

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 3 June 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 Redacted Version of

Prosecution's application for protective measures for five documents

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

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

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to ongoing disclosure obligations, the Prosecution has secured the consent of the United Nations to disclose five documents obtained pursuant to Article 54(3)(e), subject to certain protective measures. The five documents contain information falling within the scope of Rule 77.¹ For three of the five documents, the provider has consented to their disclosure in fully un-redacted form. For the remaining two documents, the provider has consented to disclosure of redacted versions only.

Protective measures requested by the information provider

2. The protective measures requested by the provider relate to the use of the documents in public proceedings and to their dissemination to third persons and bodies. In particular, and as set out in greater detail in the relevant letters,² the United Nations requests that:
 - (i) the documents or the redacted portions thereof only be submitted in evidence and quoted, paraphrased or discussed in closed session proceedings;
 - (ii) the dissemination of un-redacted transcripts and recordings of such closed session proceedings be restricted to the Trial Chamber and its staff, the Prosecution and its staff, the Accused and his Defence, and the Legal Representatives of victims only; and

¹ The relevant portions of each document are highlighted in purple for the Trial Chamber's convenience in Confidential, *ex parte*, Prosecution only Annexes 1-7.

² The letters in which the United Nations set out the requested protective measures are attached as Confidential Annexes A – D. The relevant paragraphs in each letter have been highlighted in yellow, for the avoidance of doubt. The Prosecution refers to the letters from the provider and to the specifics of each requested protective measure as set out in those letters as authoritative.

- (iii) the Accused and the Defence, the Prosecution and its staff, the Legal Representatives of victims and the Chamber's staff be prohibited from divulging to third persons or bodies the contents of the documents or of the redacted portions thereof.

In the case of two of the five documents,³ the United Nations additionally requests that:

- (iv) the public record of the proceedings contain only redacted copies of the documents;
- (v) the dissemination of un-redacted versions of the documents be restricted to the Chambers and their staff, the Prosecution and its staff, and the Accused and his Defence and the Legal Representatives of victims only; and
- (vi) the individual sources of the information contained in the documents be referred to in public session by way of a pseudonym only.

Documents to be disclosed in fully un-redacted form

3. The information provider has agreed to the disclosure of documents DRC-OTP-0042-0441,⁴ DRC-OTP-0043-0104 and DRC-OTP-0043-0418⁵ in fully un-

³ DRC-OTP-0043-0104 and DRC-OTP-0043-0418.

⁴ DRC-OTP-0042-0441 is attached as Confidential, *ex parte*, Prosecution Only Annex 1. The protective measures requested for this document are set out in the letter from the United Nations to the Prosecutor of 27 February 2009, which is filed as Confidential Annex A.

The Prosecution informs the Trial Chamber that it requested lifting of the Article 54(3)(e) restrictions bearing on this document in October 2005, and that the provider's consent to disclosure subject to conditions was obtained on 27 February 2009.

⁵ DRC-OTP-0043-0104 and DRC-OTP-0043-0418 are attached as Confidential, *ex parte*, Prosecution Only Annexes 2 and 3, respectively. The protective measures requested for these documents are

redacted form, subject to the conditions spelt out in the relevant letters. The Prosecution notes that redacted copies of DRC-OTP-0043-0104 and DRC-OTP-0043-0418 were already disclosed to the Defence.⁶

Documents to be disclosed in redacted form

4. In view of the sensitive information contained in documents DRC-OTP-0042-0181⁷ and DRC-OTP-0171-0714,⁸ the information provider has agreed to their disclosure in redacted form only, subject to the conditions spelt out in the relevant letters. The Prosecution notes that in the case of document DRC-OTP-0042-0181 (Annex 4 and redacted version Annex 5), the redactions have been applied to the names of sources, but that the nature of the sources is not redacted. In the case of document DRC-OTP-0171-0714 (Annex 6 and redacted version Annex 7), the redactions have been applied to the names of

set out in the letter from the United Nations to the Prosecutor of 13 November 2008, which is filed as Confidential Annex B. The Prosecution notes that the 13 November 2008 letter did not initially apply to documents DRC-OTP-0043-0104 and DRC-OTP-0043-0418, but the applicability of the letter was extended to these documents through letters from the United Nations of 3 March and 26 May 2009, respectively, which the Prosecution can file if the Chamber so requires.

The Prosecution informs the Trial Chamber that the relevance of these documents to the case against Thomas LUBANGA became apparent during a second review of materials subject to Article 54(3)(e) restrictions concluded by the Prosecution early in 2009. See ICC-01/04-01/06-T-101-ENG ET, page 20, line 13 to page 21, line 9 and ICC-01/04-01/06-T-168-CONF-ENG ET, page 2, line 25 to page 3, line 16. Both documents are REDACTED.

⁶ The ERNs of the disclosed redacted copies of these documents are DRC-OTP-0204-0146 and DRC-OTP-0210-0307, respectively

⁷ DRC-OTP-0042-0181 is attached as Confidential, *ex parte*, Prosecution Only Annex 4. The redacted version of this document, authorized for disclosure subject to protective measures, is DRC-OTP-1030-0385, and is attached as Confidential, *ex parte*, Prosecution Only Annex 5. The protective measures requested for this document are set out in the letter from the United Nations to the Prosecutor of 22 December 2008, which is filed as Confidential Annex C.

The Prosecution informs the Trial Chamber that the relevance of this document became apparent in the context of the audit of materials subject to Article 54(3)(e) restrictions concluded by the Prosecution early in 2009, referred to in footnote 5 above.

⁸ DRC-OTP-0171-0714 is attached as Confidential, *ex parte*, Prosecution Only Annex 6. The redacted version of this document, authorized for disclosure subject to protective measures, is DRC-OTP-1029-0655, and is attached as Confidential, *ex parte*, Prosecution Only Annex 7. The protective measures requested for this document are set out in the letter from the United Nations to the Prosecutor of 25 November 2008, which is filed as Confidential Annex D.

The Prosecution informs the Trial Chamber that the relevance of this document became apparent in the context of the audit of materials subject to Article 54(3)(e) restrictions concluded by the Prosecution early in 2009, referred to in footnote 5 above.

individuals whose identity is wholly irrelevant to the present case. The Prosecution submits that the redactions made by the provider do not affect the Defence's ability to evaluate the potentially relevant content of the documents, which is otherwise fully available to the Defence.

***Ex-parte* classification of the Annexes**

5. Given the conditions requested by the information provider, which do not allow disclosure before the Chamber has authorized protective measures, the Prosecution submits that the *ex parte* classification of Annexes 1-7 is warranted until the Chamber has granted the application for protective measures.

Relief requested

6. The Prosecution requests the Chamber to authorize:
 - (i) for document DRC-OTP-0042-0441, the protective measures stated in the attached Confidential Annex A;
 - (ii) for documents DRC-OTP-0043-0104 and DRC-OTP-0043-0418, the protective measures stated in the attached Confidential Annex B;
 - (iii) for document DRC-OTP-1030-0385 (redacted version of DRC-OTP-0042-0181), the protective measures stated in the attached Confidential Annex C; and
 - (iv) for document DRC-OTP-1029-0655 (redacted version of DRC-OTP-0171-0714), the protective measures stated in the attached Confidential Annex D.



Luis Moreno-Ocampo
Prosecutor

Dated this 3rd day of June 2009
At The Hague, The Netherlands