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

Date: **17 August 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 Confidential – Ex Parte – Prosecution Only Annex A

**Prosecution's Update on its Requests # 1567 and # 1664 for Non-Disclosure of
Information in the Statements of Individuals providing Rule 77 Information**

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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1. As the Chamber is aware, there is overlap in the investigation and evidence in the cases against Thomas Lubanga Dyilo and Germain Katanga/Mathieu Ngudjolo Chui. This Application seeks to bring consistency to redactions, or where not possible to disclose the existence of inconsistencies, to witness statements that have been or will be disclosed in both cases.
2. On 19 December 2008¹ the Prosecution requested authorisation to redact information in the statements² of 15 witnesses who provide information that may be material to the preparation of the Defence pursuant to Rule 77 of the Rules of Procedure and Evidence (Rules) (19 December 2008 Request).³ For all of these 15 witnesses, the Prosecution sought limited redactions other than to their identity.
3. On 4 February 2009,⁴ the Prosecution requested authorisation to redact information in the statements of four additional witnesses, along with a fifth witness who had been part of the group of 15 witnesses subject to the previous request (4 February 2009 Request).⁵ These witnesses also provide information that may be material to the preparation of the Defence pursuant to Rule 77. For three of the five witnesses, the Prosecution sought limited redactions other than to the identity of the witnesses.⁶ For two of the five witnesses,⁷ the Prosecution also sought to redact their identities.

¹ ICC-01/04-01/06-1567-Conf-Exp, 19 December 2008 but notified on 22 December 2008 (public redacted version at ICC-01/04-01/06-1574).

² 'Statement' being defined broadly, and including investigator's notes, draft statements, signed statements and transcripts.

³ Witnesses DRC-OTP-WWWW-0001, 0028, 0132, 0149, 0161, 0166, 0172, 0233, 0249, 0250, 0258, 0268, 0279, 0280 and 0287.

⁴ ICC-01/04-01/06-1664, 4 February 2009.

⁵ Witnesses DRC-OTP-WWWW-0090, 0102, 0238, 0280 and 0312. Redactions to the first statement of witness DRC-OTP-WWWW-0280 were requested in filing ICC-01/04-01/06-1567-Conf-Exp. Redactions to the second statement of this same witness, 0280, were requested in filing ICC-01/04-01/06-1664.

⁶ Witnesses DRC-OTP-WWWW-0280, 0238 and 0312.

⁷ Witnesses DRC-OTP-WWWW-0102 and 0090.

4. Sixteen out of the 19 witnesses concerned are witnesses in the case *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* (Katanga case).⁸
5. After the requests were filed in the present case, these witness statements became the subject of applications for redactions before Trial Chamber II in the Katanga case.⁹
6. Between February and July 2009, Trial Chamber II rendered several decisions granting some permanent redactions and some temporary redactions to these statements. In respect of the temporary redactions, Trial Chamber II ordered that these redactions be lifted 30 days before the start of the trial (i.e. on 24 August 2009). On 10 August 2009, the Prosecutor applied for the continuation of some of the temporary redactions (10 August 2009 Request).¹⁰
7. Some statements have now been disclosed to the two Accuseds in the Katanga case with fewer redactions than were applied to the same statements disclosed to Mr. Lubanga and his defence team – because the Prosecution may have asked for fewer redactions, or because that Trial Chamber II denied a broader request. Depending on the outcome of the 10 August 2009 Request, more redactions may be lifted in the Katanga case before the statements are re-disclosed to the two Accuseds on 24 August 2009.
8. In respect of the statements that were taken and disclosed in the Katanga case, the Prosecution submits that the redactions ordered in that case should be applied to the instant case. Therefore, with respect to those statements, the Prosecution will file an amendment to its 19 December 2008 Request and 4 February 2009 Request, reducing the number of redactions. That filing will be made after Trial Chamber II

⁸ Witness DRC-OTP-WWWW-0001 is not related to either the present case or the Katanga case.

⁹ In respect of four statements (DRC-OTP-0173-0281, DRC-OTP-0173-0308, DRC-OTP-1020-0461 and DRC-OTP-1018-0066) the request was made in the Katanga case before it was made in the present case.

¹⁰ ICC-01/04-01/07-1359-CONF-EXP, 10 August 2009 but notified on 11 August 2009 (public redacted version at ICC-01/04-01/07-1363).

makes a final decision on the 10 August 2009 Request (which should occur on or before 24 August 2009).

9. In respect of the statements that were taken for the present case¹¹ or only disclosed in the present case,¹² the Prosecution will verify whether additional redactions can be lifted and include those in the amendment.
10. For sake of clarity, the Prosecution attaches Annex A to the present filing, indicating for all of the statements that were subject to the 19 December 2008 Request and the 4 February 2009 request:
 - i. the witness number and to which case he/she is a witness;
 - ii. the ERN number of the statement;
 - iii. the request for redactions in the present case (including the date);
 - iv. the request for redactions in the Katanga case (including the date);
 - v. the decision authorizing redactions in the Katanga case (including the date); and
 - vi. the content of the discrepancy¹³ (i.e. what was redacted in the present case but not in the Katanga case).



Luis Moreno-Ocampo
Prosecutor

Dated this 17th day of August 2009
At The Hague, The Netherlands

¹¹ I.e. related to three of the 19 witnesses concerned.

¹² Some of the statements taken in the Katanga case were not disclosed in that case.

¹³ This column does not take into account the additional discrepancies that may occur after the decision on the 10 August 2009 Request.