Cour Pénale Internationale

International Criminal Court

Original : **English**

No.: **ICC-01/04-01/06**
Date: **27 December 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

Prosecution's Information on Further Disclosure of Incriminatory Evidence

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

Counsel for the Defence
Mr Jean Flamme
Ms Véronique Pandanzyla

Office of Public Counsel for the Defence
Ms Melinda Taylor

Background

1. On 15 May 2006, the then Single Judge decided in the "Decision on the Final System of Disclosure and the Establishment of a Timetable"[1] (15 May 2006 Decision), *"that pursuant to article 61(3) of the Statute and rule 121(2)(c) of the Rules, the Prosecutor shall communicate to the Pre-Trial Chamber the evidence on which it intends to rely at the confirmation hearing...; and that such communication shall take place by filing in the record of the case against Thomas Lubanga Dyilo the original and electronic copies..."*[2]

2. The Prosecution disclosed the evidence it relied on at the Confirmation Hearing in line with the 15 May 2006 Decision.

3. The Confirmation Hearing finished on 6 December 2006.

Information on disclosure pursuant to Article 64(3)(c)

4. On 21 December 2006, the Prosecution, in addition to the disclosure of further potentially exculpatory materials[3] and the provision for pre-inspection of materials that fall under Rule 77,[4] disclosed further incriminatory evidence pursuant to Article 64(3)(c). In the cover-letter to this disclosure, the Prosecution informed the

[1] Decision on the Final System of Disclosure and the Establishment of a Timetable, public, 15 May 2006.
[2] See 15 May 2006 Decision, at pages 5 and 6.
[3] The Prosecution makes reference to today's filing "Submission of the Disclosure Note following the Disclosure to the Defence of Potentially Exculpatory Evidence pursuant to Article 67(2) of the Rome Statute on 21 December 2006".
[4] The Prosecution makes reference to today's filing "Submission of the Rule 77 Pre-Inspection Note following the Provision of Materials falling under Rule 77 of the Rules of Procedure and Evidence to the Defence on 21 December 2006".

Defence as follows: *"The Prosecution discloses these materials as incriminatory evidence pursuant to Article 64(3)(c). The Prosecution notes that it discloses the materials for use in the event that the Pre-Trial Chamber confirms the Document Containing the Charges."*

5. In addition, the Prosecution prior to disclosure informed the Defence orally that it would notify the Pre-Trial Chamber of the disclosure but it would not file the incriminatory evidence in the record of the case against Thomas Lubanga Dyilo because in its view the 15 May 2006 Decision does not apply anymore; the Prosecution furthermore emphasized its opinion that it would be inappropriate at this stage - after the Confirmation Hearing - to provide the Pre-Trial Chamber with further incriminatory evidence. In light of these assurances, the Defence accepted the disclosure of the documents concerned.

6. Accordingly, the Prosecution herewith informs the Pre-Trial Chamber about the fact of the disclosure of further incriminatory evidence.

Luis Moreno-Ocampo
Prosecutor

Dated this 27th day of December 2006
At The Hague, The Netherlands