

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06
Date: 5 October 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***

**URGENT
Public Document**

Decision on the Prosecution Application of 5 October 2006

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 “Decision on the Postponement of the Confirmation Hearing and the Adjustment of the TimeTable set in the Decision on the Final System of Disclosure” (“the Decision on the Postponement of the Confirmation Hearing”),¹ issued by the single judge on 24 May 2006;

NOTING the “Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (“the Second Decision on Prosecution Rule 81 Motions”),² issued by the single judge on 20 September 2006;

NOTING the “Decision concerning the Prosecution Proposed Summary Evidence” (“the Decision”),³ issued by the single judge on 4 October 2006;

NOTING the submissions of the Prosecution and the observations of the representatives of the Victims and Witnesses Unit at the *ex parte* hearing on 3 October 2006;

NOTING the “Prosecution Application pursuant to Rules 81 (2) and 81 (4)” (“the Prosecution Application of 5 October 2006”), filed by the Prosecution on 5 October 2006;

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

CONSIDERING that, despite the limited scope of the confirmation hearing, the Prosecution Application of 5 October 2006 is the last of a number of Prosecution

¹ ICC-01/04-01/06-126.

² ICC-01/04-01/06-453.

³ ICC-01/04-01/06-515-Conf-Exp.

applications pursuant to rule 81 of the Rules in relation to dozens of witnesses in a case which is materially, temporally and territorially confined;

CONSIDERING that the first part of the Prosecution Application of 5 October 2006 is limited to two statements of a witness in relation to whom the representatives of the Victims and Witnesses Unit informed the single judge at the *ex parte* hearing on 3 October 2006 that: (i) the said witness has been accepted into the Witness Protection Programme run by the Victims and Witness Unit; and (ii) the relevant protective measures have been successfully implemented;

CONSIDERING that, accordingly, the Prosecution has withdrawn all the proposed redactions to the said statements based on rule 81 (4) of the Rules; that none of the redactions for which authorisation is sought in the Prosecution Application of 5 October 2006 is based on the need to protect information related to the ongoing investigation in the current case against Thomas Lubanga Dyilo; and that, therefore, the Prosecution requests the authorisation of the Chamber for redactions so as not prejudice the Prosecution's further investigations into crimes within the jurisdiction of the Court allegedly committed in the territory of the Democratic Republic of the Congo ("the DRC") after 1 July 2002;

CONSIDERING that the redactions to the two statements referred to above proposed by the Prosecution in the Prosecution Application of 5 October 2006 are consistent with the redactions authorised by the single judge in the Second Decision on Prosecution Rule 81 Motions so as not to prejudice the Prosecution's further investigations;

CONSIDERING that, for the reasons stated in the Second Decision on Prosecution Rule 81 Motions, there is a need to authorise the redactions to the two above-

mentioned statements proposed by the Prosecution in the Prosecution Application of 5 October 2006 in order not to prejudice the Prosecution's further investigations;

CONSIDERING that the second part of the Prosecution Application of 5 October 2006 refers to six documents for which the Prosecution, in its filings of 29 September 2006 and 4 October 2006, applied for certain redactions, which the single judge authorised in the Decision; that the Prosecution now realises that it had previously disclosed to the Defence the said documents without redactions; and that, accordingly, the Prosecution now requests that such documents not be disclosed to the Defence with the redactions authorised in the Decision because the re-disclosure of such documents will "highlight the areas the Prosecution sought to redact";⁴

CONSIDERING that the single judge agrees with the Prosecution that disclosing to the Defence redacted versions of documents which have been previously disclosed without redactions will inevitably highlight those areas that the Prosecution seeks to redact; that the documents referred to in the Prosecution Application of 5 October 2006 have already been disclosed without redactions as separate documents; and that, in the view of the single judge, the Prosecution should have realised about this fact before requesting twice the authorisation of the Chamber for redactions to the said documents;

CONSIDERING that the scope of the Prosecution Application of 5 October 2006 is limited insofar as it is confined to two statements of one witness and six documents previously disclosed to the Defence without redactions; and that hence the

⁴ The Prosecution Application of 5 October 2006, paras. 12 and 13.

Prosecution must be in a position to comply with the requirements provided for by the Decision on the E-Court Protocol⁵ by Monday 9 October 2006 at the latest;

CONSIDERING that the Prosecution Application of 5 October 2006 is the last rule 81 motion made by the Prosecution within the time-limits provided for in the Decision on the Postponement of the Confirmation Hearing; and that therefore by the time the two statements of the witness referred to in the Prosecution Application of 5 October 2006 are disclosed to the Defence with the redactions authorised in the present Decision, the Defence will have access to all the evidence on which the Prosecution intends to rely at the confirmation hearing according to the Prosecution Charging Document and List of Evidence;

CONSIDERING, in this regard, that on 16 March 2006 Thomas Lubanga Dyilo was served with the arrest warrant for him and with a redacted version of the Decision of the Chamber to issue such a warrant; that immediately after Thomas Lubanga Dyilo was surrendered to the seat of the Court in The Hague, he was given access to a redacted version of the materials presented by the Prosecution in support of the application for the issuance of an arrest warrant for Thomas Lubanga Dyilo; that before 28 August 2006, the Defence had access to many documents on which the Prosecution intends to rely at the confirmation hearing; that on 28 August 2006, the Defence had access to the Prosecution Charging Document and List of Evidence, as well to the identities and unredacted statements of a number of Prosecution witnesses and many additional unredacted documents on which the Prosecution intends to rely at the confirmation hearing; that ever since 28 August 2006, the Defence has been receiving access to the remainder of the evidence on which the Prosecution intends to rely at the confirmation hearing further to the single judge's rulings on the Prosecution Rule 81 Motions; and that by 9 October 2006 at the latest,

⁵ "Final Decision on the E-Court Protocol for the Provision of Evidence, Material and Witness Information in Electronic Version for Their Presentation during the Confirmation Hearing", issued by the single judge on 28 August 2006, ICC-01/04-01/06-360.

the Defence will have access to all the evidence on which the Prosecution intends to rely at the confirmation hearing according to the Prosecution Charging Document and List of Evidence, with the particulars provided for in the Final Decision on the Draft Protocol;

CONSIDERING therefore that, in the view of the single judge, this stage of the proceedings leading to the confirmation hearing is finalised with the present decision;

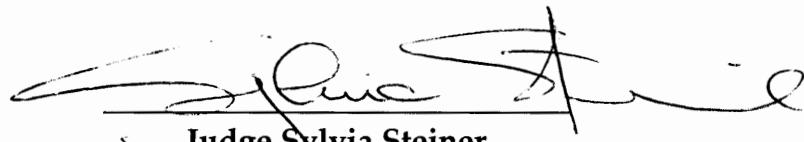
FOR THESE REASONS

AUTHORISE pursuant to rule 81 (2) of the Rules the redactions proposed by the Prosecution to the two witness statements contained in the Prosecution Application of 5 October 2006;

AUTHORISE ,pursuant to rule 81 (4) of the Rules, that the six documents contained in the Prosecution Application of 5 October 2006 not be disclosed to the Defence in conjunction with the summary evidence authorised in the Decision;

ORDER the Prosecution (i) to disclose immediately to the Defence the two statements included in the Prosecution Application of 5 October 2006 with the redactions authorised in the present decision; and (ii) to comply with the Final Decision on the E-Court Protocol by 9 October 2006 at 16h00;

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



Judge Sylvia Steiner
Single Judge

Done this Thursday 5 October 2006

At The Hague

The Netherlands