed redactions to the initials and identifying information of Prosecution witnesses in the following documents, which are not referred to in the Prosecution List of Evidence, under the condition that by Monday 25 September 2006 the Prosecution informs the Chamber and the Defence whether it intends to rely on such documents at the confirmation hearing:

- (i) ICC-01/04-01/06-384-Conf-Exp-Anx12
- (ii) ICC-01/04-01/06-384-Conf-Exp-Anx13
- (iii) ICC-01/04-01/06-384-Conf-Exp-Anx14

ORDER the Prosecution to (i) disclose immediately to the Defence redacted versions of those witness statements, investigators' reports of witness interviews and

documents for which redactions are authorised in the present decision; and (ii) in relation to the said statements, reports and documents on which the Prosecution intends to rely at the confirmation hearing, to comply with the Decision on the Final System of Disclosure and with the Final Decision on the E-Court Protocol by 25 September 2006;

DECIDE not to authorise any redaction in the documents included in ICC-01/04-01/06-409-Conf-Exp-Anx3, and ICC-01/04-01/06-409-Conf-Exp-Anx15 because all redactions which the Prosecution initially proposed for these documents have been subsequently withdrawn by the Prosecution;

DECIDE not to admit into evidence for the purpose of the confirmation hearing the documents contained in the following annexes:

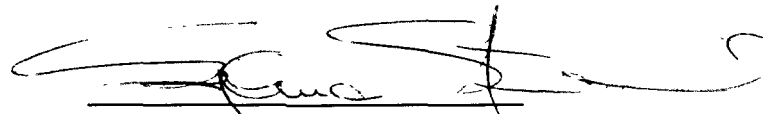
- (i) ICC-01/04-01/06-384-Conf-Exp-Anx7, ICC-01/04-01/06-384-Conf-Exp-Anx8, ICC-01/04-01/06-391-Conf-Exp (which contains the corrected version of ICC-01/04-01/06-384-Conf-Exp-Anx9), ICC-01/04-01/06-384-Conf-Exp-Anx10, and ICC-01/04-01/06-384-Conf-Exp-Anx11 because the REDACTED of unknown persons under the age of eighteen are wholly irrelevant at face value in the present case, which is confined to the alleged enlistment, conscription and active use in military operations of children under the age of fifteen;²²
- (ii) The article "L'UPC de Lubanga se livre aux actes de cannibalisme REDACTED " contained in page 2 of ICC-01/04-01/06-409-Conf-Exp-Anx4

²² The Prosecution has insisted on the redaction of the names of the relevant persons, the REDACTED do not specify the age of the said persons and the reliance on codes to proof the age of those persons is incompatible with the prohibition against relying on redacted information at the confirmation hearing.

because such an article is wholly irrelevant at face value in the present case, which is confined to the alleged enlistment, conscription and active use in military operations of children under the age of fifteen;

GIVE the Prosecution until 25 September 2006 to obtain the consent of the provider to disclose to the Defence the unredacted version of the two documents not included in the Fifth Prosecution Request of 29 August 2006; and if that consent cannot be secured by 25 September 2006, give the Prosecution, in compliance with the "Decision on the Prosecution practice to provide to the Defence redacted versions of evidence and materials without authorisation by the Chamber", until 25 September 2006 to file the said two documents as disclosed to the Defence in order for the Chamber to decide whether to authorise the redactions;

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



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 20 September 2006

At The Hague

The Netherlands