



Original: English

No: ICC-01/04-01/06

Date: 31 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 Redacted Version

**DECISION ON THE PROSECUTION REQUEST FOR ACCESS TO THE
REGISTRY RECOMMENDATIONS**

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 Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Statute” (“the Decision Establishing General Principles”),¹ issued by the single judge on 19 May 2006, which states that “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 the 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;”²

NOTING the “Recommandations of the Registrar on Protective Measures for Prosecution Witnesses” (“the Registry Recommendations”),³ filed under seal and *ex parte* by the Registry on 24 July 2006, in which, in addition to providing the general information on the protective measures available for certain categories of witnesses requested by the single judge on 29 June 2006, the recommendations of the Victims and Witnesses Unit (“the VWU”) on the feasibility and sufficiency of the available protective measures for REDACTED Prosecution witnesses are included;

¹ ICC-01/04-01/06-108.

² The Decision Establishing General Principles, pp. 22 and 23.

³ ICC-01/04-01/06-204-US-Exp.

NOTING the “Prosecution’s Request for Access to *Ex Parte* Filings”, filed by the Prosecution on 26 July 2006 under seal and *ex parte* Prosecution and Registry only (“the Prosecution Request”),⁴ in which the Prosecution:

- (i) informs the Chamber that REDACTED
- (ii) requests access to the Registry Recommendations because it “needs the information to determine the necessity to request authorization REDACTED pursuant to Rule 81 (4)” and because, according to the Prosecution, it is entitled to comment on the VWU’s views;⁵

NOTING article 68 (1) of the Statute and rules 17 and 81 (4) of the Rules;

CONSIDERING that, according to the Decision Establishing General Principles, the assessment of the VWU on the feasibility and sufficiency of the available protective measures for a given witness is a procedural pre-requisite for the Prosecution’s filing, pursuant to rule 81 (4) of the Rules, of a motion for the non-disclosure of the identity of that witness for the purpose of the confirmation hearing;

CONSIDERING that the Registry Recommendations contain the assessment of the feasibility and sufficiency of the available protective measures for the REDACTED;

CONSIDERING therefore that the Prosecution must have access to the Registry Recommendations in order to be in a position to file a motion REDACTED pursuant to rule 81 (4) of the Rules; and that if the Prosecution decides to file any such motion, in its submission in support of the motion, it may address the assessment of the VWU concerning the relevant witness(es) contained in the Registry Recommendations;

⁴ ICC-01/04-01/06-210-US-Exp

⁵ The Prosecution Request, para. 12.

CONSIDERING further that in order to ensure legal certainty concerning the fact that the Prosecution has requested the assessment of the VWU on the feasibility and sufficiency of the available protective measures for a given witness and that the VWU has made such an assessment, it is necessary that, in the future, both the request of the Prosecution and the assessment of the VWU be filed in the record of the case against Thomas Lubanga Dyilo;

CONSIDERING further that, according to the Decision Establishing General Principles, the Defence should be made aware of the existence of the Registry Recommendations in a separate filing;

FOR THESE REASONS

DECIDE to grant the request of the Prosecution and to reclassify the Registry Recommendations as under seal and *ex parte* only available to the Prosecution.

INSTRUCT the Registry to notify the Registry Recommendations to the Prosecution.

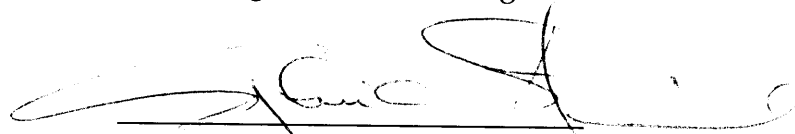
INSTRUCT the Registry to make a separate filing in order to give notice of the existence of the Registry Recommendations to the Defence.

DECIDE that, in the future, the following documents shall be filed in the record of the case against Thomas Lubanga Dyilo *ex parte* only available to the Prosecution:

- (i) any request of the Prosecution for the assessment of the VWU on the feasibility and sufficiency of the available protective measures for a witness on which the Prosecution intends to rely at the confirmation hearing;
- (ii) any assessment by the VWU at the request of the Prosecution on the feasibility and sufficiency of the available protective measures for a witness on which the Prosecution intends to rely at the confirmation hearing.

DECIDE that the Defence must be given notice of the existence of these filings by way of a separate filing.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 31 July 2006

At The Hague

The Netherlands