

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06

Date: 23 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**

**URGENT
Public Document**

DECISION ON THE PROSECUTION MOTION FOR RECONSIDERATION

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 on the Final System of Disclosure and the Establishment of a Timetable (the “Decision on the Final System of Disclosure”),¹ issued on 15 May 2006 by Judge Sylvia Steiner acting as single judge;

NOTING the Motion for Reconsideration (“the Prosecution Motion”),² filed by the Prosecution on 22 May 2006, whereby “the Prosecution requests that the Pre-Trial Chamber reconsider the following three aspects: (1) the ruling that the Prosecution must provide for translations of witness statements; (2) the ruling that the Registry is the repository for original witness statements following *inter partes* disclosure; and (3) limited aspects related to the Draft Protocol on the Presentation of Evidence”;³

NOTING the Decision on the Prosecutor’s Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification (“the Decision on the Prosecution Motion for Reconsideration”), issued by Pre-Trial Chamber II (“PTC II”) on 28 October 2005;⁴

NOTING the decision of Pre-Trial Chamber I of 22 March 2006 in the case against Thomas Lubanga Dyilo designating Judge Sylvia Steiner as single judge responsible, under article 57 (2) of the Rome Statute (“the Statute”),⁵ 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”);

¹ ICC-01/04-01/06-102.

² ICC-01/04-01/06-120.

³ *Ibid.*, para. 10. See also Prosecution Motion, para. 22.

⁴ ICC-02/04-01/05-60.

⁵ ICC-01/04-01/06-51.

NOTING articles 15 (5), 19 (10), 57 (3) (c), 61 (8) and 82 (1) of the Statute and rules 118 (2), 125 (2) and 135 (4) of the Rules;

CONSIDERING that, according to article 21 (1) and (2) of the Statute, the Court shall apply first and foremost the statutory framework provided for by the Statute, the Rules, and the Elements of the Crimes; and that in interpreting this framework "the Court may apply principles and rules of law as interpreted in its previous decisions";

CONSIDERING that, in principle, the statutory framework set out by the Statute and the Rules do not provide for a motion for reconsideration as a procedural remedy against any decision taken by the Pre-Trial Chamber or the single judge;

CONSIDERING that in the Decision on the Prosecution Motion for Reconsideration PTC II rejected *inter alia* the motion of the Prosecution because:

The instruments governing the Court's procedure make no provision for such a broad remedy as an unqualified "motion for reconsideration". Review of decisions by the Court is only allowed under specific circumstances, explicitly provided in the Statute and the Rules. Suffices it to mention here article 15, paragraph 5, of the Statute, allowing the Prosecutor to request the Pre-Trial Chamber to review its denial of authorisation of the investigation, based on new facts or evidence regarding the same situation; article 19, paragraph 10, of the Statute, allowing the Prosecutor to request a review of a decision of inadmissibility of a case when satisfied "that new facts have arisen which negate the basis on which the case had been previously found inadmissible"; article 61, paragraph 8, of the Statute, allowing the Prosecutor to request the Chamber to confirm a charge which had originally not been confirmed, based upon additional evidence; rule 118, subrule 2, of the Rules, allowing the person concerned or the Prosecutor to request the Pre-Trial Chamber to review its ruling on the release or detention of such person; rule 125, sub-rule 3, of the Rules, allowing the Prosecutor to request the Chamber to review its decision not to hold a hearing on the confirmation of the charges in the absence of the person concerned; rule 135, sub-rule 4, of the Rules, allowing the prosecution and the defence to request a review of the determination that the accused is unfit to stand trial. Outside such specific instances, the only remedy of a general nature is the interlocutory appeal against decisions other than final decisions, as set forth in article 82, paragraph 1 (d) of the Statute (on which see *infra*, sub paragraph 20).⁶

CONSIDERING, further, that according to the Prosecution, "the Single Judge in the 15 May 2006 Decision has to a high extent considered the Prosecution's main observations on the 'interim system of disclosure', and has established a system that

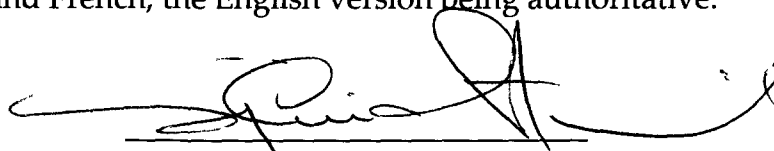
⁶ The Decision on the Prosecution , para. 18.

to a considerable level takes into account the Prosecution's legal and practical concerns"; and that the Prosecution "is *not* asking the Pre-Trial Chamber to reconsider the principal, substantive elements of the 15 May 2006 Decision but only very few and limited consequential aspects of it".⁸

FOR THESE REASONS

DECIDE to reject *in limine* the Prosecution Motion;

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



Judge Sylvia Steiner
Single Judge

Dated this Tuesday 23 May 2006

At The Hague

The Netherlands

⁷ The Prosecution Motion, para. 2.

⁸ *Ibid*, para. 3.