

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 24 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***

URGENT

PUBLIC

With Annexes Confidential, *ex parte*, only available to the Office of the Prosecutor

**Prosecution's application for variation in the protective measures concerning
witness 44 and witness 101**

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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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Background

1. The Prosecution submits the following request for a variation of protective measures on an urgent basis, bearing in mind its ongoing disclosure obligations in the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui ("Germain Katanga *et al.*")

Trial Chamber I

2. On 5 December 2008, the Prosecution requested Trial Chamber I, in the case of the Prosecutor v. Thomas Lubanga ("Thomas Lubanga"), to grant protective measures in the form of redactions to the identity of eight individuals, including witness 44 and witness 101.¹
3. On 12 June 2009, the redactions and alternate forms of disclosure were authorised by this Chamber for these witnesses.² As a result of the order of Trial Chamber I, the Defense and relevant Legal Representatives are not entitled to have

¹ ICC-01/04-01/06-1542, 5 December 2008 with corresponding redacted statement attached as confidential, ex-parte-Prosecution Only Annex 14.

² ICC-01/04-01/06-1980-Conf-Anx1, (confidential redacted version of ICC-01/04-01/06-1965-Conf-Exp), 12 June 2009, page 44, paragraphs 86-92 and page 49, para 98.

access to the information that has been redacted. Accordingly, the protected information cannot be disclosed to third parties.

Trial Chamber II

4. On 23 March 2009, the Prosecution filed with Trial Chamber II in the case of Germain Katanga *et al.* a request seeking protective measure for witnesses 44 and 101, who could not be located. In particular, the Prosecution sought redactions concerning information that could reveal their identity.³
5. On 8 July 2009, Trial Chamber II requested that the Prosecution attempt to locate witnesses 44 and 101, in order to obtain their observations regarding the disclosure of their statements and identity to the Defence in the case before Trial Chamber II.⁴
6. On July 14 2009, the Prosecution was able to communicate with witness 44 and witness 101. Witness 44 agreed to the disclosure of his/her identity to the Chamber and the parties in the case of Germain Katanga *et al.* However, the witness objected to the disclosure of his/her identity in the case of Thomas

³ ICC-01/04-01/07-985.

⁴ ICC-01/04-01/06-T-68-Conf-Exp-FRA-ET of 8 July 2009

Lubanga. Witness 101 agreed to the disclosure of his/her identity in both cases.⁵

7. On 17 July 2009, the Prosecution resubmitted the statements of witness 44 and witness 101 to Trial Chamber II in order to seek authorization for certain redactions before disclosing them to the Defence.⁶

8. The Prosecution intends to disclose to the defence in the case of Katanga et al, the statement of witness 44, subject to redaction, pursuant to Rule 81(4), of information that reveals the identity of family members of witness 44, as well as the name of a support person that was present during the interview of this witness.⁷

9. The Prosecution also intends to disclose to the defence in the case of Katanga et al, the statement of witness 101, subject to redaction, pursuant to Rule 81(4) of information that reveals the identity of family members of witness 101. The

⁵ With the specific condition that neither Thomas Lubanga nor members of the Defence team reveal to any third party the fact that witness 101 provided a statement to the Office of the Prosecutor.

⁶ ICC-01/04-01/07-1315, p. 3.

⁷ See Annex A.

Prosecution further seeks the redaction, pursuant to Rule 81(2), of the name of a source of witness 101.⁸

Confidentiality

10. The Prosecution requests that the Annexes to this submission be received by the Chamber as Confidential, *ex parte*, only available to the Office of the Prosecutor since they describe the information for which redactions are requested.

Prosecution's request

11. In light of the foregoing, pursuant to Regulation 42, the Prosecution seeks a variation of the protective measures concerning both witness 44 and witness 101, ordered by Trial Chamber I, so that it may comply with its disclosure obligations in the case of Germain Katanga et al.

12. Regarding W-101, the Prosecution is seeking authorization to lift the Article 68 and Rule 81(4) redactions concerning information pertaining to the identity

⁸ See annex B.

of the witness. The Prosecution is seeking this variation of protective measure for the purposes of disclosure to the defences in both the Katanga et al., case, as well as in the Lubanga case. In both cases, if the request is granted, the disclosure of the statements of witness 101 will be conducted in the manner as stated in paragraph 9 above.

13. The Prosecution is further seeking authorization to lift the Article 68 and Rule 81 (4) redactions of information revealing the identity of witness 44. However, considering the fact that this witness has specifically stated that his/her identity not be disclosed in the Thomas Lubanga case, the Prosecution's request is limited to a variation that would allow it to disclose the statement of witness 44 without the above redactions to the defence in the Germain Katanga et al. case only.

Conclusion

14. The Prosecution respectfully requests that the Chamber authorize the variation of the protective measures as petitioned.

A handwritten signature in black ink, appearing to read 'Bensouda', is written over a horizontal line. The signature is stylized with a large loop at the end.

Fatou Bensouda

Deputy Prosecutor

Dated this 24th day of July 2009

At the Hague , The Netherlands