

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06

Date: 17 May 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, 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 on the Defence Request for Unrestricted Access to the Entire File of the
Situation in the Democratic Republic of the Congo**

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

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

NOTING the Decision concerning Pre-Trial Chamber I’s Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo (“the Decision”),¹ issued by Pre-Trial Chamber I on 24 February 2006, which determined “that Mr Thomas Lubanga Dyilo shall have access only to the redacted index of the record of the situation in the DRC and to any public document contained therein; and that Mr Thomas Lubanga Dyilo shall not have access to non-public documents in the record of the situation in the DRC unless otherwise provided by the Chamber upon a motivated request by him”;²

NOTING the Decision on Access by Duty Counsel for the Defence to All Documents Relating to the Case against Mr Thomas Lubanga Dyilo,³ issued by Judge Sylvia Steiner acting as single judge on 30 March 2006;

NOTING the *Observations de la défense concernant le système de divulgation, requis par les décisions du 23 et 27 mars 2006* (“the Defence Request”)⁴ filed by Duty Counsel for the Defence on 6 April 2006, in which he requests, *inter alia*, unrestricted access to the file of the situation in the Democratic Republic of the Congo (“the DRC”) in order to identify potential material for Defence preparations for the confirmation hearing;⁵

NOTING the Prosecution’s Response to, *inter alia*, the Request of the Defence for Unrestricted Access to the Entire Record of the Situation in the Democratic Republic

¹ ICC-01/04-01/06-8.

² *Ibid*, p. 4.

³ ICC-01/04-01/06-61.

⁴ ICC-01/04-01/06-68.

⁵ *Ibid*, pp. 6 and 8.

of the Congo,⁶ filed by the Prosecution on 26 April 2006, in which it submits that “the Defence, at this juncture, is trying to do what is commonly referred to as a ‘fishing expedition’”⁷ and that the applicable law “does not support the lifting of security classifications to allow the Defence access to redacted materials, without the Defence: (i) having identified particular facts relevant to the defence justifying a respective request, that is, a legitimate forensic purpose, and (ii) having shown that the underlying reasons for redactions – such as, *inter alia*, reasons of safety of victims and witnesses – do not continue to apply”.⁸

NOTING the decision of Pre-Trial Chamber I of 22 March 2006 designating Judge Sylvia Steiner as single judge responsible, under article 57 (2) of the Rome Statute (“the Statute”),⁹ for exercising the functions of the Chamber in the case against Thomas Lubanga Dyilo, including those functions provided for in rule 121 (2) (b) of the Rules of Procedure and Evidence (“the Rules”);

NOTING articles 57 (3) (c), 61 (3) (b), 61 (1) and (2) and 68 (1) of the Statute; rules 15, 76 to 83, 87 (2) (c), 88 (4) and 121 of the Rules; and regulation 8 (c) of the Regulations of the Court (“the Regulations”);

CONSIDERING that the Defence has already obtained access to all public documents in the record of the DRC situation, which, as required by article 67 (1) of the Statute, rule 15 of the Rules and regulation 8 (c) of the Regulations, includes non-redacted versions, public redacted versions, or web-site announcements of all decisions issued by Pre-Trial Chamber I in the proceedings relating to the investigation of the DRC situation;

⁶ ICC-01/04-01/06-86.

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*, p. 9.

⁹ ICC-01/04-01/06-51.

CONSIDERING further that the Defence has already obtained access to a redacted version of the index of the record of the DRC situation in which only a few words have been redacted;

CONSIDERING that, according to the Decision, the Defence must (i) identify the specific non-public documents in the record of the DRC situation to which the request of the Defence refers and (ii) provide the reasons for requesting access to them;

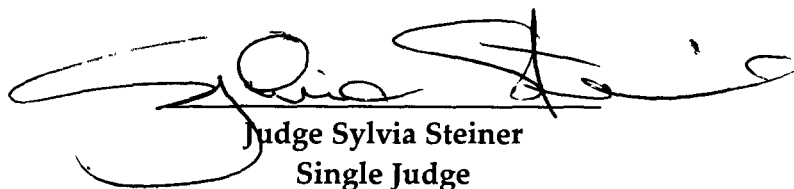
CONSIDERING that the Defence Request fails to comply with either of the two requirements set out in the Decision;

CONSIDERING that the documents of the DRC situation record in the case against Thomas Lubanga Dyilo currently accessible to the Defence put the latter in a position to comply with the requirements set out in the Decision;

FOR THESE REASONS

REJECT the Defence Request.

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



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 17 May 2006

At The Hague

The Netherlands