



Original: English

No: ICC-01/04-01/06

Date: 27 July 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 NEW VERSION OF THE DRAFT PROTOCOL ON THE  
PRESENTATION OF EVIDENCE PREPARED JOINTLY BY THE OFFICE OF THE  
PROSECUTOR, THE DEFENCE AND THE REGISTRY**

**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  
Ms Véronique Pandanzyla

**Legal Representatives of Victims a/0001/06  
to a/0003/06**

Mr Luc Walley  
Mr Franck Mulenda

**Office of Public Counsel for the Defence**

Ms Melinda Taylor

**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 (Decision on the Final System of Disclosure),<sup>1</sup> issued by the single judge on 15 May 2006, in which *inter alia* the single judge ordered the parties to file the originals and an electronic copy of the evidence on which they intend to rely at the confirmation hearing containing the particulars required by the Draft Protocol on the Presentation of Evidence as it stood on 15 May 2006;

**NOTING** the Decision on the Prosecution Motion for Reconsideration,<sup>2</sup> issued by the single judge on 23 May 2006, in which the single judge rejected *in limine* the Prosecution’s motion for reconsideration of limited aspects of the Draft Protocol on the Presentation of Evidence;

**NOTING** the order issued by the single judge during the status conference on 23 June 2006, in which the Registry, the Prosecution and the Defence were to prepare a joint proposal on a modified Draft Protocol on the Presentation of Evidence by 14 July 2006;

**NOTING** the extension of the time limit granted by the single judge until 20 July 2006 as requested by the Registry;

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<sup>1</sup> ICC-01/04-01/06-102.

<sup>2</sup> ICC-01/04-01/06-123.

**NOTING** the Submission of a New Version of the E-Court Protocol prepared jointly by the Office of the Prosecutor, the Defence and the Registry (“the Submission”),<sup>3</sup> filed on 20 July 2006, which contains (i) a new Draft Protocol on the Presentation of Evidence for the purpose of the confirmation hearing (“the Draft Protocol included in Annex I to the Submission”); and (ii) a list of points of disagreement between the parties;

**NOTING** regulation 26 of the Regulations of the Court;

**CONSIDERING** that according to the Submission, “[a] distinction must be made between, on the one hand, elements which must imperatively be incorporated in the e-court protocol to allow the e-court system of presentation of evidence to function (hereinafter the “objective elements”) and, on the other hand, elements which provide further information, but are not paramount to the system (hereinafter the “subjective elements”).”<sup>4</sup>

**CONSIDERING** that, according to the Submission, “it appears that an agreement has been reached on the objective elements as amended”,<sup>5</sup> but that “points of disagreements have been recorded in relation to some subjective elements”.<sup>6</sup>

**CONSIDERING** that, according to the Submission, “the Prosecution has stated they would appreciate to have an opportunity to further address the areas of disagreement with the single judge in judicial proceedings prior to a decision on these matters”;<sup>7</sup>

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<sup>3</sup> ICC-01/04-01/06-201.

<sup>4</sup> The Submission, p. 3.

<sup>5</sup> The Submission, p. 3.

<sup>6</sup> The Submission, p.3.

<sup>7</sup> The Submission, p. 4.

**CONSIDERING** that, according to the Decision on the Final System of Disclosure, the Prosecution must file the originals and an electronic version of the evidence on which it intends to rely at the confirmation hearing as soon as practicable after it has been disclosed to the Defence;<sup>8</sup>

**CONSIDERING** that the process of disclosure of evidence on which the Prosecution intends to rely at the confirmation hearing has been taking place since April 2006;

**FOR THESE REASONS,**

**DECIDE** to give the parties the opportunity at the status conference already scheduled to be held on 17 August 2006 to elaborate on their positions in relation to the points of disagreement highlighted in Annex II to the Submission.

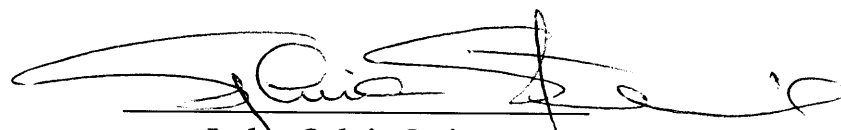
**DECIDE** that, until a final decision is taken on the content of the Draft Protocol on the Presentation of Evidence to be used for the purpose of the confirmation hearing in the case against Thomas Lubanga Dyilo, the parties shall file the originals and an electronic copy of the evidence on which they intend to rely at the confirmation hearing containing the particulars required by the Draft Protocol included in Annex I to the Submission.

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<sup>8</sup> The Decision on the Final System of Disclosure, pp. 5 and 6.

**DECIDE** that any further information that the final decision on the content of the Draft Protocol on the Presentation of Evidence might require shall be subsequently provided by the parties;

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



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

Dated this Thursday 27 July 2006

At The Hague

The Netherlands