

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/06

Date: 22 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 Redacted Version**

**DECISION ON THE PROSECUTION FILING OF 19 APRIL 2006 AND  
APPLICATION OF 24 APRIL 2006**

**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 Prosecution’s “Submission of Potentially Exculpatory Material” (the “Prosecution’s Filing”),<sup>1</sup> filed by the Prosecution on 19 April 2004, REDACTED;

**NOTING** the Prosecution’s “Application pursuant to rules 81 (2) and 81 (4) of the Rules of Procedure and Evidence” (the “Prosecution’s Application”),<sup>2</sup> filed on 24 April 2006, in which it requested:

- (i) REDACTED; and
- (ii) authorisation from the Chamber pursuant to rule 81 (4) of the Rules not to disclose the identities of certain witnesses and victims to the Defence;

**NOTING** the *in camera* hearing held with the Prosecution in the presence of representatives of the Victims and Witnesses Unit on 2 May 2006;

**NOTING** the “Defence Motion Regarding Ex Parte Hearing of 2 May 2006” (the “Defence’s Motion”),<sup>3</sup> filed by the Defence on 8 May 2006;

**NOTING** the “Supplemental Briefing Provided in Respect of the Prosecution’s Filing of 19 April 2006” (the “Prosecution’s Supplemental Brief in Support of the Prosecution’s Filing”),<sup>4</sup> filed by the Prosecution on 8 May 2006;

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<sup>1</sup> ICC-01/04-01/06-81-Conf-Exp.

<sup>2</sup> ICC-01/04-01/06-83-US-Exp.

<sup>3</sup> ICC-01/04-01/06-93-Conf.

<sup>4</sup> ICC-01/04-01/06-94-Conf-Exp.

**NOTING** the “Supplemental Briefing Provided in Respect of the Application pursuant to rules 81 (2) and 81 (4) of 21 April 2006” (the “Prosecution’s Supplemental Brief in Support of the Prosecution’s Application”),<sup>5</sup> filed by the Prosecution on 9 May 2006;

**NOTING** the “Decision on the Final System of Disclosure and the Establishment of a Timetable” (the “Decision on the Final System of Disclosure”),<sup>6</sup> issued by Judge Sylvia Steiner acting as single judge on 15 May 2006;

**NOTING** the “Decision Establishing General Principles Governing Applications to Restrict Disclosure under rules 81 (2) and 81 (4) of the Rules of Procedure and Evidence” (the “Decision Establishing General Principles”),<sup>7</sup> issued by Judge Sylvia Steiner acting as single judge on 19 May 2006;

**NOTING** the decision of Pre-Trial Chamber I of 22 March 2006<sup>8</sup> designating Judge Sylvia Steiner as single judge in the case against Thomas Lubanga Dyilo, responsible under article 57 (2) of the Rome Statute (the “Statute”) for exercising the functions of the Chamber in that case, including those provided for in rule 121 (2) (b) of the Rules of Procedure and Evidence (the “Rules”);

**NOTING** articles 54 (3) (e), 57 (3) (c), 61, 67, and 68 of the Statute; rules 15, 76, 77, 81, 87, 88, and 121 of the Rules; regulation 8 of the Regulations of the Court (the “Regulations”); and regulations 14 and 24 of the Regulations of the Registry;

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<sup>5</sup> ICC-01/04-01/06-95-US-Exp.

<sup>6</sup> ICC-01/04-01/06-102.

<sup>7</sup> ICC-01/04-01/06-108.

<sup>8</sup> ICC-01/04-01/06-51.

**CONSIDERING** that according to the Decision Establishing General Principles, “any Prosecution request pursuant to article 68 of the Statute and rule 81 (4) of the Rules for non-disclosure of the identity of Prosecution witnesses at the confirmation hearing to ensure their safety or that of their families shall be granted only if :

- (i) the Prosecution has first sought protective measures from the Victims and Witnesses Unit concerning the relevant witness; and
- (ii) the Prosecution shows that, due to exceptional circumstances surrounding the relevant witness, non-disclosure of identity remains necessary due to infeasibility of protective measures sought or insufficiency of protective measures adopted within the framework of the protection program of the Victims and Witnesses Unit as a result of the Prosecution request.”<sup>9</sup>

**CONSIDERING REDACTED;**<sup>10</sup>

### **FOR THESE REASONS**

**DECIDE** that the Prosecution shall proceed as set out in the dispositive part of the Decision Establishing General Principles if it insists on (i) non-disclosure of identity of those witnesses included in the Prosecution’s Application and the Prosecution’s

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<sup>9</sup> The Decision Establishing General Principles, pp. 22 and 23.

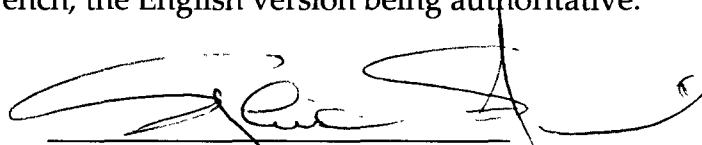
<sup>10</sup> The Prosecution Filing, p. 3.

Supplemental Brief in Support of the Prosecution's Application and (ii) the redaction of identifying information contained in their statements.

**ORDER** the Prosecution to inform the Chamber no later than 7 June 2006, of the outcome REDACTED referred to in the Prosecution's Filing of 19 April 2006.

**DECIDE** that a public redacted version of this decision shall be posted on the Court's website as soon as practicable.

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



**Judge Sylvia Steiner**  
**Single Judge**

Dated this Monday 22 May 2006

At The Hague

The Netherlands