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No.: ICC-01/04-01/06

Date: 1 August 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 CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Document

**Request to file a Reply to the Prosecution's Response to Conclusion de la défense
quant aux divulgations de documents expurgés par le Procureur**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Ekkehard Withopf, Senior Trial
Attorney

**Counsel for the Victims a/0001/06 to
a/003/06**

Mr. Luc Walley
Mr. Frank Mulenda

Counsel for the Defence

Mr. Jean Flamme
Ms. Véronique Pandanzyla

1. Introduction

1. During the Status Conference convened on 14 July 2006, the Prosecutor informed the Single Judge and the Defence of its stance regarding its right to *proprio motu* redact materials which the Prosecution is obliged to disclose or provide to the Defence pursuant to articles 67(2) and 61(3) and Rule 77. As a consequence of these redactions, the Prosecution had also adopted the practice of filing redacted copies of such materials which fall under article 61(3) as opposed to the originals.
2. The Honourable Single Judge requested the Defence to respond to these submissions in a motion which was to be filed by 24 July 2006. The Defence duly filed its objections.
3. On 28 July 2006, the Prosecution filed its 'Prosecution's Response to Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur'. Although the Prosecution incorporated by reference its submissions from the 14 July 2006 Status Conference, it provided further elaboration regarding its justification for the redactions,¹ and legal arguments as to why Rule 81(4) would not apply to the materials in question.²
4. In addition, the Prosecution delineated a proposal for process Defence requests for access to unredacted version, which had not been put before the Defence for consideration when it filed its initial motion on 24 July 2006. The Prosecution also appeared to alter its stance regarding the filing of original copies, although its new position is contingent on the Court's acceptance of the Prosecutor's "independent right" to *proprio motu* redact the materials in question.
5. Although the Prosecution filed its response on 28 July 2006, the response was not notified to the Defence³ until 31 July 2006, which thus deprived the Defence of the ability to prepare its reply for the first three days of the deadline. The notification email is attached as an annex to this request.

2. Submissions

6. In accordance with Regulation 24(5), a party may request leave to file a reply.

¹ See para 10 of Prosecution Response dated 28 July 2006.

² See para 11 of Prosecution Response dated 28 July 2006.

³ In light of the fact that the Lead Counsel for Thomas Lubanga Dyilo will not have regular access to a computer from 28 July until 11 August 2006, he requested the Registry to notify all documents to the OPCD during this time period. This request was approved by Court Management.

7. The Defence submits that it would be in the interests of justice to grant the Defence leave to file a reply for the following reasons.
8. If leave is granted, the deadline for filing a reply is within 10 days of notification of the response. Firstly, the practice of the Prosecution, if approved by the Pre-trial Chamber, would have serious repercussions for the ability of the Defence to prepare its case for the confirmation hearing and would establish a far-reaching precedent regarding the scope of the Prosecutor's obligations and powers under the Statute. Secondly, the response of the Prosecution raises new issues which the Defence was not able to address in its initial motion.
9. In terms of the deadline for filing a response – if leave is granted – regulation 34(c) stipulates that it must be filed within 10 days of notification of the response. As noted in paragraph 5, the Defence did not receive notification of the Defence until Monday 31 July 2006.
10. Regulation 31(1) provides that all participants shall provide the Registry with an address for notification of documents. Pursuant to the Lead Counsel's request that all documents be notified to the OPCD from 28 July to 11 August 2006, the formal address for notification during this time period was the OPCD email address. Accordingly, even if the response was sent to the email address of the Lead Counsel on an earlier date, the Defence respectfully submits that the date for notification should be the date on which the response was notified to the OPCD (on behalf of Lead Counsel).
11. In addition, as noted in footnote 3, the Lead Counsel for Thomas Lubanga Dyilo will not have regular access to a computer from 28 July until 11 August 2006. Thus, whilst Lead Counsel is able to consult with and provide verbal instructions to his legal assistant and the OPCD for the purpose of preparing procedural requests, such as requests for extension of time and requests for leave to reply or appeal, it is far more problematic to prepare lengthy and substantive filings in this manner. This difficulty is compounded by the fact that at this stage of the proceedings, the legal aid scheme does not allow for the assignment of a Co-Counsel, who could generally perform these functions in the absence of Lead Counsel.⁴
12. In accordance with regulation 35(2), a Chamber may extend a time limit if good cause is shown. The Defence respectfully submits that the logistical problems faced by the

⁴ The Defence would also like to note for the record that this situation will reoccur during the Lead Counsel's mission in the DRC, which is currently scheduled for 21 until 31 August 2006.

Defence, which result from its limited resources, constitute good cause for extending the deadline for filing a reply until

13. Alternatively, the Defence requests that the deadline should run from the date on which the response was notified to the OPCD.

3. Relief Sought

14. In light of the aforementioned arguments, the Defence respectfully requests the Honourable Pre-trial Chamber to:

- i. Grant leave to the Defence to file a reply to the Prosecution's Response to Conclusions de la défense quant aux divulgations de documents expurgés faites par le Procureur;
- ii. If leave is granted, extend the deadline for the Defence reply until 20 August 2006; or in the alternative,
- iii. Order that the deadline for filing the reply shall run from the date on which the document was notified to the OPCD, on behalf of the Lead Counsel.



On behalf of Jean Flamme, Defence Counsel,
Melinda Taylor, Associate Counsel OPCD

Dated this 1st day of August, 2006

At The Hague