



Original: English

No.: ICC-01/04-01/06

Date: 05 January 2009

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 public Annexes A and B
and**

Confidential *ex parte* Prosecution only Annex 1

**Prosecution's application for protective measures for information relevant to
trial witness DRC-OTP- WWWW-0010**

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

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Louis Gilissen

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Ms Paolina Massidda

States Representatives

Amicus Curiae

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Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

Mr Simo Vaatainen

**Victims Participation and Reparations
Section**

Other

Ms Fiona McKay

Introduction

1. Pursuant to ongoing disclosure obligations, the Prosecution identified a further item related to trial witness DRC-OTP-WWWW-0010 that could potentially fall under Article 67(2) and Rule 76(1). The document was obtained pursuant to Article 54(3)(e).¹ Accordingly, the Prosecution asked the United Nations, the provider, to lift the restrictions. The United Nations agrees to the disclosure of the document to the Defence in a fully un-redacted form, on condition that certain protective measures are applied to the use of the document in open court.²

Prosecution's application for protective measures

2. The Prosecution hereby requests the Trial Chamber to order the protective measures specified by the United Nations in its letter, attached as Annex A, subject to what is stated in paragraph 3 below :
 - (i) the accused and his Defence and the legal representatives of the victims, as well as the staff of the Office of the Prosecutor and the staff of the Trial Chamber, be prohibited from divulging to any third person or body the information contained in those parts of the

¹ The information is contained on pages DRC-OTP-001-0189 and DRC-OTP-001-0190 of a document. It is relevant to witness DRC-OTP-WWWW-0010 as potentially exculpatory information under Article 67(2), because it contains information additional to the facts contained in her disclosed statement.

² The document containing the information relevant to trial witness DRC-OTP-WWWW-0010 is attached in Annex B. The letter of the United Nations is attached as Annex A, specifying the conditions under which it consents to the disclosure of the information pursuant to article 54(3)(e) and its use in proceedings.

document that are redacted in the copy of the document that is enclosed with this letter;

- (ii) in the event that the document is used in proceedings before the Chambers, the public record of the proceedings contain only the redacted document and dissemination of the un-redacted version be restricted to the Chambers and their staff, the Office of the Prosecutor, the accused and his Defence, and the legal representatives of the victims;
 - (iii) in the event that the Defence, the Office of the Prosecutor, the Chambers, or the legal representatives of the victims wish to quote from or to paraphrase or to discuss in proceedings before the Chambers any of the redacted information contained in the document, the proceedings in which this is done be held in closed session and un-redacted transcripts and recordings of such parts of the proceedings be restricted to the Chambers and their staff, to the Office of the Prosecutor, to the accused and his Defence, and to the legal representatives of the victims;
 - (iv) in the event that references are made in open court to the individual who is the source of the statement contained in the document or to the family members of that individual, they be identified by means of pseudonyms only;
3. Finally, the information provider has agreed to the following: “In the event that (a) [trial witness DRC-OTP-WWWW-0010] who provided the information contained in the portion of the document (...) proceeds to testify in open session before a Chamber of the Court and (b) that person is requested to testify in open court about information contained in any of those parts of the document that are the subject of the redactions shown on the

enclosed copy and (c) that person indicates to the Chamber that she is ready and willing to testify about that information in open session and (iv) the Chamber considers that it would not endanger her safety or security or that of her family for her to do so, the conditions set out in [paragraph 2(i)-(iv)] above will cease to apply in respect of the item or items of information concerned.”

***Ex-parte* classification of Annex 1**

4. Given the conditions requested by the information provider, which do not allow disclosure of the un-redacted information to the Defence before the Chamber has authorized protective measures, the Prosecution attaches an un-redacted version of the information contained in Annex B for the Chamber’s information in a separate confidential *ex-parte* Prosecution only Annex1.

Relief requested

5. The Prosecution requests the Chamber to order protective measures as spelled out in paragraph 2 above, and subject to paragraph 3 above, including an order (i) that the information contained in the redacted portions of the document attached in Annex B³, not be revealed to third parties or the public; (ii) that the public record of the proceedings contain only the redacted version of the document; (iii) that the parties or participants paraphrase or discuss the content of the redacted portion in closed session only and (iv) that references to the witness or her family members in open court are done by

³ An un-redacted version of the information is provided to the Chamber in the confidential *ex-parte* Annex1.

means of pseudonym only, unless the Chamber considers after consulting the witness that it would not endanger her safety or security or that of her family.



Luis Moreno-Ocampo, Prosecutor

Dated this 05th day of January 2009
At The Hague, The Netherlands