

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **02 September 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 Document
Public Redacted Version**

Prosecution's Application to Vary the Protective Measures for a Witness

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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**Unrepresented Applicants for
 Participation/Reparation**

The Office of Public Counsel for Victims

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

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Trial Chamber II

Pursuant to the order of Trial Chamber II of 27 August 2009¹, and in conjunction with the Prosecution's submission filed 31 August 2009², the Prosecution herewith applies for a variation of protective measures for witness {REDACTED}. The Prosecution seeks leave to lift the redactions of a name applied to withhold the identity of WWW-0219, mentioned in the transcripts of {REDACTED} ³. Leave is being sought because Trial Chamber II has determined that "considerable additional protective measures have been implemented" for WWW-0219⁴ and that therefore the disclosure of his identity would not jeopardise his security.⁵

Ex Parte Filing

1. The Prosecution submits that the classification of Attachment A as *Confidential, ex parte, only available to the Office of the Prosecutor* is necessary⁶ as it seeks relief on the basis of protective measures. The information discussed must be treated confidentially, and cannot be disclosed to the Defence.⁷
2. The Prosecution submits that no alternative procedures exist to deal with this request. The rights of the Accused are maintained as the main submission is confidential available to the Defence setting out the basis for the filing.

Submissions

3. The Prosecution refers the Chamber to its recently-filed application ICC-01/04-01/06-2098⁸, wherein the background and procedural history is set out in detail.

¹ ICC-01/04-01/07-1434, 27 August 2009.

² ICC-01/04-01/06-2098.

³ {REDACTED}. {REDACTED} of WWW-0219.

⁴ ICC-01/04-01/07-1434, 27 August 2009, para.12.

⁵ The lifting of the redactions to the identity of WWW-0219 is being sought for the same reasons as articulated in Prosecution's Submission of 31 August 2009 – ICC-01/04-01/06-2098.

⁶ In the Trial Chamber's 'Decision on the procedures to be adopted for *ex parte* proceedings', of 6 December 2007, the Trial Chamber determined that *ex parte* procedures are only to be used exceptionally when other procedures are not available, and that the Chamber must ensure that the use of the *ex parte* procedure is proportionate given the potential prejudice to the Accused (ICC-01/04-01/06-1058, para. 12).

⁷ See the Decision of the Appeals Chamber, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006, at paras. 37, 65-67.

⁸ "Prosecution's Submission of Information and Request for the Variation of Protective Measures for Witness 219", 31 August 2009.

4. On 12 June 2009 the Trial Chamber ordered the non-disclosure of the “{REDACTED} communication”⁹ in accordance with Articles 54(3)(f), 64(6)(e) and 68(1) of the Statute and Rule 81(4) of the Rules of Procedure and Evidence (“Rules”). This non-disclosure {REDACTED}. In the Order the Chamber stated that “...should Trial Chamber II in due course order disclosure of the name of this individual, Trial Chamber I will review the present order, having been informed immediately of the decision of Trial Chamber II”.¹⁰
5. Trial Chamber II has now ordered the disclosure of the name of WWW-0219.¹¹ In its Decision, Trial Chamber II noted that “...the security of the witness is not jeopardised by the fact that his identity is now revealed in the present case”.

Relief Requested

6. Accordingly, the Prosecution seeks leave of the Chamber to lift the redactions to the name mentioned in the transcripts of {REDACTED} thereby varying the protective measures as ordered in its Decision ICC-01/04-01/06-1980 –Annex 2.



Luis Moreno-Ocampo, Prosecutor

Dated this 2nd day of September 2009
At The Hague, The Netherlands

⁹ ICC-01/04-01/06-1980-Annex 2, para.64, 24 June 2009.

¹⁰ *Ibid*, para. 64.

¹¹ See footnote 2 and reference is also made to {REDACTED}