

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 22 November 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Single Judge

Registrar: Mr Bruno Cathala

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

Public Formatted and Redacted Version

**Prosecution's Information in respect of disclosure with unauthorised redactions
and Rule 81 Application**

The Office of the Prosecutor

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

Legal Representatives of Victims

Mr Luc Walley Mr Franck Mulenda
Me Carine Bapita Buyangandu

Counsel for the Defence

Mr Jean Flamme
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**Office of Public Counsel
for the Defence**

Ms Melinda Taylor

Background

1. On 13 October 2006, in a letter to the Prosecution, the Defence requested the Prosecution to provide it with an indication of the basis of redactions contained in documents disclosed by the Prosecution (the Defence's Request). Specifically, the Defence requested *"to be informed whether each redaction was one that was carried out on the basis of Rule 54(3)(e) (whether carried out by the provider of the evidence or the Prosecution to ensure consistency in the redaction of information) or was one that was carried out on the basis of Rule 81(2)"*.
2. On 19 October 2006, in discharging its ongoing obligation to disclose potentially exculpatory materials, the Prosecution disclosed to the Defence a number of documents as potentially exculpatory evidence. These documents included DRC-OTP-REDACTED, DRC-OTP- REDACTED and DRC-OTP- REDACTED (the Three Disclosed Documents).¹
3. In compliance with the Defence's Request, the Prosecution prepared a report on the legal basis on which it applied² for all redactions contained in disclosed documents (the Report on Redactions). The Prosecution gave the Defence an initial, partial version of the Report on Redactions on 26 October 2006, indicating that a second report would be transmitted to the Defence with the shortest delay possible. The Prosecution gave the

¹ ICC-01/04-01/06-606, Public document with confidential annex ICC-01/04-01/06-606-Conf-Anx.

² In its 29 October 2006, 09:25 hours email to the Defence, the Prosecution indicated that the initial report "details the legal basis for the redactions based on our respective applications for authorisation of redactions as reflected in Ringtail (as distinguished from the legal basis the Single Judge has used in her respective Decisions)".

Defence a second, final and comprehensive³ version of the Report on Redactions on 17 November 2006. The document lists the legal basis for each of the redactions contained in the over 140 documents which have been disclosed in redacted form.

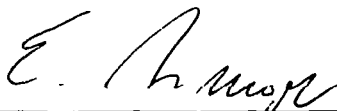
4. While finalizing the Report on Redactions, on 16 November 2006, the Prosecution realized that, due to an oversight on its part, the Three Disclosed Documents were disclosed to the Defence in redacted form without authorisation by the Single Judge.⁴
5. On 17 November 2006, on the occasion of a disclosure meeting, the Prosecution informed the Defence that, due to an oversight on its part, the redactions contained in the Three Disclosed Documents had not been authorised by the Pre-Trial Chamber.

³ The second, final and comprehensive Report on Redactions includes all documents listed in the initial, partial report, and thus makes the initial report redundant.

⁴ The Prosecution notes that two of the documents (DRC-OTP-REDACTED and DRC-OTP- REDACTED) had been the subject of Rule 81 applications. See the Prosecution's "Provision of Summary Evidence to the Pre-Trial Chamber", ICC-01/04-01/06-491, Public with Confidential -*Ex Parte*- Prosecution Only Annexes, as well as ICC-01/04-01/06-491-Conf-Exp-Anx8, at pages REDACTED, and ICC-01/04-01/06-491-Conf-Exp-Anx14, at page REDACTED. See also the Prosecution's subsequent "Amended Provision of Summary Evidence to the Pre-Trial Chamber", ICC-01/04-01/06-513, Public with Confidential -*Ex Parte*- Prosecution Only Annexes, as well as ICC-01/04-01/06-513-Conf-Exp-Anx16, at pages REDACTED, and ICC-01/04-01/06-513-Conf-Exp-Anx22, at pages REDACTED. The Prosecution had applied for complete non-disclosure of these documents, as they related to the statement of one of the witnesses on whom it intended to rely on at the Confirmation Hearing. The Single Judge subsequently declared the statement of that witness inadmissible as well as, it would seem, the two documents concerned. See the "Decision concerning the Prosecution Proposed Summary Evidence", ICC-01/04-01/06-517, Public Redacted Version, at page 9.

Rule 81 application

6. The Prosecution hereby requests the authorisation of the Single Judge to maintain the redactions in the Three Disclosed Documents, which were disclosed in redacted form without the prior authorisation of the Pre-Trial Chamber due to an oversight of the Prosecution's.
7. The Prosecution requests authorisation to maintain the redactions to documents DRC-OTP-REDACTED and DRC-OTP- REDACTED on the basis of Rule 81(2) and (4). REDACTED.
8. The Prosecution requests authorisation to maintain the single redaction on the first page of document DRC-OTP- REDACTED on the basis of Rule 81(4). REDACTED.


 **Luis Moreno-Ocampo**
Prosecutor

Dated this 22nd day of November 2006
At The Hague, The Netherlands