



Original: **French**

No.: ICC-01/04-01/06
Date: **30 October 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
v. THOMAS LUBANGA DYILO**

Public Document

Decision Further to the Information Provided by the Prosecutor on 25 October 2006

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Mr Jean Flamme
Ms Véronique Pandanzyla

**The Office of the Public Counsel for the
Defence**

Ms Melinda Taylor

I, Judge Claude Jorda, judge at the International Criminal Court (“the Court”);

NOTING the *Decision on the Prosecution practice to provide to the Defence redacted versions of evidence and materials without authorisation by the Chamber*, rendered on 28 August 2006 by the Single judge;¹

NOTING the *Decision on the Prosecution Information in respect of the Second Decision on Rule 81 Motions* (“the Decision on Article 54(3)(e) Documents”), rendered by the Single judge on 28 September 2006;²

NOTING the “Prosecution's Information pursuant to the 28 September 2006 *Decision on the Prosecution Information in respect of the Second Decision on Rule 81 Motions*” (“the Prosecution Information”), filed on 25 October 2006;³

CONSIDERING articles 54, 61, 67 and 69 of the Rome Statute (“the Statute”) and rules 77 and 81 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING, on one hand, that pursuant to the Decision on Article 54(3)(e) Documents, the Prosecution was bound to provide a detailed report indicating how many article 54(3)(e) documents have not been disclosed to the Defence because the Prosecution has been unable to secure the consent of the providers despite the fact the Prosecution identified these documents as falling under article 67(2) of the Statute or rule 77 of the Rules;

¹ ICC-01/04-01/06-355.

² ICC-01/04-01/06-490.

³ ICC-01/04-01/06-611.

CONSIDERING that the Prosecution identified 33 documents, within the scope of article 54(3) and falling under article 67(2) of the Statute or rule 77 of the Rules, which have not been disclosed to the Defence; i) that the Prosecution is awaiting a response from the information provider for two of these documents; ii) that, for 29 of the documents, the Prosecution has not yet forwarded its request for authorisation to the information provider; iii) that, for two of the documents, the information provider refused to give his or her consent;

CONSIDERING, on the other hand, that in accordance with the Decision on the Article 54(3)(e) Documents, the Prosecution was bound to provide a detailed report indicating all article 54(3)(e) documents disclosed in an unredacted and/or redacted form to the Defence under article 67(2) of the Statute or rule 77 of the Rules;

CONSIDERING that of the 30 documents thus disclosed, seven were disclosed in redacted form in accordance with the information provider's wishes; i) that for six of the documents, contrary to the order of the Single judge in the Decision on the Article 54(3)(e) Documents, the Prosecution does not consider it necessary to seek the information provider's consent to remove the redactions because the Prosecution deems it very unlikely that such consent would be given since the said redactions relate to specific identifying information; ii) that a request was made to the information provider and the Prosecution is still awaiting a reply for one of the documents;

FOR THESE REASONS

ORDER the Prosecution to do its utmost and, if necessary, to reseek the information providers' consent to:

- i) be able to submit the 33 aforementioned documents within the scope of article 54(3)(e) and falling under article 67(2) of the Statute or rule 77 of the Rules, which have not been disclosed to the Defence;
- ii) be able to submit an unredacted copy of the seven aforementioned documents within the scope of article 54(3)(e) and falling under article 67(2) of the Statute or rule 77 of the Rules, which have already been disclosed to the Defence in redacted form.

ORDER the Prosecution to submit to the Pre-Trial Chamber a detailed report of the outcome of these steps on 6 November 2006.

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

[signature]

Judge Claude Jorda
Single judge

Dated this Monday 30 October 2006

At The Hague, The Netherlands.