

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 28 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 Document

**Decision on the Prosecution Information in respect of the Second Decision on
Rule 81 Motions**

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

**The Legal Representatives of the
Victims**

Mr Luc Walley

Mr Franck Mulenda

Counsel for the Defence

Mr Jean Flamme

Ms Veronique Pandanzyla

**The Office of Public Counsel for the
Defence**

Ms Melinda Taylor

I, Judge Sylvia Steiner, judge at the International Criminal Court (“the Court”);

NOTING the “Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (“the Decision”),¹ issued by the single judge on 20 September 2006;

NOTING the “Prosecution’s Information in respect of the Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (“the Prosecution Request”),² filed by the Prosecution on 25 September 2006, in which the Prosecution:

- (i) makes it clear to the single judge that the Prosecution
 - a. does not intend to rely at the confirmation hearing on the documents contained in ICC-01/04-01/06-384-Conf-Exp-Anx12, ICC-01/04-01/06-384-Conf-Exp-Anx13 and ICC-01/04-01/06-384-Conf-Exp-Anx14;
 - b. considers that such documents must nevertheless be disclosed to the Defence because they fall within the scope of rule 77 of the Rules (“the Rules”); and
 - c. states that the proposed redactions are necessary to protect the Prosecution source.
- (ii) is filing two documents which, pursuant to article 67 (2) of the Statute, were previously disclosed to the Defence with certain redactions required by the provider of the documents under article 54 (3) (e) of the Statute and without the prior authorisation of the Chamber;

¹ ICC-01/04-01/06-455.

² ICC-01/04-01/06-477-Conf-Exp.

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;

CONSIDERING that, according to the Decision, the redactions proposed by the Prosecution in those documents contained in ICC-01/04-01/06-384-Conf-Exp-Anx12, ICC-01/04-01/06-384-Conf-Exp-Anx13 and ICC-01/04-01/06-384-Conf-Exp-Anx14, were authorised by the single judge “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”³; and that, in the Prosecution Request, the Prosecution provides the information required by the Decision;

CONSIDERING that at the status conference on 26 September 2006, the Prosecution stated that, in addition to the documents attached to the Prosecution Request, it has, pursuant to article 67 (2) of the Statute, disclosed other documents with certain redactions required by the provider of the documents under article 54 (3) (e) of the Statute and without prior authorisation of the Chamber;

CONSIDERING that at the status conference on 26 September 2006, the Prosecution stated that it had not yet obtained the consent of the provider to disclose to the Defence some article 54 (3) (e) documents which the Prosecution had identified as falling within article 67 (2) of the Statute or rule 77 of the Rules;

FOR THESE REASONS

³ Decision, p. 15.

AUTHORISE the Prosecution to disclose immediately to the Defence the documents contained in ICC-01/04-01/06-384-Conf-Exp-Anx12, ICC-01/04-01/06-384-Conf-Exp-Anx13 and ICC-01/04-01/06-384-Conf-Exp-Anx14, with the redactions proposed by the Prosecution in those annexes;

ORDER the Prosecution to do its utmost prior to the confirmation hearing to:

- (i) obtain the consent of the providers to disclose to the Defence in an unredacted form those article 54 (3) (e) documents already identified by the Prosecution as falling within the scope of article 67 (2) of the Statute or rule 77 of the Rules;
- (ii) obtain the agreement of the providers on the transmission to the Defence of the unredacted versions of those documents already disclosed to the Defence in a redacted form at the request of the providers and without the prior authorisation of the Chamber;

ORDER the Prosecution to file no later than 15 days before the confirmation hearing:

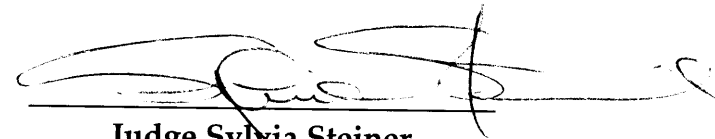
- (i) a detailed report indicating all article 54 (3) (e) documents disclosed in an unredacted and/or redacted form to the Defence under article 67 (2) of the Statute or rule 77 of the Rules;
- (ii) a detailed report indicating how many article 54 (3) (e) documents have not been disclosed to the Defence because the Prosecution has been unable to secure the consent of the providers despite having been identified by the Prosecution as falling under article 67 (2) of the Statute or rule 77 of the Rules;

ORDER the Prosecution to file no later than 15 days before the confirmation hearing in the same format in which they have been disclosed to the Defence all article 54 (3)

(e) documents which meet the following two conditions:

- a. the documents have been disclosed to the Defence pursuant to article 67 (2) of the Statute or rule 77 of the Rules; and
- b. such disclosure has taken place in a redacted form at the request of the providers and without the prior authorisation of the Chamber;

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



Judge Sylvia Steiner
Single Judge

Done this Thursday 28 September 2006

At The Hague

The Netherlands