

**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 DEFENCE MOTION CONCERNING THE *EX PARTE*  
HEARING OF 2 MAY 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 on 19 April 2004;

**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;

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

**NOTING** the “Defence’s Motion Regarding Ex Parte Hearing of 2 May 2006” (the “Defence’s Motion”),<sup>3</sup> filed on 8 May 2006, by which the Defence requested the Pre-Trial Chamber, *inter alia*, to:

- (i) “order the Prosecution to file a redacted version of their applications for non-disclosure and protective measures filed on 19 and 24 April 2006”;
- (ii) “order that a redacted transcript of the hearing convened on 2 May 2006 shall be provided to the Defence”;
- (iii) “REDACTED”;
- (iv) “reject the application of the Prosecution not to disclose the identities of witnesses just prior to trial”;

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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.

- (v) “order the Prosecutor to disclose the aforementioned exculpatory material and identities to the Defence forthwith in order to enable the Defence to effectively prepare for the confirmation hearing”;
- (vi) “order that all future motions for non-disclosure and protective measures shall be filed on an *inter partes* basis – with an *ex parte* confidential;
- (vii) “order that all future hearings under Rule 81 (2) shall – to the extent possible – be held on an *inter partes* basis, with the provision that the specific details of the application may be discussed at the end of the hearing on an *an ex parte* basis; and
- (viii) “order that all future hearings under Rule 81 (4) shall be held on an *inter partes* basis”;

**NOTING** the “Decision on the Final System of Disclosure and the Establishment of a Timetable” (the “Decision on the Final System of Disclosure”),<sup>4</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 pursuant to rules 81 (2) and 81 (4) of the Rules of Procedure and Evidence” (the “Decision Establishing General Principles”)<sup>5</sup>, issued by Judge Sylvia Steiner acting as single judge on 19 May 2006;

**NOTING** the “Decision Convening and *In Camera* and *Ex Parte* Hearing” (Decision Convening a Hearing”), issued by judge Sylvia Steiner acting as single judge on 19 May 2006;<sup>6</sup>

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<sup>4</sup> ICC-01/04-01/06-102.

<sup>5</sup> ICC-01/04-01/06-108.

<sup>6</sup> ICC-01/04-01/06-109-Conf-Exp; and its confidential redacted version ICC-01/04-01/06-110-Conf.

**NOTING** the “Decision on the Prosecution Filing of 19 April 2006 and Application of 24 April 2006” (the “Decision on the Prosecution Filing and Application”),<sup>7</sup> issued by Judge Sylvia Steiner acting as single judge on 22 May 2006;

**NOTING** the decision of Pre-Trial Chamber I of 22 March 2006 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”),<sup>8</sup> 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;

**CONSIDERING** that most of the requests contained in the Defence’s Motion have already been dealt with in the Decision Establishing General Principles, the Decision Convening a Hearing and the Decision on the Prosecution Filing and Application;

**CONSIDERING**, further, that the Decision Establishing General Principles establishes, *inter alia*, the following principles concerning applications pursuant to rule 81 (2) and (4):

- (i) all future applications by the Prosecution or the Defence to restrict disclosure under rule 81 (2) or (4) of the Rules shall be filed *inter partes* to notify the other party of the existence of the application and of any request for *ex parte* proceedings that might be contained in such an application;

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<sup>7</sup> ICC-01/04-01/06-116-Conf.

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

and to the extent necessary, any such application shall be accompanied by an *ex parte* annex containing the specific details of the application and of the request for *ex parte* proceedings;

- (ii) the Defence shall not be provided with a redacted version of any document filed, or of the transcripts of any hearing held, during such *ex parte* proceedings under rule 81 (2) or (4) of the Rules; and
- (iii) the Defence shall be provided, at the very least, with a redacted version of any decision taken by the single judge in proceedings relating to any application by the Prosecution under rule 81 (2) or (4) of the Rules.<sup>9</sup>

**CONSIDERING** that in the Decision on the Prosecution Filing and Application, the single judge decided 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 Supplemental Brief in Support of the Prosecution’s Application and (ii) the redaction of identifying information contained in their statements.”<sup>10</sup>

**CONSIDERING REDACTED;**

**CONSIDERING**, however, that the Defence is already aware of the existence of the Prosecution Filing of 19 April 2006 and the Prosecution’s Application of 24 April 2006 and has filed legal submissions concerning (i) the relationship between the Prosecution’s obligations REDACTED; and (ii) the scope of rule 81 (2) and (4) of the Rules; and has filed legal submissions;

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<sup>9</sup> Decision Establishing General Principles, pp. 19-24.

<sup>10</sup> Decision on the Prosecution Filing and Application, p. 5.

**CONSIDERING REDACTED;**


**FOR THESE REASONS**

**DECIDE** to reject the request of the Defence to order the Prosecution to file a redacted version of the Prosecution Filing of 19 April 2006 and the Prosecution's Application of 24 April 2006;

**DECIDE** to reject the request of the Defence to be provided with a redacted transcript of the hearing convened on 2 May 2006;

**DECIDE** to reject the request of the Defence to order at this stage the Prosecution to disclose the item of exculpatory material referred to in the Prosecution Filing of 19 April 2006 and the identities of the witnesses referred to in the Prosecution's Application of 24 April 2006.

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