

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/06

Date: 1 September 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 Request for Extension of Time, Clarification and
Provision of Information**

The Office of the Prosecutor

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

NOTING the “Decision on the E-Court Protocol for the Provision of Evidence, Material, and Witness Information in Electronic Version for Their Presentation during the Confirmation Hearing” (“the Decision”),¹ issued by the single judge on 28 August 2006, in which it was held that “in relation to evidence other than witness statements for which the Prosecution does not intend to request any redaction by 29 August 2006, the Prosecution must fill in the above-mentioned fields by 4 September 2006”;²

NOTING the “Prosecution’s Request for Extension of Time, Clarification and Provision of Information” (“the Prosecution Request”),³ filed by the Prosecution on 31 August 2006, whereby the Prosecution requests:

- (i) to extend the deadline of Monday 4 September 2006 to provide the requested data in relation to evidence other than witness statements to Thursday 7 September 2006;
- (ii) to clarify:
 - a. whether metadata should be provided for the field “Recipient Organisation”;
 - b. the definition of the term ‘witness’ for the purpose of the E-Court Protocol which would include those who have provided statements on which the Prosecution intends to rely at the confirmation hearing, in addition to those who will testify in a hearing before the Court;

¹ ICC-01/04-01/06-360.

² ICC-01/04-01/06-360, page 7.

³ ICC-01/04-01/06-372.

- c. the definition of the field "Related to Witness" as including those documents on which the witnesses comment in their statements;
- (iii) to provide the list of incidents to be used for legal coding of documents and witnesses, as outlined in paragraph 4 (iii) (b) of the Prosecution Request;⁴

NOTING regulations 26 and 35 of the Regulations of the Court;

CONSIDERING that the Prosecution and the Defence have had ample opportunity to discuss any issue relating to the E-Court Protocol for the purpose of the confirmation hearing in the present case; and that the Decision must be fully implemented in all its aspects as a matter of urgency;

CONSIDERING, however, that in this particular instance good cause has been shown by paragraph 4 of the Prosecution Request in relation to the Prosecution Request for extension of time;

CONSIDERING that the field "Recipient Organisation" was part of the Draft E-Court Protocol as it stood on 15 May 2006; and that to date it has been opposed only by the Prosecution;

CONSIDERING that the definition of witness proposed by the Prosecution in paragraph 5 of the Prosecution Request is in line with the notion of witness provided for in the "Decision on the Final System of Disclosure and the Establishment of a Time-Table" issued by the single judge on 15 May 2006;⁵

⁴ ICC-01/04-01/06-372, p. 5.

⁵ ICC-01/04-01/06-102, paras. 94 to 100.

CONSIDERING that the definition of the field "Related to Witness" in the Draft E-Court Protocol as it stood on 15 May 2006 was as follows:

"Indicate to which witness or witnesses the potential evidence, evidence or material relates. A relation exists, for example, if the item is a witness statement or if the evidence or material is authored by or addressed to the witness, or if the participant intends to tender the item through the witness. The permissible values in this box are any of the witness numbers in the form SSS.PPP.WWWW.XXXX, 'No' or 'Unavailable'";

CONSIDERING therefore that the definition of the field "Related to Witness" in the Draft E-Court Protocol as it stood on 15 May 2006 was not limited to those documents on which the witnesses comment in their statements; and that it is necessary to clarify exactly what information must be included in such a field for the purpose of the confirmation hearing in the present case;

CONSIDERING that the Draft E-Court Protocol as it stood on 15 May 2006 did not require a number to be provided by the Court Management Section; and that it required the Prosecution and the Defence to deliver a witness number in accordance with the pattern outlined in the Draft E-Court Protocol where a unique number for the section "XXXX" can be chosen freely by the Prosecution and the Defence;

CONSIDERING that the list of incidents must be based on the Prosecution Charging Document and List of Evidence;

FOR THESE REASONS

DECIDE to extend from 4 September 2006 to 7 September 2006 at 16h00 the deadline given to the Prosecution to provide the requested data in relation to evidence other than witness statements;

DECIDE that, in relation to the presentation of evidence and materials, metadata for the field "Recipient Organisation" must be provided by the Prosecution and the Defence in the manner set out in the Decision in relation to the field "Recipient";

DECIDE that the definition of witness for the purpose of the E-Court Protocol for the presentation of evidence, materials and witness information for the confirmation hearing in the present case shall include those persons who have provided statements on which the Prosecution or the Defence intends to rely at the confirmation hearing, in addition to those who will testify at the hearing;

DECIDE to clarify that the field "Related to Witness" shall include the following information for the purpose of the presentation of evidence and material at the confirmation hearing in the present case:

- (i) those documents on which the relevant witness comments in his or her statement; and
- (ii) other evidence, excluding witness statements, on which the Prosecution or the Defence intends to rely at the confirmation hearing and which is authored by or addressed to the relevant witness, or which the Prosecution or the Defence intends to tender through the relevant witness;

DECIDE that the Prosecution and the Defence shall deliver witness numbers in accordance with the pattern outlined in the Draft E-Court Protocol as it stood on 15 May 2006, according to which a unique number for the section "XXXX" can be chosen freely by the Prosecution and the Defence for each witness for which a request for non-disclosure of identity has been granted or is pending before the Chamber;

DECIDE that the list of incidents shall be comprised of the following training camps and military operations:

- (i) in relation to the charges of enlistment and conscription of children under the age of 15 into the UPC/FPLC – those UPC/FPLC training camps referred to in the Prosecution Charging Document and List of Evidence to which children under the fifteen were allegedly brought between 1 July 2002 and 31 December 2003;
- (ii) in relation to the charge of use of children under the age of fifteen to actively participate in hostilities – those military operations carried out between 1 July 2002 and 31 December 2003 in which the UPC/FPLC allegedly used children under the age of fifteen to actively participate in the hostilities and which are referred to in the Prosecution Charging Document and List of Evidence;

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



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 30 August 2006

At The Hague

The Netherlands