Cour Pénale Internationale

International Criminal Court

Original: **English**

No: **ICC-01/04-01/06**
Date: **28 August 2006**

PRE-TRIAL CHAMBER I

Before: **Judge Sylvia Steiner, Single Judge**

Registrar: **Mr Bruno Cathala**

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

Public Document

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

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

NOTING the "Decision on the Final System of Disclosure and the Establishment of a Timetable" ("the Decision on the Final System of Disclosure"),[1] issued by the single judge on 15 May 2006, in which *inter alia* the single judge ordered the parties to file the originals and an electronic copy of the evidence on which they intend to rely at the confirmation hearing containing the particulars required by the Draft Protocol on the Presentation of Evidence as it stood on 15 May 2006;

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"),[2] issued by the single judge on 24 May 2006;

NOTING the "Decision on the Prosecution Motion for Reconsideration,[3] issued by the single judge on 23 May 2006, in which the single judge rejected *in limine* the Prosecution motion for reconsideration of limited aspects of the Draft Protocol on the Presentation of Evidence;

NOTING the order by the single judge at the status conference on 23 June 2006, in which the Registry, the Prosecution and the Defence were instructed to prepare a joint proposal on a modified Draft Protocol on the Presentation of Evidence by 14 July 2006;

[1] ICC-01/04-01/06-102.
[2] ICC-01/04-01/06-126.
[3] ICC-01/04-01/06-123.

NOTING the extension of the time limit until 20 July 2006 granted by the single judge, as the request of the Registry;

NOTING the Submission of a New Version of the E-Court Protocol prepared jointly by the Office of the Prosecutor, the Defence and the Registry ("the Submission"),[4] filed on 20 July 2006, which contains (i) a new Draft Protocol on the Presentation of Evidence for the purpose of the confirmation hearing ("the Draft Protocol included in Annex I to the Submission"); and (ii) a list of the points of disagreement between the parties;

NOTING the final submissions of the Prosecution, the Defence and the Registry at the status conference[5] presided over by the single judge on 24 August 2006;

NOTING the "Decision on the Prosecution practice to provide to the Defence redacted versions of evidence and materials without authorisation by the Chamber" (the "Decision on the Prosecution Practice"), issued by the Single Judge on 25 August 2006;

NOTING rule 121 of the Rules of Procedure and Evidence ("the Rules"), regulation 26 of the Regulations of the Court ("the Regulations") and regulation 52 of the Regulations of the Registry ("the RoR");

CONSIDERING the relevance to the Defence preparation for the confirmation hearing of the following additional fields of the E-Court Protocol relating to the presentation of evidence and material: (i) Author; (ii) Author Organization; (iii) Recipient; (iv) Parties; (v) Related to Witness; (vi) Charge; (vii) Element of Alleged

[4] ICC-01/04-01/06-201.
[5] ICC-01/04-01/06-T-13-EN.

Crime; (viii) Incident; (ix) Element of Statement of Facts; and (x) Mode of Participation;

CONSIDERING the relevance to the Defence preparation for the confirmation hearing of the following additional fields in the E-Court Protocol relating to witness information : (i) Disclosure Date; (ii) Charge; (iii) Element of Alleged Crime; (v) Incident; (v) Element of Statement of Facts; (vi) Mode of Participation; and (vii) Person/Witness from whom the Document Emanated;

CONSIDERING that, as set out in the Decision on the Prosecution Practice, all redactions of witness statements and other evidence on which the Prosecution intends to rely at the confirmation hearing must be authorised by the Chamber;

CONSIDERING that the problems advanced by the Prosecution relating to both the protection of victims and witnesses and other confidential information can be solved by first obtaining from the Chamber authorisation to redact the relevant information from the evidence disclosed to the Defence and subsequently filling in the above-mentioned additional fields with: (i) code numbers for any kind of names for which redactions have been authorised, such as *inter alia* those of witnesses, victims, authors of documents, entities which generated the documents or specific incidents; and (ii) the word "REDACTED" for any other information for which redactions have been authorised;

CONSIDERING that, according to the rule 121 (6) of the Rules, the Defence is only obliged to file its list of evidence 15 days before the commencement of the confirmation hearing; that according to the Final Decision on Disclosure and the Decision on the Postponement, the Defence has until 18 September 2006, that is 9 days before the confirmation hearing, to disclose to the Prosecution the evidence

other than witness statements contained in the Defence list of evidence; that the Final Decision on Disclosure and the Decision on the Postponement do not establish a deadline for the Defence to disclose to the Prosecution the statements of the witnesses on which it intends to rely at the confirmation hearing other than at the commencement of the confirmation hearing; and that, according to the Final Decision on Disclosure and the Decision on Postponement, the filing of originals and electronic versions of the evidence on which the Defence intends to rely at the confirmation hearing takes place after they have been disclosed to the Prosecution;

CONSIDERING, however, that according to regulation 52 (2) of the RoR, an electronic copy of the evidence on which the Defence intends to rely at the confirmation hearing shall be provided, at least three full working days before the confirmation hearing; and that, in the view of the single judge, such an electronic version must contain the particulars required by the E-Court Protocol;

CONSIDERING that according to the Final System of Disclosure the potentially exculpatory materials disclosed by the Prosecution under article 67 (2) of the Statute need not be filed with the Registry;

FOR THESE REASONS

DECIDE that, for the purpose of the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo,* the E-Court Protocol for the presentation of evidence, material and witness information in electronic format shall contain the following:

(i) the content of the Draft Protocol included in Annex I of the Submission;

(ii) the following additional fields:

a. in relation to the presentation of evidence and material, with the content defined for such fields in the version of the Draft Protocol as it stood on 15 May 2006:

   i. Author

   ii. Author Organisation

   iii. Recipient

   iv. Parties

   v. Related to Witness

   vi. Charge

   vii. Element of Alleged Crime

   viii. Incident

   ix. Element of Statement of Facts; and

   x. Mode of Participation

b. in relation to witness information:

   i. Disclosure Date;

   ii. Charge;

   iii. Element of Alleged Crime;

   iv. Incident;

   v. Element of Statement of Facts;

   vi. Mode of Participation

   vii. Person/Witness from whom the Document Emanated

DECIDE that the Prosecution must fill in all the above-mentioned fields for the purpose of the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo,*

DECIDE that, except for the fields "Charge", "Elements of the Crimes", "Incident", "Elements of Statements of Facts" and "Mode of Participation", the Defence must fill in all the above-mentioned fields for the purpose of the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo;*

DECIDE that, in relation to the evidence which will be referred to in the Prosecution Charging Document and the List of Evidence, the above-mentioned additional fields must be filled in by the Prosecution only after it has filed the Prosecution Charging Document and List of Evidence on 28 August 2006 as follows:

(i) in relation to the witness statements for which there is no pending rule 81 motion by 28 August 2006, the Prosecution must fill in the above-mentioned fields by 4 September 2006;

(ii) in relation to the witness statements for which there is a pending rule 81 motion by 28 August 2006, the Prosecution must fill in the above-mentioned fields as soon as practicable after a decision on that motion has been taken and no later than four days from the date the decision is issued;

(iii) in relation to evidence other than witness statements for which the Prosecution does not intend to request any redactions by 29 August 2006, the Prosecution must fill in the above-mentioned fields by 4 September 2006;

(iv) in relation to evidence other than witness statements for which there is a pending motion for redactions by 29 August 2006, the Prosecution must fill in the above-mentioned fields as soon as practicable after a

decision on that motion has been taken and no later than four days from the date the decision is issued;

DECIDE that, in relation to the evidence on which the Defence intends to rely at the confirmation hearing, the Defence must fill in the above-mentioned additional fields only three working days before the commencement of the Confirmation Hearing as required by the Registry for technical reasons;

DECIDE that, in relation to any type of names for which redactions have been authorised, such as *inter alia* those of witnesses, victims, authors of documents, entities which generated the documents or specific incidents, the above-mentioned additional fields shall be filled in with code numbers;

DECIDE that, in relation to information other than names for which redactions have been authorised, the above-mentioned additional fields shall be filled in : (i) with the word "REDACTED" for any such information; or (ii) by not including any such information in those fields.

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

Judge Sylvia Steiner
Single Judge

Dated this Monday 28 August 2006

At The Hague

The Netherlands