



Original: English

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

Date: 14 July 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

With Annexes Confidential, Ex Parte – Only available to the Prosecution

**Prosecution's Request Pursuant to Regulation 42 in Relation to Protective
Measures Sought Before Trial Chamber II
(Witnesses 33, 169, 175, 178/253, 179, 243, 271, 282, 288)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Ms Silvana Arbia

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Background

1. On 9 April 2009 and 12 June 2009, this Chamber ordered protective measures to protect the identity of Witnesses 33, 169, 175, 178/253, 179, 243, 271, 282, and 288.¹ These witnesses are also Prosecution witnesses in the case of The Prosecutor vs. Germain Katanga and Mathieu Ngudjolo (“Katanga case”) before Trial Chamber II.
2. On 8 July 2009, in a closed session hearing, Trial Chamber II requested the Prosecution to seek permission from Trial Chamber I (the “Chamber”), pursuant to Regulation 42 of the Regulation of the Court (“Regulation 42”), for the variation of the redactions to the statements of the above-identified witnesses 33, 169, 175, 178/253, 179, 243, 271, 282, and 288.²

Confidentiality

3. The Prosecution provides, in the Annexes to this submission, the statements of the witnesses for which it is seeking a variation of the protective measures. The Prosecution also submits for each statement a chart that refers to this Chamber’s decisions granting protective measures and details the information to be redacted or lifted and the factual and legal basis for the requested redactions.
4. The Prosecution requests that the Annexes to this submission be received as Confidential, *Ex Parte* – Only available to the Prosecutor since they describe the information for which protective measures, in the form of redactions, are sought.

¹ ICC-01/04-01/06-1814-Conf and ICC-01/04-01/06-1965-Conf-Exp. For witness 33, the measures were imposed in decisions ICC-01/04-01/06-453-Conf-Exp and ICC-01/04-01/06-1082-Conf.

² ICC-01/04-01/07-1250. At the time of the filing of this request, the transcript of the closed session was not yet available in the transcend system.

Prosecution's Request

5. The Prosecution respectfully requests the permission to lift a limited number of redactions to the statements of witnesses 33, 271, 282, and 288. The Prosecution will seek an order from Trial Chamber II barring the disclosure to the Lubanga defence team of these statements.

6. The Prosecution also informs the Chamber that it is seeking additional redactions to the statements of witnesses 33, 178/253, 179, 243, 282 and 288 to enable their disclosure in the Katanga case, beyond those previously ordered by this Chamber. A confidentiality order imposed on the defence by this Chamber bars the disclosure of these statements to anyone outside the Lubanga defence team. That order, we submit, sufficiently protects against disclosure of information that may be redacted by Trial Chamber II.

7. The Prosecution further informs the Chamber that it intends to disclose the statements of witness 169 in the Katanga case with the same redactions (protective measures) as ordered by the Chamber.³ Since the redactions sought are the same, the Prosecution is not annexing the statement of witness 169.

8. Finally, the Prosecution informs the Chamber that it is seeking, before Trial Chamber II, the same redactions as requested before this Chamber to the statement of witness 90.⁴ The decision of this Chamber is still pending in relation to this witness.

9. The Prosecution, including members of the Katanga trial team, are available to answer, in an *ex parte* closed session, any questions the Chamber may have on this Request.

³ See ICC-01/04-01/06-1814-Conf, para 55.

⁴ ICC-01/04-01/06-1664 and its confidential annexes 9 and 10.

Conclusion

10. The Prosecution seeks, pursuant to Regulation 42, an order to vary the redactions to the statement of witnesses 33, 271, 282 and 288. The Prosecution further informs that it is requesting from Trial Chamber II additional redactions to the statements of witnesses 33, 178/253, 179, 243, 282 and 288. The Prosecution informs the Chamber that it intends to disclose, in the Katanga case, the statement of witness 169 with the redactions as ordered by the Chamber. Finally, the Prosecution is seeking to disclose, in the Katanga case, the statement of witness 90 with the redactions as filed in its pending request before this Chamber.



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of July 2009
At The Hague, The Netherlands