



Original: English

No: ICC-01/04-01/06

Date: 4 August 2006

**PRE-TRIAL CHAMBER I**

**Before:** Judge Sylvia Steiner, Single Judge

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO  
IN THE CASE OF  
THE PROSECUTOR  
v. THOMAS LUBANGA DYILO**

**Public Document**

**Decision on the Requests of the Defence of 3 and 4 July 2006**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo

Mrs Fatou Bensouda

Mr Ekkehard Withopf

**The Legal Representatives of the  
Victims**

Mr Luc Walley

Mr Franck Mulenda

**Counsel for the Defence**

Mr Jean Flamme

Ms Veronique Pandanzyla

**The Office of Public Counsel for the  
Defence**

Ms Melinda Taylor

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

**NOTING** the oral argument of the Defence at the status conference on 23 June 2006<sup>1</sup>, whereby the Defence brings to the attention of the single judge concerns regarding the French translation of documents, the general procedure for deadlines and his intention to file a written motion on the matters;

**NOTING** the “Motion requesting that all deadlines run from the date of receipt of French version”<sup>2</sup>, filed by the Defence on 3 July 2006, in which the Defence: (i) stressed that the Defence team is unable to fully comprehend and react to decisions and motions because the team’s working language is French and Thomas Lubanga Dyilo does not speak nor read English; and that a translation of those documents by the Defence team for Thomas Lubanga Dyilo would “invite misunderstandings and inaccuracies” in addition of being time consuming, thus violating article 67 (1) (f) of the Rome Statute (“the Statute”); and (ii) requested that Thomas Lubanga Dyilo be provided with a French translation of all procedural documents<sup>3</sup> and that deadlines set by those documents start running from the date of receipt of the French versions of the said documents by the Defence;

**NOTING** the “Motion Requesting Translation of Disclosure and Relevant Materials into French”<sup>4</sup>, filed by the Defence on 4 July 2006, whereby the Defence (i) asserted that, under articles 54 (1), 67 (1) (a) and 67 (2) of the Statute, the Prosecution is obliged to discharge its disclosure obligations by providing to Thomas Lubanga Dyilo the witness statements and documents on which the Prosecution intends to rely at the confirmation hearing in a language that Thomas Lubanga Dyilo fully

<sup>1</sup> ICC-01/04-01/06-T-9-EN, p. 35-38.

<sup>2</sup> ICC-01/04-01/06-179-tEN.

<sup>3</sup> Procedural documents are understood as decisions and orders of the Chamber, and other documents filed by the parties outside the system of disclosure such as motions, responses, observations.

<sup>4</sup> ICC-01/04-01/06-180-tEN.

understands and speaks; and (ii) therefore requested that all documents<sup>5</sup> communicated by the

Prosecution and which substantiate the charges against Thomas Lubanga Dyilo be translated into French within the disclosure deadlines set by the single judge;

**NOTING** the “Prosecution's Response to Defence's Requête aux fins de la traduction en français des pièces communiquées et de toute autre pièce pertinente”<sup>6</sup>, filed by the Prosecution on 14 July 2006, whereby the Prosecution contended that (i) its only statutory obligation in terms of translation falls within rule 76 of the Rules of Procedure and Evidence (“the Rules”); (ii) the rights contained in article 67 of the Statute have their limitations; and (iii) if the Prosecution were to translate all the evidentiary materials already disclosed, the confirmation hearing would be considerably delayed;

**NOTING** the “Prosecution's Response to Defence's Requête aux fins de faire courir tous les délais à compter de la date de réception de la version française des documents”<sup>7</sup>, filed by the Prosecution on 14 July 2006, by which the Prosecution argues that (i) the Defence Counsel does have sufficient command of English as he filed two “lengthy and substantive motions in English”; (ii) there is no express statutory right for a person to receive translation of all court filings; and (ii) that due to limited translation resources, the Prosecution supports a case-by-case approach for the extension of a time limit pursuant to regulation 35 of the Regulations of the Court (“the Regulations”);

<sup>5</sup>ICC-01/04-01/06-180, para. 27: all exculpatory materials under article 67 (2) of the Rome Statute and all material falling under rule 77 of the Rules of Procedure and Evidence.

<sup>6</sup> ICC-01/04-01/06-192.

<sup>7</sup> ICC-01/04-01/06-193.

**NOTING** the decision of Pre-Trial Chamber I of 22 March 2006 designating Judge Sylvia Steiner as single judge responsible, under article 57 (2) of the Statute, for exercising the functions of the Chamber in the case against Thomas Lubanga Dyilo<sup>8</sup>;

**NOTING** articles 21, 50, 54, 61 and 67 of the Statute, rules 76, 77 and 121 (3) of the Rules and regulations 35 and 40 (3) of the Regulations;

**CONSIDERING** that Thomas Lubanga Dyilo fully understands and speaks French<sup>9</sup>, which is one of the official working language of the Court;

**CONSIDERING** that although rule 22 (1) of the Rules requires only that Counsel for the Defence “have an excellent knowledge of and be fluent in at least one of the working languages of the Court”, the Defence has to date filed motions both in French and in English, which are the two working languages of the Court;

**CONSIDERING** that article 67 (1) (a), (c) and (f) of the Statute provides for the right of Thomas Lubanga Dyilo: (i) “to be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks”; (ii) “to be tried without undue delay”; and (iii) “to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks”;

**CONSIDERING** that rule 76 (3) of the Rules is the only provision which expressly imposes upon the Prosecution a statutory obligation to provide the Defence with

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

<sup>9</sup> ICC-01/04-01/06-T-3-FR, p. 3, lines 4-19.

evidentiary materials in a language which Thomas Lubanga Dyilo fully understands and speaks;

**CONSIDERING** that the European Court of Human Rights (“the ECHR”) ruled in the *Leudicke* Case that “the right, stated in article 6 (3) (e) of the [European Convention on Human Rights]<sup>10</sup>, to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. Paragraph 3 (e) signifies that a person “charged with a criminal offence” who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him [...] in order to have the benefit of a fair trial”<sup>11</sup>;

**CONSIDERING**, however, the same Court ruled in the *Kamasinski* Case that the right to the free assistance of an interpreter for the translation or interpretation of court documents by determining that article 6 (3) (e) European Convention on Human Rights “does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events”<sup>12</sup>;

**CONSIDERING** that the right set out in article 67 (1) (a) of the Statute grants Thomas Lubanga Dyilo the right to be informed in detail of the nature, cause and

<sup>10</sup> European Convention on Human Rights, Rome, 4 November 1950, Article 6 (3) (e): “Everyone charged with a criminal offence has the following minimum rights: (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

<sup>11</sup> Case of *Leudicke v. Germany* [EHCR] Applications no. 6210/73; 7132/75 (1978), par. 48.

<sup>12</sup> Case of *Kamasinski v. Austria* [ECHR] Application No. 9783/82, Judgement, 19 December 1989, par. 74.

content of the charges against him<sup>13</sup> as opposed to granting him a general right to receive all documents from the Prosecution in a language he fully understands and speaks; that the Chamber is of the view that the detailed description of the charges together with a list of evidence (“the Charging Document and List of Evidence”) provided for in rule 121 (3) of the Rules will adequately inform Thomas Lubanga Dyilo of the nature, cause and content of the charges against him; and that the rights of Thomas Lubanga Dyilo under article 67 (1) (a) of the Statute would be duly guaranteed by the filing by the Prosecution in the record of the case against Thomas Lubanga Dyilo of a French version of the Charging Document and List of Evidence and, as the case may be, of the Amended Charging Document and List of Evidence within the time limits provided for in rule 121 (3), (4) and (5) of the Rules;

**CONSIDERING**, that by using the words “as are necessary to meet the requirements of fairness”, article 67 (1) (f) of the Statute does not grant Thomas Lubanga Dyilo the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that Thomas Lubanga Dyilo fully understands and speaks; and that this interpretation is fully consistent with the case law of the ECHR on this matter<sup>14</sup>;

**CONSIDERING**, further, that during the status conferences of 23 June 2006 and 14 July 2006<sup>15</sup>, the Prosecution has reaffirmed his readiness to make continuous efforts to disclose to the Defence the French version of the documents when the said documents are available in both the English language and the French language;

<sup>13</sup> See the following cases of the ICTY where a balance is made between the right to a fair and expeditious trial and the requests that all evidentiary materials be translated in a language which the accused fully understands and speaks: *The Prosecutor v Mladen Naletilić & Vinko Martinović*, Case no. IT-98-34, Decision on Defence’s Motion Concerning Translation of all Documents, 18 October 2001; and *The Procureur v LJUBICIC*, Case No. IT-00-41, Décision relative à la requête de la défense aux fins de la traduction de tous les documents, 20 novembre 2002.

<sup>14</sup> Case of *Leudicke v. Germany* [ECHR] Applications no. 6210/73; 7132/75 (1978), par. 48; Case of *Kamasinski v. Austria* [ECHR] Application No. 9783/82, Judgement, 19 December 1989, par. 74.

<sup>15</sup> ICC-01/04-01/06-T-9-EN, p. 39, lines 2-12, ICC-01/04-01/06-T-11-EN, p. 42, lines 3-17.

**CONSIDERING**, nevertheless, that in the view of the Chamber, Thomas Lubanga Dyilo would greatly benefit from the permanent assistance of a French interpreter in order to facilitate his adequate knowledge of the evidentiary materials and procedural documents filed by the Prosecution, as well as his proper understanding of the decisions and orders of the Chamber pending their official written translations;

**CONSIDERING** that pursuant to regulation 40 (3) of the Regulations, the Registry is the organ of the Court responsible for ensuring the translation of all decisions and orders of the Chamber;

**CONSIDERING** further that, pursuant to regulation 35 (2) of the Regulations, the Chamber, at the request of *inter alia* the Defence, “may extend or reduce a time limit if good cause is shown”; and that, therefore, the Defence has the possibility to request an extension of time limit to respond to a specific document;

**CONSIDERING** that the case-by-case approach by the Chamber to allow a variation in the time limits is fully consistent with the rights of Thomas Lubanga Dyilo;

#### **FOR THESE REASONS**

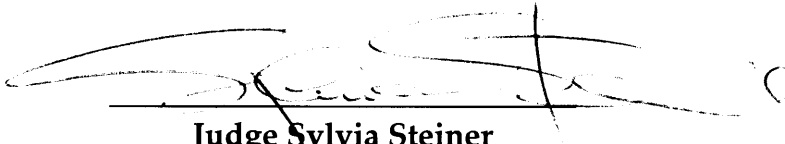
**DENY** the request of the Defence to order the Prosecution to provide in French all documents that the Prosecution, pursuant to the Statute and the Rules, is obliged to disclose to the Defence for the purpose of the confirmation hearing;

**DENY** the request of the Defence to have all future deadlines in the proceedings to run from the date of receipt of the French version of the procedural documents by the Defence;

**ORDER** the Prosecution to file a French version of the Charging Document and List of Evidence and, as the case may be, of the Amended Charging Document and List of Evidence within the time-limits provided for in rule 121 (3), (4) and (5) of the Rules and in accordance with the disclosure timetable as set out in the 24 June 2006 Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable set in the Decision on the Final System of Disclosure.

**ORDER** the Registrar to have permanently available and free of any cost, a French interpreter to assist Thomas Lubanga Dyilo and the Defence team for the purpose of the confirmation hearing with documents of the case which are available only in English.

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



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

Dated this Friday 4 August 2006

At The Hague

The Netherlands