

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 Victims
a/0047/06, a/0048/06, a/0050/06 and a/0052/06 Only Annexes 1-4**

**Prosecution's Application for redactions to victim applications a/0047/06, a/0048/06,
a/0050/06 and a/0052/06 and request for disclosure**

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. The Prosecution has in its possession the original victim applications for victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 in unredacted form.⁴ Additionally, the Prosecution has in its possession supplementary information relevant to victim a/0050/06 in unredacted form, which was provided later but was attached to the original application.⁵ However, for victims a/0047/06, a/0048/06 and a/0052/06, the Prosecution received supplementary information in redacted form only.⁶
3. The Prosecution consulted with the legal representative of dual status victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 regarding the four original victim

¹ ICC-01/04-01/06-1637.

² Ibid., at paragraphs 9 and 13.

³ Ibid., at paragraph 9.

⁴ See ICC-01/04-01/06-216-Conf-Exp (a/0047/06), ICC-01/04-01/06-217-Conf-Exp (a/0048/06), ICC-01/04-01/06-221-Conf-Exp (victim a/0052/06).

⁵ ICC-01/04-533-Conf-Anx6.

⁶ ICC-01/04-01/06-1339-Conf-Anx11 (a/0047/06), ICC-01/04-01/06-1339-Conf-Anx12 (a/0048/06), ICC-01/04-01/06-1339-Conf-Anx16 (a/0052/06), ICC-01/04-01/06-1506-Conf-Anx9 (a/0047/06), ICC-01/04-01/06-1506-Conf-Anx10 (a/0048/06) and ICC-01/04-01/06-1506-Conf-Anx11 (a/0052/06).

applications and the supplementary items which the Prosecution determined to be relevant for disclosure. The legal representative requested that limited redactions be applied to the victim applications and the supplementary items. Accordingly, the Prosecution seeks authorisation to redact information in the victim applications and supplementary items of four dual status victims represented by the Office of Public Counsel for Victims (OPCV).⁷ In support of this request, the Prosecution relies on Rule 81(2) and (4). As set out below, the Prosecution is also requesting that OPCV disclose to the parties a version of the supplementary items with the limited redactions requested herein, if approved.

4. For the four applications and supplementary items relevant to victims represented by OPCV, the Prosecution seeks discrete redactions (i) under Rule 81(2) to the name and identifying information of an intermediary, the local interpreter, the witness to the application and the location of the interview and (ii) under Rule 81(4), to the identity and whereabouts of family members or guardians of the witnesses, insofar as they have not already been disclosed to the defence, and the references to the addresses provided by the dual status victims at the time of application.
5. The Prosecution submits that the proposed redactions will not hinder the Defence's ability to assess the PEXO 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.

⁷ The original victim applications of victims a/0047/06, a/0048/06, and a/0052/06 as notified by the Registry on 31 July 2006 and the original victim application of a/0050/06 supplemented by further information notified by the Registry in the DRC situation on 20 August 2008, are attached to the present filing as Confidential-*ex parte* – Prosecution and Legal Representative of victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 Only Annexes 1 to 4. The applications are provided in a manner that permits the Trial Chamber to view the redactions that the Prosecution is seeking.

The victim applications of dual status victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06.

6. The victim applications and supplementary items relate to trial witnesses, DRC-OTP-WWWW-0007, DRC-OTP-WWWW-0008, DRC-OTP-WWWW-0010 and DRC-OTP-WWWW-0011, all of REDACTED whose identities have been disclosed to the Defence. Consequently the Prosecution seeks authorization for discrete redactions other than to the witnesses' identity.
7. First, under Rule 81(2), the Prosecution requests authorization to redact the name and identifying information of the intermediary REDACTED in all four applications. REDACTED serves as an intermediary REDACTED. The Chamber has previously authorized redaction of his identity.⁸ Consequently his name and identifying information has been redacted in the material already in possession of the Defence.
8. Second, also under Rule 81(2), the Prosecution seeks to redact in all four applications the name and identifying information of the person who signed the victim application as a witness, REDACTED, since based on available information REDACTED identity could lead to the identification of the intermediary.
9. Third, also under Rule 81(2), in respect of the supplementary information as contained in the application of victim a/0050/06 (see Annex 3), the Prosecution seeks authorization to redact the reference to REDACTED, where the victim had signed the renewed application. REDACTED, the Prosecution seeks authorization to redact this location. The OPCV has requested that the location of the interview is equally redacted in all items of supplementary information for victims a/0047/06, a/0048/06 and a/0052/06.

⁸ Oral Decision dated 18 January 2008, ICC-01/04-01/06-T-720CONF-EXP-ENG, page 2, lines 8-17.

10. Fourth, also under Rule 81(2), in respect of the supplementary information as contained in the application of victim a/0050/06 (see Annex 3), the Prosecution seeks authorization to redact the name of the interpreter, REDACTED, employed by the Court's Interpretation and Translation Section. In the Katanga case, the Single Judge authorised redactions to the names, initials and signatures of interpreters and psycho-social experts who assisted in interviewing witnesses and taking their Statements. The Single Judge reasoned that these individuals cannot be easily rotated given the limited number of persons with the necessary qualifications to perform these functions properly.⁹ In order to protect his safety the Prosecution submits that it would be appropriate to redact the information concerned. The OPCV has requested that the name of the interpreter, REDACTED, is equally redacted in all items of supplementary information for victims a/0047/06, a/0048/06 and a/0052/06.

11. Furthermore, the Prosecution seeks authorization pursuant to Rule 81(4), to redact in all four applications the references to the identities of family members or guardians of the witnesses, insofar as they have not already been disclosed to the defence through the content of the witness statements. REDACTED. The Prosecution requests these redactions to protect the safety of these persons.

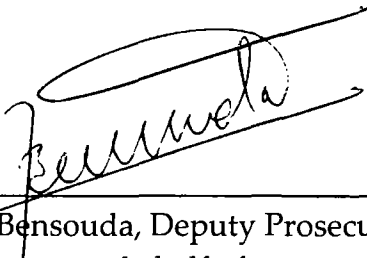
12. Finally, also pursuant to Rule 81(4), the Prosecution seeks to redact in all four applications the addresses provided by the dual status victims at the time of application. Although the victims no longer reside at the addresses provided in their victim application, REDACTED, the Prosecution nevertheless seeks authorization to redact the victims' prior addresses to protect the safety of relatives REDACTED who may be identified through the mention of their previous address.

⁹ ICC-01/04/01/07-90, paras. 61, 64; ICC-01/04/01/07-160, para. 58; ICC-01/04/01/07-249, para. 51; ICC-01/04/01/07-361, para. 55; ICC-01/04/01/07-427, para. 66; ICC-01/04/01/07-561, paras. 49, 50. Specific references to 'interpreters' were redacted in the majority of these public decisions, pursuant to redactions authorised in Confidential Ex Parte annexes to the decisions.

Requested Relief

1. Based on the foregoing, the Prosecution requests:

- (i) authorisation for the non-disclosure of information contained in the victim applications and supplementary items of a/0047/06, a/0048/06, a/0050/06 and a/0052/06 in accordance with Rules 81(2) and 81(4), as set out above;
- (ii) an order that OPCV can disclose to the parties the supplementary information relevant to victims a/0047/06, a/0048/06 and a/0052/06 with redactions as outlined herein, if the redactions are approved by the Chamber.



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

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