

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 February 2009

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 Redacted Version
with Confidential - *Ex Parte* - Prosecution and Legal Representative of Victim
a/0002/06 Only Annex 1**

**Prosecution's Application for Redactions to a Document Stemming from Victim
a/0002/06**

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 Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Ms Paolina Massidda

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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Introduction

1. On 21 January 2009, the Trial Chamber issued its “Decision on the defence application for disclosure of victim applications”¹, in which it ordered the Prosecution to “apply the same approach to [victim applications] as it does to any other exculpatory material in its possession”.² The Trial Chamber held that the principle of “disclosure of exculpatory materials”, is not limited to Article 67(2), but rather includes the Prosecution’s disclosure obligations under Rule 76 and Rule 77.³ The Trial Chamber further held “that prior to disclosure of information relevant to these particular witnesses who hold dual status, the views of their individual representatives must be sought, and if objections to disclosure are raised, the matter should be brought immediately to the attention of the Chamber by way of filing, for determination.”
2. Following consultations with one of the legal representatives of dual status victim a/0002/06 regarding a document signed by victim a/0002/06 (son), which the Prosecution determined to be relevant for disclosure, the Prosecution seeks authorisation to redact information in this one document⁴ pursuant to Rules 81(2) and (4) of the Rules of Procedure and Evidence (Rules).
3. The Prosecution seeks authorisation for redactions (i) under Rule 81(2) to the name of a local Victims and Witnesses Unit’s (VWU) staff member and (ii) under Rule 81 (4) to the location where the document was signed and where the victim was living at the time.

¹ ICC-01/04-01/06-1637.

² Ibid., at paragraphs 9 and 13.

³ Ibid., at paragraph 9.

⁴ See Annex 1, attached to the present filing as Confidential - *ex parte* - Prosecution and Legal Representatives of victim a/0002/06 Only Annex 1. The document is provided in a manner that permits the Trial Chamber to view the redactions that the Prosecution is seeking.

4. The Prosecution submits that the proposed redactions do not hinder the Defence's ability to assess the exculpatory or Rule 77 information contained in the applications, and they do not impact on issues that are relevant to the Defence case. Accordingly, the Prosecution submits that the redactions are not prejudicial to or inconsistent with the rights of the Accused.

Material relevant to victim a/0002/06

5. The document stemming from victim a/0002/06, as attached in Annex 1, is a power of attorney signed by trial witness DRC-OTP-WWWW-0298. Trial witness DRC-OTP-WWWW-0298 REDACTED identity has been disclosed to the Defence. Consequently the Prosecution seeks authorisation for discrete redactions other than to the witness' identity.
6. This document has been disclosed to the Defence with the proposed redactions on 2 February 2009. The Defence was informed that the Prosecution intended to file an application to authorise the redactions. Should the Trial Chamber decide not to authorise the redactions, the Prosecution will immediately disclose an unredacted version to the Defence.
7. Under Rule 81(2), the Prosecution first seeks authorisation to redact the name of REDACTED, a local VWU staff member whose identity should not be disclosed due to REDACTED, which renders this local staff member particularly vulnerable.
8. Second, also under Rule 81(2), the Prosecution seeks authorisation to redact the name of REDACTED. This person is REDACTED. REDACTED a source of information for the Office of the Prosecutor (OTP) and its name as well as the name of REDACTED has been authorized for redactions in the past.⁵ For the

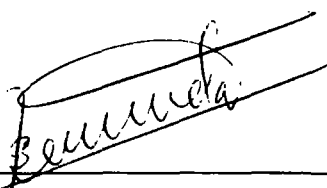
⁵ Oral Decision dated 13 December 2007, ICC-01/04-01/06-T-66-CONF-EXP-ENG, page 4, lines 17-24.

document attached in Annex 1 attached hereto redactions are sought to the name of the person REDACTED resides in the DRC and his protection and continued work could be compromised if his name were to be disclosed.

9. Finally, the Prosecution seeks authorisation under Rule 81(4) to redact the name of the location where the witness lived at the time REDACTED as well as the location in which the document was signed REDACTED. Since trial witness DRC-OTP-WWWW-0298 REDACTED, the Prosecution seeks to redact any reference to prior and possible current location of the victim, in order not to jeopardize his safety.

Requested Relief

1. Based on the foregoing, the Prosecution requests:
 - (i) authorisation for the non-disclosure of information contained in the document submitted by victim a/0002/06 in accordance with Rules 81(2) and 81(4), as set out above.



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

Dated this 9th day of February 2009
At The Hague, The Netherlands