



Original: English

No.: ICC-01/04-01/06
Date: 10 December 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
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, Prosecution and Defence Only Annex**

**Prosecution's Request for Non-Disclosure of the Identity of Twenty-
Five Individuals providing *Tu Quoque* Information**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley

Ms Carine Bapita Buyangandu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. At a hearing on 18 November 2008, the Trial Chamber invited the parties and participants to make submissions on the issue of *tu quoque* information in the Prosecution's possession.¹ These submissions were requested in light of the Appeals Chamber's ruling, in its decision of 11 July 2008, that "*material relating to the general use of child soldiers in the DRC is material to the preparation of [the] defence*",² and thus falls within the Prosecution's disclosure obligations pursuant to Rule 77 of the Rules of Procedure and Evidence. The Trial Chamber sought the parties' and participants' views regarding the consequences of this decision by the Appeals Chamber, which reversed an 18 January 2008 oral order of the Trial Chamber which had authorised the non-disclosure of *tu quoque* materials.³

2. At the 25 November 2008 hearing, the Prosecution advised the Trial Chamber that, further to its application dated 21 December 2007,⁴ there were forty-three individuals who had provided *tu quoque* information in witness statements to the Prosecution, and that it had disclosed anonymous excerpts of these statements to the Defence.⁵

3. On the same date, the Trial Chamber ordered the Prosecution to file the undisclosed materials in fully unredacted form to the Chamber

¹ ICC-01/04-01/06-T-98-ENG, page 5, lines 14-22.

² ICC-01/04-01/06-1433, para. 82.

³ Trial Chamber's oral order of 18 January 2008, ICC-01/04-01/06-T-71-ENG, page 10, lines 11-13.

⁴ ICC-01/04-01/06-1102.

⁵ ICC-01/04-01/06-T-99-ENG at page 28, lines 14-17. The Prosecution notes that it also advised the Trial Chamber that 5 individuals who provide *tu quoque* information also provide additional information that is considered to fall within the scope of Rule 77.

and in the format the Prosecution proposes to disclose such materials to the Defence,⁶ along with any proposed admissions of fact⁷ and alternative evidence⁸ that cover the relevant information in each statement. Finally, the Chamber ordered the Prosecution to provide a brief update of the security situation of each of the witnesses whose evidence cannot be disclosed to the Defence, to the extent that it is available.⁹

4. On 5 December 2008 the Prosecution filed the Confidential, *ex parte*, Prosecution Only “Prosecution’s Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information”¹⁰ (“5 December 2008 Application”). In its 5 December 2008 Application, the Prosecution advised the Trial Chamber that it had disclosed to the Defence statements from a number of the forty-three witnesses who provide *tu quoque* information on 3 December 2008, and that it intends to disclose additional statements in the course of the week of 8 December 2008. In addition to the information provided in the 5 December 2008 Application, the Prosecution can now inform the Chamber and the Defence that the combined result of the past and forthcoming disclosures will be that the Defence will have access to the full (rather than excerpted) statements containing *tu quoque* information for eighteen of the forty-three witnesses, and that the identities of those eighteen witnesses will be known to the Defence.¹¹

⁶ See ICC-01/04-01/06-T-99-ENG at page 37, lines 7-10 and page 34, lines 21-24.

⁷ ICC-01/04-01/06-T-99-ENG at page 31, lines 3-9 and page 34, lines 12-16.

⁸ ICC-01/04-01/06-T-99-ENG at page 30, line 22 to page 31, line 2.

⁹ ICC-01/04-01/06-T-99-ENG at page 35, lines 1-5.

¹⁰ ICC-01/04-01/06-1545-Conf-Exp

¹¹ A chart indicating the statements and witnesses concerned, and the date of disclosure of these materials, is provided as Confidential, Prosecution and Defence Only Annex. This chart is provided with the present filing for the first time. The Prosecution draws the Chamber’s attention to the fact that a total of 26 statements will be disclosed in the week

5. While a number of the statements from those eighteen witnesses contain redactions for which the Prosecution must seek the Trial Chamber's authorisation,¹² these redactions do not pertain to the identity of the witnesses, do not affect the information that is material to the preparation of the Defence, and in the Prosecution's submission, do not limit the Defence's ability to investigate the information of a *tu quoque* nature contained therein.

6. For the remaining twenty-five individuals who provide *tu quoque* information and in two cases provide additional Rule 77 information,¹³ the Prosecution is requesting authorisation for their identities to remain undisclosed, and proposing alternatives to the unredacted disclosure of their information, which include the disclosure of redacted¹⁴ statements or summaries, to be considered together with proposed admissions of fact¹⁵ and with the items of

of 8 December 2008, rather than the 20 indicated at paragraph 4 of the 5 December 2008 Application, and that these 26 statements relate to 14, rather than to the 15 witnesses which had been indicated in the 5 December 2008 Application.

The Prosecution draws the Chamber's and the Defence's attention to the fact that the present filing contains a number of further clarifications.

¹² The Prosecution will file an application seeking authorisation for the redactions contained in these statements from the Trial Chamber in the week of 8 December 2008.

¹³ The Prosecution refers to the indication above at footnote 5 that it advised the Chamber that out of the forty-three witnesses who provide *tu quoque* information, five individuals also provide other Rule 77 information. For one of these five witnesses, the Prosecution disclosed the relevant materials to the Defence on 3 December 2008. For two others, the Prosecution will do so in the week of 8 December 2008. In its filing of 5 December 2008 and in the present filing, the Prosecution provides information on the remaining two witnesses who provide *tu quoque* and other Rule 77 information.

¹⁴ The Prosecution provided all statements to the Trial Chamber with the redactions in "proof" (ie with grey see-through boxes, that will enable the Trial Chamber to view the information that is redacted) and to the Defence in the format in which they would be disclosed (redacted versions or summaries).

¹⁵ The proposed admissions of fact are listed in the Confidential – Prosecution and Defence Only Annex to the present filing, where they appear on the same row as the witness to whose evidence the proposed admissions relate.

disclosed evidence which contain *tu quoque* or other Rule 77 information.¹⁶

II. Application for extension of page limit

7. The Prosecution sought an extension of the page limit for its 5 December 2008 Application pursuant to Regulation 37(2) of the Regulations of the Court. The Prosecution submitted that the exceptional circumstances required by that provision exist, as the submissions contain information provided by twenty-five witnesses in their statements, updated security information for each witness, and a description of the proposed methods of disclosure.

III. Prosecution's Submissions

8. For each of the twenty-five individuals who are the subject of the 5 December 2008 Application and who are referred to in the present filing, the Prosecution's submission includes the nature of each item and the proposed forms of disclosure.¹⁷
9. The Prosecution is seeking authorization for non-disclosure of the identity of the twenty-five individuals referred to in the 5 December

¹⁶ The Prosecution attached a chart listing 145 items of evidence containing *tu quoque* information which have been disclosed to the Defence, as well as 9 items of disclosed, alternative Rule 77 evidence to its 5 December 2008 Application. See ICC-01/04-01/06-1545-Conf-Anx155.

¹⁷ In its 5 December 2008 Application, the Prosecution additionally provided the Trial Chamber with updated security situation for each individual.

2008 Application, on the basis of Articles 54(3)(f), 64, 68 of the Rome Statute (Statute) and Rules 81(2) and (4), 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.

Vulnerable witnesses who provide tu quoque information

10. From the twenty-five individuals who are the subject of the 5 December 2008 Application, the eighteen¹⁸ who are referred to in paragraphs 14 to 67 below, are all, in the Prosecution's submission, particularly vulnerable witnesses. For each of these witnesses, the Prosecution proposes disclosing a redacted version of their statements, and requests authorisation to make redactions to the witnesses' identifying information contained therein pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

11. The Prosecution submits that these vulnerable witnesses require special protection in particular in light of the provision of Article 68(1), which mandates the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, and to have regard to factors such as age, gender, health, and the nature of the crime.

12. The Prosecution submits that the non-disclosure of the identities of these witnesses would not be prejudicial or inconsistent with the

¹⁸ The Prosecution informs the Chamber that only eighteen witnesses are referred to in this section, rather than nineteen, as had been indicated at paragraphs 10 and 13 of the 5 December 2008 Application.

rights of the Accused, in particular given that the Accused will receive the statements with only limited redactions that do not impinge upon the *tu quoque* information; that the Prosecution has made both broad and – in its 5 December 2008 Application and in the Annex to the present filing – detailed admissions of fact relating to the use of child soldiers; and that the Prosecution has disclosed a considerable volume of materials which may serve as alternative evidence.

13. With respect to each of the eighteen witnesses, authorisation for further redactions is requested below.

Witness DRC-OTP-WWWW-0064

14. Witness DRC-OTP-WWWW-0064 provided a statement¹⁹ to the Office of the Prosecutor (OTP) in 2006.

15. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying other persons mentioned in this witness' statement.

16. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

¹⁹ The proposed redacted version of this witness's statement, DRC-OTP-0160-0309, was filed as Confidential, *ex parte*, Prosecution Only Annex A and as Confidential, Prosecution and Defence Only Annex A to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

Witness DRC-OTP-WWWW-0137

17. Witness DRC-OTP-WWWW-0137 provided a statement²⁰ to the OTP in 2006.

18. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

19. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0155

20. Witness DRC-OTP-WWWW-0155 provided two statements²¹ to the OTP in 2006.

21. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

²⁰ The proposed redacted version of this witness's statement, DRC-OTP-0150-0138, was filed as Confidential, *ex parte*, Prosecution Only Annex B and as Confidential, Prosecution and Defence Only Annex B to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

²¹ The proposed redacted versions of this witness's statements, DRC-OTP-0149-0030 and DRC-OTP-0164-0504, were filed as Confidential, *ex parte*, Prosecution Only Annex C and as Confidential, Prosecution and Defence Only Annex C to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statements contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

22. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0169

23. Witness DRC-OTP-WWWW-0169 provided a statement²² to the OTP in 2006.

24. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement, as well as to other information contained in the statement which in the Prosecution's submission is immaterial to the case.

25. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0170

26. Witness DRC-OTP-WWWW-0170 provided a statement²³ to the OTP in 2006.

27. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation,

²² The proposed redacted version of this witness's statement, DRC-OTP-0150-0150, was filed as Confidential, *ex parte*, Prosecution Only Annex D and as Confidential, Prosecution and Defence Only Annex D to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

²³ The proposed redacted version of this witness's statement, DRC-OTP-0150-0331, was filed as Confidential, *ex parte*, Prosecution Only Annex E and as Confidential, Prosecution and Defence Only Annex E to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Article 54(3)(f) and Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

28. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0175

29. Witness DRC-OTP-WWWW-0175 provided a statement²⁴ to the OTP in 2005.

30. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

31. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0176

32. Witness DRC-OTP-WWWW-0176 provided a statement²⁵ to the OTP in 2005.

²⁴ The proposed redacted version of this witness's statement, DRC-OTP-0150-0183, was filed as Confidential, *ex parte*, Prosecution Only Annex F and as Confidential, Prosecution and Defence Only Annex F to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

33. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

34. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0177

35. Witness DRC-OTP-WWWW-0177 provided a statement²⁶ to the OTP in 2006.

36. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Article 54(3)(f) and Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

37. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration.

²⁵ The proposed redacted version of this witness's statement, DRC-OTP-0149-0041, was filed as Confidential, *ex parte*, Prosecution Only Annex G and as Confidential, Prosecution and Defence Only Annex G to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

²⁶ The proposed redacted version of this witness's statement, DRC-OTP-0149-0021, was filed as Confidential, *ex parte*, Prosecution Only Annex H and as Confidential, Prosecution and Defence Only Annex H to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

Witness DRC-OTP-WWWW-0178

38. Witness DRC-OTP-WWWW-0178 provided a statement²⁷ to the OTP in 2006.

39. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

40. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0179

41. Witness DRC-OTP-WWWW-0179 provided a statement²⁸ to the OTP in 2006.

42. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying

²⁷ The proposed redacted version of this witness's statement, DRC-OTP-0149-0026, was filed as Confidential, *ex parte*, Prosecution Only Annex I and as Confidential, Prosecution and Defence Only Annex I to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

²⁸ The proposed redacted version of this witness's statement, DRC-OTP-0149-0035, was filed as Confidential, *ex parte*, Prosecution Only Annex J and as Confidential, Prosecution and Defence Only Annex J to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

another person mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Article 54(3)(f) and Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

43. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0216

44. Witness DRC-OTP-WWWW-0216 provided a statement²⁹ to the OTP in 2006.

45. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Article 54(3)(f) and Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

46. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0256

²⁹ The proposed redacted version of this witness's statement, DRC-OTP-0152-0106, was filed as Confidential, *ex parte*, Prosecution Only Annex K and as Confidential, Prosecution and Defence Only Annex K to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

47. Witness DRC-OTP-WWWW-0256 provided a statement³⁰ to the OTP in 2006.

48. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Article 54(3)(f) and Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

49. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0278

50. Witness DRC-OTP-WWWW-0278 provided a statement³¹ to the OTP in 2007.

51. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other persons mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Rule

³⁰ The proposed redacted version of this witness's statement, DRC-OTP-0150-0024, was filed as Confidential, *ex parte*, Prosecution Only Annex L and as Confidential, Prosecution and Defence Only Annex L to the 5 December 2008 Application. The Prosecution informs the Chamber that the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

³¹ The proposed redacted version of this witness's statement, DRC-OTP-1007-1055, was filed as Confidential, *ex parte*, Prosecution Only Annex M and as Confidential, Prosecution and Defence Only Annex M to the 5 December 2008 Application.

81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

52. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0281

53. Witness DRC-OTP-WWWW-0281 provided a statement³² to the OTP in 2007.

54. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other persons mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

55. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0282

56. Witness DRC-OTP-WWWW-0282 provided a statement³³ to the OTP in 2007.

³² The proposed redacted version of this witness's statement, DRC-OTP-1007-1044, was filed as Confidential, *ex parte*, Prosecution Only Annex N and as Confidential, Prosecution and Defence Only Annex N to the 5 December 2008 Application.

³³ The proposed redacted version of this witness's statement, DRC-OTP-1007-1108, was filed as Confidential, *ex parte*, Prosecution Only Annex O and as Confidential, Prosecution and Defence Only Annex O to the 5 December 2008 Application.

57. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other persons mentioned in this witness' statement.

58. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0243

59. Witness DRC-OTP-WWWW-0243 provided a statement³⁴ to the OTP in 2007.

60. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution also requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other natural and legal persons mentioned in this witness' statement.

61. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0271

62. Witness DRC-OTP-WWWW-0271 provided a statement³⁵ to the OTP in 2006.

³⁴ The proposed redacted version of this witness's statement, DRC-OTP-1013-0045, was filed as Confidential, *ex parte*, Prosecution Only Annex P and as Confidential, Prosecution and Defence Only Annex P to the 5 December 2008 Application.

³⁵ The proposed redacted version of this witness's statement, DRC-OTP-1004-0094, was filed as Confidential, *ex parte*, Prosecution Only Annex Q and as Confidential, Prosecution and Defence Only Annex Q to the 5 December 2008 Application.

63. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution also requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other natural and legal persons mentioned in this witness' statement. The Prosecution additionally requests authorisation, pursuant to Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

64. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0288

65. Witness DRC-OTP-WWWW-0288 provided a statement³⁶ to the OTP in 2007.

66. In addition to the redactions requested at paragraph 10 for this category of witnesses, the Prosecution additionally requests authorisation, pursuant to Article 54(3)(f), to redact the information identifying other natural and legal persons mentioned in this witness' statement, as well as, pursuant to Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

67. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

³⁶ The proposed redacted version of this witness's statement, DRC-OTP-1013-0185, was filed as Confidential, *ex parte*, Prosecution Only Annex R and as Confidential, Prosecution and Defence Only Annex R to the 5 December 2008 Application.

Other witnesses who provide tu quoque information

68. Of the twenty-five individuals who are the subject of the 5 December 2008 Application, the remaining seven are addressed in paragraphs 69 to 93 below. For four of these seven witnesses, the Prosecution proposes disclosing redacted versions of their statements and for three others the Prosecution proposes disclosing a summary of their statements.³⁷

Witness DRC-OTP-WWWW-0267

69. Witness DRC-OTP-WWWW-0267 provided two statements to the OTP in 2006.

70. The Prosecution proposes providing a summary of these statements, with verbatim extracts of the sections containing the *tu quoque* information.³⁸

71. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0219

72. Witness DRC-OTP-WWWW-0219 provided two statements to the OTP in 2005 and 2007. In these statements, the witness provided *tu*

³⁷ In its 5 December 2008 Application, the Prosecution provided the Trial Chamber with updated information on the security situation of these seven witnesses.

³⁸ The proposed summary of the statements provided by this witness was filed in Confidential, *ex parte*, Prosecution Only Annex S along with an unredacted copy of the witness' statement, and in Confidential, *ex parte*, Prosecution and Defence Only Annex S to the 5 December 2008 Application.

quoque information, as well as information that falls within the scope of Rule 77.

73. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0219, with verbatim extracts of the sections containing the *tu quoque* and other Rule 77 information.³⁹ The Prosecution requests redactions to the witness's identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

74. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration, for both the *tu quoque* and the other Rule 77 information.

Witness DRC-OTP-WWWW-0114

75. Witness DRC-OTP-WWWW-0114 provided a statement to the OTP in 2005, which was previously disclosed to the Defence in December 2007 in redacted form.

76. The Prosecution proposes disclosing a version of Witness DRC-OTP-WWWW-0114's statement⁴⁰ which fewer redactions. The Prosecution requests redactions to the witness's identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

³⁹ The proposed summary of the interview of witness DRC-OTP-WWWW-0219 was filed in Confidential, *ex parte*, Prosecution Only Annex T along with an unredacted copy of the witness' statement, and in Confidential, *ex parte*, Prosecution and Defence Only Annex T to the 5 December 2008 Application.

⁴⁰ The proposed redacted version of this witness's statement, DRC-OTP-0070-0386, was filed as Confidential, *ex parte*, Prosecution Only Annex U and as Confidential, Prosecution and Defence Only Annex U to the 5 December 2008 Application.

77. The Prosecution also requests authorisation, pursuant to Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

78. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0122

79. Witness DRC-OTP-WWWW-0122 provided a statement⁴¹ to the OTP in 2005.

80. The Prosecution proposes disclosing a redacted version of witness DRC-OTP-WWWW-0122's statement. The Prosecution requests redactions to the witness's identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

81. The Prosecution also requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement.

82. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0115

83. Witness DRC-OTP-WWWW-0115 provided a statement to the OTP in 2005.

⁴¹ The proposed redacted version of this witness's statement, DRC-OTP-0150-0017, was filed as Confidential, *ex parte*, Prosecution Only Annex V and as Confidential, Prosecution and Defence Only Annex V to the 5 December 2008 Application. The Prosecution informs the Chamber that the first of the witness's statement contains internal work product which the Prosecution has redacted pursuant to Rule 81(1).

84. The Prosecution proposes disclosing a redacted version of witness DRC-OTP-WWWW-0115's statement.⁴² The Prosecution requests redactions to the witness's identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

85. The Prosecution also requests authorisation, pursuant to Rule 81(2), to redact the information identifying another person mentioned in this witness' statement, as well as other information contained in the statement which in the Prosecution's submission is immaterial to the case.

86. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0088

87. Witness DRC-OTP-WWWW-0088 provided a statement to the OTP in 2005.

88. The Prosecution proposes disclosing a redacted version of Witness DRC-OTP-WWWW-0088's statement.⁴³ The Prosecution requests redactions to the witness's identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

89. The Prosecution also requests authorisation, pursuant to Rule 81(2), to redact other information contained in the statement which in the Prosecution's submission is immaterial to the case.

⁴² The proposed redacted version of this witness's statement, DRC-OTP-0070-0340, was filed as Confidential, *ex parte*, Prosecution Only Annex W and as Confidential, Prosecution and Defence Only Annex W to the 5 December 2008 Application.

⁴³ The proposed redacted version of this witness's statement, DRC-OTP-0150-0072, was filed as Confidential, *ex parte*, Prosecution Only Annex X and as Confidential, Prosecution and Defence Only Annex X to the 5 December 2008 Application.

90. The Prosecution also submits a proposed admission of fact for the Trial Chamber's consideration.

Witness DRC-OTP-WWWW-0292

91. Witness DRC-OTP-WWWW-0292 provided statements to the OTP in 2007. In these statements, the witness provided *tu quoque* information, as well as information that falls within the scope of Rule 77.

92. The Prosecution proposes providing a summary of the interview of witness DRC-OTP-WWWW-0292, with verbatim extracts of the sections containing the *tu quoque* and other Rule 77 information.⁴⁴ The Prosecution requests redactions to the witness' identifying information pursuant to Articles 54(3)(f), 64 and 68 and Rule 81(4).

93. The Prosecution also submits proposed admissions of fact for the Trial Chamber's consideration, for both the *tu quoque* and the other Rule 77 information.

Submissions on the evidence provided by the twenty-five witnesses

94. The Prosecution submits that the *tu quoque* information contained in the statements from the twenty-five witnesses or summaries thereof will be provided to the Defence in unredacted form, revealing sufficient details of the nature of these witnesses' evidence, and in

⁴⁴ The proposed summary of the interview of witness DRC-OTP-WWWW-0292 was filed in Confidential, *ex parte*, Prosecution Only Annex Y along with an unredacted copy of the witness' statement, and in Confidential, *ex parte*, Prosecution and Defence Only Annex Y to the 5 December 2008 Application.

particular the relevant *tu quoque* evidence, to allow the Defence to evaluate the information they provide. In the relevant portions of certain statements and summaries, the witnesses' identifying information has been redacted, but this does not, in the Prosecution's view, impact on the Defence's ability to evaluate the *tu quoque* or other Rule 77 information.

95. The Prosecution recalls it has made an admission regarding the use of child soldiers by groups other than the UPC/FPLC.⁴⁵ In addition to that admission, the Prosecution has proposed a number of additional admissions in its 5 December 2008 Application and in the Annex to the present filing.

96. Finally, the Prosecution submits that the Defence have sufficient information of a *tu quoque* nature to ensure that they can investigate the issue sufficiently, and that they will receive further witness statements, without redactions to the witnesses' identities, in the course of the week of 8 December 2008.

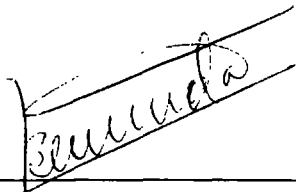
IV. Relief Sought

97. Based on the foregoing, the Prosecution requests that the Trial Chamber authorize:

- (i) the non-disclosure of the identity and identifying information for twenty-five witnesses in accordance with Articles 54(3)(f), 64 and 68, and

⁴⁵ See ICC-01/04-01/06-1502-Conf-AnxC, page 7.

- (ii) alternative forms of disclosure to cover the relevant information from each of the twenty-five individuals, such as redacted statements, summaries, admissions of fact or alternative items of evidence already disclosed.⁴⁶



 Fatou Bensouda, Deputy Prosecutor (Prosecutions)
 on behalf of
 Luis Moreno-Ocampo, Prosecutor

Dated this 10th day of December 2008
 At The Hague, The Netherlands

⁴⁶ Or to be disclosed. In addition to the 154 disclosed items of alternative evidence provided to the Chamber and the Defence as annexes to the 5 December 2008 Application, the Prosecution submits that the statements of eighteen witnesses whose identity is being revealed to the Defence also constitute alternative evidence. As indicated in the Annex to this filing, eight of these statements were disclosed to the Defence on 3 December 2008. The remaining twenty-six statements are already available to the Defence as annexes to the 5 December 2008 Application, and will be disclosed in the week of 8 December 2008. These twenty-six statements also constitute alternative evidence, in the Prosecution's submission.