

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 March 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 Document
with
Confidential-Ex Parte- Prosecution Only Attachment A and Annexes 1-4
and Confidential – Prosecution and Defence Only Annexes 5-7

Prosecution's Request for Non-Disclosure of Information in One
Witness Statement containing Rule 77 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

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**Unrepresented Applicants for
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Other

I. Background

1. On 5 December 2008, the Prosecution filed its "Prosecution's Request for Non-Disclosure of the Identity of Eight Individuals providing Rule 77 Information",¹ seeking redactions to the identity of eight individuals who provide information that is material to the Defence. Witness DRC-OTP-WWWW-0163 was included in the Prosecution's filing.
2. On 6 March 2009, witness DRC-OTP-WWWW-0163 agreed to the disclosure of his identity in the cases against Germain Katanga, Mathieu Ngudjolo Chui and Thomas Lubanga Dyilo. Accordingly, the Prosecution withdraws its request of 5 December 2008 in relation only to witness DRC-OTP-WWWW-0163.
3. The Prosecution now seeks authorisation to disclose the interview of witness DRC-OTP-WWWW-0163, taken pursuant to the provisions of Article 55(2), with limited redactions applied under Article 54(3)(f) of the Rome Statute and/or Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (Rules).² 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.
4. The Prosecution notes that the Office of the Prosecutor (OTP) is seeking the same redactions to this witness interview as are being sought before Trial Chamber II.³

¹ ICC-01/04-01/06-1542.

² Attached hereto as Confidential – *Ex parte*- Prosecution Only Annex 1 is a chart identifying each proposed redaction with justification.

³ ICC-01/04-01/07-934, 27 February 2009.

II. Prosecution's Submissions

5. The Prosecution is seeking authorization for non-disclosure of information in the interview of witness DRC-OTP-WWWW-0163 on the basis of Article 54(3)(f) and/or Rules 81(2) and 81(4). The Prosecution submits that the discrete redactions sought do not affect the Defence's ability to assess comprehensively the information provided by the witness and do not affect any information that is material to the preparation of the Defence.
6. Witness DRC-OTP-WWWW-0163 was interviewed by the OTP. In March 2009, Witness DRC-OTP-WWWW-0163 agreed to the disclosure of his identity in the case against Thomas Lubanga.⁴
7. The redacted statement of witness DRC-OTP-WWWW-0163 and screening note were disclosed to the Defence on 10 March 2009. Should the Trial Chamber decide not to authorise the redactions as proposed, the Prosecution will immediately disclose the documents in the form in which disclosure has been authorised.

Ex Parte Filing

8. The Prosecution submits that the classification of Attachment A and four annexes to the present filing as « Confidential - *Ex Parte* – Prosecution Only » is necessary.⁵

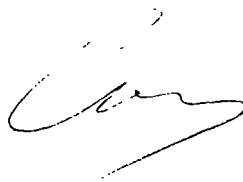
⁴ Attached hereto as Confidential, *ex parte* - Prosecution Only Annexes 2, 3 and 4 are three sections of the Article 55(2) interview of witness DRC-OTP-WWWW-0163 with proposed redactions applied in a manner which permits the Trial Chamber to view the words that the Prosecution proposes to redact. Attached hereto as Annexes 5, 6 and 7 are the same interview sections with opaque redactions for the Defence. The Prosecution notes that it has also disclosed a screening of witness 0163 with Rule 81(1) redactions to protect internal work product.

⁵ In the Trial Chamber's 'Decision on the procedures to be adopted for *ex parte* proceedings', of 6 December 2007, the Trial Chamber determined that *ex parte* procedures are only to be used exceptionally when other procedures are not available, and that the Chamber must ensure that the use of the *ex parte* procedure is proportionate given the potential prejudice to the Accused (ICC-01/04-01/06-1058, para. 12).

9. The present filing seeks relief on the basis of provisions on protective measures. The Prosecution submits that the Attachment and annexes should be treated confidentially in advance of a determination as to whether disclosure is necessary.⁶ Moreover, the Statute provides that the applications pursuant to Rule 81(2) "shall be heard on an *ex parte* basis". Since this application is made, in part, pursuant to Rule 81(2), an *ex parte* classification is justified.
10. The Prosecution submits that no alternative procedures exist to deal with this request. The rights of the Accused are maintained to the extent that he will receive a copy of this public filing and he will receive as annexes the redacted version of the interviews that are the subject of this application for non-disclosure of information.

III. Requested Relief

11. Based on the foregoing, the Prosecution requests that the Trial Chamber authorize the redaction of information in the Article 55(2) interview of witness DRC-OTP-WWWW-0163, in accordance with Article 54(3)(f) and/or Rules 81(2) and 81(4).



Luis Moreno-Ocampo
Prosecutor

Dated this 12th day of March 2009
At The Hague, The Netherlands

⁶ See the Decision of the Appeals Chamber, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006, at paras. 37, 65-67.