

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 23 April 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**

Confidential *ex parte* Prosecution only Annexes 1-24

**Prosecution's application for protective measures for documents relevant to
trial witness DRC-OTP- WWW-0012**

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 Mabile

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to ongoing disclosure obligations, the Prosecution has obtained the consent of the United Nations to disclose twelve documents related to trial witness DRC-OTP-WWWW-0012 that were obtained under the provisions of Article 54(3)(e).
2. The United Nations has agreed to the disclosure of the twelve documents in fully un-redacted form, but only on condition that certain protective measures govern the use of the documents during open session.¹ In particular, and as set out in greater detail below, the United Nations has requested that portions of the twelve documents be redacted when referred to in public session and that the individual sources of the information contained in the documents be referred to in public session by way of a pseudonym only.
3. Should the Trial Chamber decide not to order the requested protective measures, the United Nations has in any case consented to the disclosure of redacted versions of the documents.²

Prosecution's application for protective measures

4. The Prosecution hereby requests the Trial Chamber to authorize the following protective measures, as stipulated by the United Nations in a letter to the Prosecutor:³

¹ The twelve documents relevant to trial witness DRC-OTP-WWWW-0012 are attached in un-redacted form as Confidential, *Ex Parte*, Prosecution Only Annexes 1-12.

² The Prosecution attaches as Confidential, *Ex Parte*, Prosecution Only Annexes 13-24 the redacted versions of the documents.

³ The Prosecution lists the protective measures as set out in the letter from the United Nations to the Prosecutor of 13 November 2008. The terms of the letter apply to the twelve documents related to witness DRC-OTP-WWWW-0012 in accordance with letters from the United Nations to the Prosecutor of 3 March and 15 April 2009. The Prosecution can file these letters with the Chamber should it so require.

- (i) “the accused and his Defence and the legal representatives of the victims, as well as the staff of your Office 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 documents that are the subject of the redactions that have previously been stipulated⁴ by the United Nations;
- (ii) in the event that the documents or any of their number are submitted in evidence, either by your Office or by the Defence, the public record of the proceedings contain only copies of those documents that bear the redactions previously stipulated by the United Nations and dissemination of the unredacted versions be restricted to the Chambers and their staff, to your Office and its staff and to the accused and his Defence;
- (iii) in the event that your Office or the Defence or the legal representatives of the victims or the Chambers wish to quote from or to paraphrase or to discuss in oral proceedings before the Chambers information that is contained in any of those parts of the documents concerned that are the subject of the redactions previously stipulated by this Office, the part or parts of the proceedings in which this is done be held in closed session and unredacted transcripts and recordings of such parts of the proceedings be restricted to the Chambers and their staff, to your Office and its staff, to the legal representatives of the victims and to the accused and his Defence;

⁴ The redactions stipulated by the United Nations are contained in Confidential, *Ex Parte*, Prosecution Only Annexes 13-24.

- (iv) in the event that references are made in open court to the two individuals⁵ who are the sources of the information contained [in] the documents, they be identified by means of pseudonyms only”.

***Ex-parte* classification of Annexes 1-24**

5. 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 un-redacted versions of the documents for the Chamber’s information as confidential *ex parte* Prosecution only Annexes 1-12.
6. The Prosecution attaches the redacted versions of the documents, as provided by the United Nations for use in public proceedings, in confidential *ex parte* Prosecution only Annexes 13-24. The Prosecution submits that the nature and the location of the redactions stipulated by the provider justify the classification as *ex parte* until the Trial Chamber has ruled on the application for protective measures.

Relief requested

7. The Prosecution requests the Chamber to authorize the protective measures identified in paragraph 4 above.
8. Witness DRC-OTP-WWWW-0012 is scheduled to appear in court on 5 May 2009. In light of the imminence of his testimony, the Prosecution respectfully requests that the present application be dealt with expeditiously. The

⁵ The Prosecution informs the Trial Chamber that these are the two individuals referred to in the email communication sent by the Legal Advisor to the Trial Chamber to the Prosecution on 10 November 2008 1:59 PM.

Prosecution recalls that protective measures such as those requested herein have been previously granted by the Trial Chamber for other documents related to this witness.⁶



Luis Moreno-Ocampo, Prosecutor

Dated this 23th day of April 2009
At The Hague, The Netherlands

⁶ Email from the Legal Advisor to the Trial Chamber to the Prosecution of 19 November 2008 15:58, authorising the protective measures requested by the provider. See ICC-01/04-01/06-1644, paras 26, 28.