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Date: **5 December 2008**

TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

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

Public Document
with – Confidential – Ex Parte - Prosecution Only Attachment A,
10 Confidential - Ex Parte - Prosecution Only Annexes and 44 Confidential –
Prosecution and Defence Only Annexes
Prosecution's Request for Non-Disclosure of the Identity of Eight Individuals
providing Rule 77 Information

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations
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I. Background

1. On 25 November 2008, the Prosecution advised the Trial Chamber that further to its application dated 21 December 2007¹ there were approximately 12 individuals who had provided information to the Office of the Prosecutor (OTP) that may be material to the preparation of the Defence under Rule 77 of the Rules of Procedure and Evidence (Rules). The Prosecution has disclosed anonymous excerpts of the relevant information to the Defence.²
2. On the same date, the Trial Chamber ordered the Prosecution to file the material at issue in unredacted form and in the form in which disclosure is proposed, along with any proposed admissions of fact and alternative evidence that cover the relevant information in each statement.³
3. The Prosecution can advise that there are in fact 10 individuals who fall into this category, rather than 12. For these 10 individuals, the Prosecution can advise that the relevant statements of 2 of these 10 individuals can be disclosed without redactions to the identity of the individuals.⁴ For the remaining 8 individuals, the Prosecution is, with the present filing, providing the requested information for the Trial Chamber's consideration.

II. Prosecution's Submissions

4. The Prosecution is seeking authorization for non-disclosure of the identity of the eight individuals referred to in the present filing, on the basis of Articles 54(3)(f), 61, 64, 68 of the Rome Statute (Statute) and Rule 81(4),

¹ ICC-01/04-01/06-1102, with Confidential-*ex parte* Annexes.

² ICC-01/04-01/06-T-99-ENG at page 36, lines 15-25. The Prosecution notes that it also advised the Trial Chamber that 5 individuals who provide information that is '*tu quoque*' also provide additional information that is considered to be Rule 77. These five witnesses will be dealt with in the Prosecution's separate filing also dated 5 December 2008, related to the non-disclosure of the identity of certain individuals who provide '*tu quoque*' information.

³ ICC-01/04-01/06-T-99-ENG at page 37, lines 5-13.

⁴ Item DRC-OTP-0150-0394 was disclosed on 3 December 2008. Item DRC-OTP-0160-0381 will be disclosed at the next disclosure meeting, scheduled for 10 December 2008.

and for disclosure of alternative forms of the relevant information provided by each individual. The Prosecution also relies on Rule 77 as a legal basis for the relief sought, as Rule 77 expressly makes disclosure subject to the restrictions on disclosure contained in the Statute and Rules 81 and 82.

5. For each of the eight individuals that are the subject of the present filing, the Prosecution's submission includes the nature and a brief summary of each item, the security concerns for each individual, the proposed form(s) of disclosure and the requested relief. In addition, the Prosecution attaches a chart as Confidential – Prosecution and Defence Only Annex 1 with details of the proposed form(s) of disclosure for each of the eight items.

(i) *Witness DRC-OTP-WWWW-0316*

6. Witness DRC-OTP-WWWW-0316 provided a two-page report⁵ that includes information that may be relevant to the preparation of the Defence. The Prosecution proposes disclosing the report in full, but seeks authorization to redact the name of the witness as the author of the report as well as to the letters designating his position.
7. The Prosecution requests these redactions under Articles 54(3)(f), 61, 64, 68 of the Rome Statute (Statute) and Rule 81(4).
8. The Prosecution has requested authorization to redact the identity of Witness DRC-OTP-WWWW-0316 in other documents on the same basis.⁶
9. The Prosecution also submits a proposed admission of fact, and proposed items of alternative evidence to cover the information. These proposed forms of alternative disclosure are contained in Annex 1.

⁵ DRC-OTP-0142-0004. The proposed redacted version of this report, with transparent redactions that allow the Trial Chamber to view the words that are proposed for redaction, is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 2**. The proposed redacted report with opaque redactions is attached as Confidential – Prosecution and Defence Only **Annex 3**.

⁶ See "Prosecution's Application for Non-Disclosure of Information", paras. 6-10, ICC-01/04-01/06-1330-Conf-Exp with Conf-Exp Annexes. See also "Réponse de la Défense à la "Prosecution's Application for Non-Disclosure of Information" datée du 13 mai 2008", 26 May 2008, ICC-01/04-01/06-1357.

10. The Prosecution requests that the name and role of Witness DRC-OTP-WWWW-0316 be redacted in the report.

(ii) *Witness DRC-OTP-WWWW-0018*

11. Witness DRC-OTP-WWWW-0018 was interviewed by the OTP⁷ and provided information that may be potentially exonerating and material to the preparation of the Defence.
12. The Prosecution proposes disclosing a redacted version of Witness DRC-OTP-WWWW-0018's statement. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4). The Prosecution submits that the information relevant to the Defence will be provided in unredacted form, with sufficient details of the nature of this witness' evidence to allow the Defence to evaluate the information.
13. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration. The Prosecution has also proposed alternative evidence to cover this information from other sources. The Prosecution refers to the Chart at Annex 1.
14. The Prosecution requests that the name and identifying information in the statement of Witness DRC-OTP-WWWW-0018 be disclosed in redacted form.

⁷ DRC-OTP-0096-0116. The proposed redacted version of this statement, with transparent redactions that allow the Trial Chamber to view the words that are proposed for redaction, is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 4**. The proposed redacted report with opaque redactions is attached as Confidential – Prosecution and Defence Only **Annex 5**.

(iii) *Witness DRC-OTP-WWWW-0163*

15. Witness DRC-OTP-WWWW-0163 was interviewed by the OTP that may be material to the preparation of the Defence.
16. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0163, with verbatim extracts of the sections providing information that may be material to the preparation of the Defence.⁸
17. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).
18. The Prosecution submits a proposed admission of fact for the Trial Chamber's consideration, and proposed items of alternative evidence to cover the information provided by this witness. These proposed forms of alternative disclosure are contained in Annex 1.
19. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0163 and to disclose a summary of the evidence, a proposed admission of fact or alternative items of evidence that cover the relevant information.

(iv) *Witness DRC-OTP-WWWW-0044*

20. Witness DRC-OTP-WWWW-0044 was interviewed by the OTP and provided information that may be material to the preparation of the Defence and information that may be potentially exonerating.
21. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0044, with verbatim extracts of the sections

⁸ The proposed summary of the interview of Witness DRC-OTP-WWWW-0163 is attached hereto as Confidential – Prosecution and Defence Only **Annex 6**. The complete, unredacted version of the interview is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 7**.

providing information that may be material to the preparation of the Defence or potentially exonerating.⁹

22. The Prosecution submits a proposed admission of fact for the Trial Chamber's consideration, and proposed items of alternative evidence to cover the information provided by this witness. These proposed forms of alternative disclosure are contained in Annex 1.
23. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).
24. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0044 and to disclose a summary of the evidence, a proposed admission of fact or alternative items of evidence that cover the relevant information.

(v) *Witness DRC-OTP-WWWW-0035*

25. Witness DRC-OTP-WWWW-0035 was interviewed by the OTP and provided information that may be potentially exonerating.
26. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0035, with verbatim extracts of the sections providing information that may be potentially exonerating.¹⁰
27. The Prosecution also submits proposed items of alternative evidence to cover the information provided by this witness. These proposed forms of alternative disclosure are contained in Annex 1.

⁹ The proposed summary of the unsigned statement of Witness DRC-OTP-WWWW-0044 is attached hereto as Confidential – Prosecution and Defence Only **Annex 8**. The complete, unredacted version of the unsigned statement is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 9**.

¹⁰ The proposed summary of the interview of Witness DRC-OTP-WWWW-0035 is attached hereto as Confidential – Prosecution and Defence Only **Annex 10**. The complete, unredacted version of the interview is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 11**.

28. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).

29. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0035 and to disclose a summary of the evidence or alternative items of evidence that cover the relevant information.

(vi) *Witness DRC-OTP-WWWW-0037*

30. Witness DRC-OTP-WWWW-0037 was interviewed by the OTP and provided information that may be potentially exonerating or material to the preparation of the Defence.

31. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0037, with verbatim extracts of the sections providing information that may be potentially exonerating or material to the preparation of the Defence.¹¹

32. The Prosecution also submits proposed admissions of fact and proposed items of alternative evidence to cover the information provided by this witness. These proposed forms of alternative disclosure are contained in Annex 1.

33. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).

34. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0037 and to disclose a summary of the evidence or alternative items of evidence that cover the relevant information.

¹¹ The proposed summary of the interview of Witness DRC-OTP-WWWW-0037 is attached hereto as Confidential – Prosecution and Defence Only **Annex 12**. The complete, unredacted version of the interview is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 13**.

(vii) *Witness DRC-OTP-WWWW-0101*

35. Witness DRC-OTP-WWWW-0101 was interviewed by the OTP and provided information that may be material to the preparation of the Defence.
36. The Prosecution proposes disclosing a redacted version of Witness DRC-OTP-WWWW-0101's statement.¹² The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).
37. The Prosecution submits that the information relevant to the Defence will be provided in unredacted form, with sufficient details of the nature of this witness' evidence to allow the Defence to evaluate the information.
38. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0101 and to disclose a redacted version of the statement or alternative items of evidence that cover the relevant information.

(viii) *Witness DRC-OTP-WWWW-0270*

39. Witness DRC-OTP-WWWW-0270 was interviewed by the OTP and provided information that may be material to the preparation of the Defence.
40. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0270, with verbatim extracts of the sections

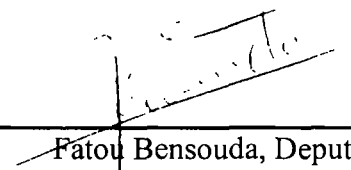
¹² DRC-OTP-0104-0123. The proposed redacted version of this statement, with transparent redactions that allow the Trial Chamber to view the words that are proposed for redaction, is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 14**. The proposed redacted report with opaque redactions is attached as Confidential – Prosecution and Defence Only **Annex 15**.

providing information that may be material to the preparation of the Defence.¹³

41. The Prosecution also submits proposed admissions of fact and proposed items of alternative evidence to cover the information provided by this witness. These proposed forms of alternative disclosure are contained in Annex 1.
42. The Prosecution requests redactions to the witness' identity under Articles 54(3)(f), 61, 64, 68 and Rule 81(4).
43. The Prosecution requests authorization not to disclose the identity of witness DRC-OTP-WWWW-0270 and to disclose a summary of the evidence or alternative items of evidence that cover the relevant information.

III. Requested Relief

44. Based on the foregoing, the Prosecution requests that the Trial Chamber authorize:
 - (i) the non-disclosure of the identity and identifying information for eight witnesses in accordance with Articles 54(3)(f), 61, 64, 68 and Rule 81(4);¹⁴ and
 - (ii) alternative forms of disclosure to cover the relevant information from each of the eight individuals, as identified.



 Fatou Bensouda, Deputy Prosecutor

¹³ The proposed summary of the interview of Witness DRC-OTP-WWWW-0270 is attached hereto as Confidential – Prosecution and Defence Only **Annex 16**. The complete, unredacted version of the interview is attached hereto as Confidential – *Ex Parte* - Prosecution Only **Annex 17**.

¹⁴ Redacted Statements : DRC-OTP-0142-0004, DRC-OTP-0096-0116 and DRC-OTP-0104-0123. Summaries: DRC-OTP-0160-0448 and for DRC-OTP-WWWW-0163, DRC-OTP-WWWW-0035, DRC-OTP-WWWW-0037, DRC-OTP-WWWW-0270.

On behalf of
Luis Moreno-Ocampo
Prosecutor

Dated this 5th day of December 2008
At The Hague, The Netherlands