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

Date: **9 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
with Confidential – *Ex Parte* – Prosecution Only Annexes A and B

**Prosecution's Updated Requests of filings # 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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Other

Pursuant to the 'Prosecution's Update on its Requests ## 1567 and 1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information', the Prosecution hereby amends its requests for non-disclosure of information.

***Ex Parte* Filing**

1. The Prosecution submits that the classification of Annexes A and B as Confidential-*Ex Parte* – Prosecution Only is necessary¹ as it seeks relief on the basis of protective measures. The information discussed must be treated confidentially, and cannot be disclosed to the Defence.²
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 publicly available to the Defence setting out the basis for the filing.

Background

3. On 17 August 2009, the Prosecution filed a 'Prosecution's Update on its Requests ## 1567 and 1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information' (Prosecution's Update)³ and informed the Chamber that it would submit an amendment to the above-mentioned requests.⁴

¹ 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).

² 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.

³ ICC-01/04-01/06-2082, 17 August 2009. For the background of this filing see paras. 1 to 7.

⁴ Namely 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) and ICC-01/04-01/06-1664, 4 February 2009, as referred to in ICC-01/04-01/06-2082, para. 8.

4. In the Prosecution's Update, the Prosecution indicated that, in respect of the statements⁵ that were taken and disclosed in the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* (Katanga case), the Prosecution would streamline and reduce the number of redactions. In respect of the statements that were taken for the present case or only disclosed in the present case, the Prosecution would verify whether additional redactions can be lifted.⁶
5. On 21 August 2009, the Prosecution filed a 'Prosecution's Notice that it will lift redactions to names of interpreters and interview locations'.⁷ The Prosecution informed the Chamber that it would be disclosing the names of interpreters and interview locations in the Katanga case.⁸

Amendment

Statements that were taken and disclosed in the Katanga case

6. In respect of these statements, the Prosecution requested to redact the following categories of information:
 - (i) Internal work product (pursuant to Rule 81(1));
 - (ii) Interview locations (pursuant to Rule 81(2));
 - (iii) Intermediaries (pursuant to Rule 81(2))⁹;
 - (iv) Names, initials and signatures of persons present when the interviews were conducted, i.e. interpreters and psychotherapists (pursuant to Rule 81(2));
 - (v) Prosecution sources (pursuant to Rule 81(2));
 - (vi) The whereabouts of certain witnesses who are in the International Criminal Court Protection Program (ICCPP) (pursuant to Rule 81(4));

⁵ 'Statement' is defined broadly to include investigator's notes, draft statements, signed statements and transcripts.

⁶ ICC-01/04-01/06-2082, paras. 8 and 9.

⁷ ICC-01/04-01/06-2089-Conf, 21 August 2009. For the background of this filing see paras. 1 and 2.

⁸ ICC-01/04-01/06-2089-Conf, para. 2.

⁹ Except in respect of one intermediary, see Annex B.

- (vii) The names and whereabouts of the family members or guardians of the witnesses (pursuant to Rule 81(4))¹⁰; and
- (viii) Victims (pursuant to Rule 81(4))¹¹.

7. In line with the Katanga case, the Prosecution now amends its request to maintain redactions only to the following categories:

- (i) Internal work product (pursuant to Rule 81(1));
- (ii) Intermediaries (pursuant to Rule 81(2)): the Prosecution does not maintain its requests in respect of one intermediary whose name was already disclosed to the defence in the present case in relation to the testimony of Witness DRC-OTP-WWWW-0015;
- (iii) Permanent Prosecution sources (pursuant to Rule 81(2)): the Prosecution does not maintain its requests in respect of sources who have provided information only in the Katanga case;
- (iv) The current whereabouts of certain witnesses who are in the International Criminal Court Protection Program (ICCPP) (pursuant to Rule 81(4)): the Prosecution does not maintain its request in respect of past whereabouts/locations where witnesses in the ICCPP might have resided;
- (v) The names and current whereabouts of surviving family members or guardians of the witnesses (pursuant to Rule 81(4)): the Prosecution does not maintain its requests in respect of:
 - a. deceased family members or guardians; or
 - b. previous whereabouts of family members or guardians.

Statements that were taken for the present case or only disclosed in the present case (related to witnesses DRC-OTP-WWWW-0001, DRC-OTP-WWWW-0090, DRC-OTP-WWWW-0102 and DRC-OTP-WWWW-0149)

8. In respect of the statement of witness DRC-OTP-WWWW-0001, the Prosecution requested redactions only to the names and whereabouts of the family members of the witness (pursuant to Rule 81(4)). The Prosecution now has information that the witness and his close family have relocated. Therefore, it does not maintain its

¹⁰ In filing ICC-01/04-01/06-1664, redactions to this category of information was requested under both Rule 81(4) and Article 54(3)(f), see para. 2.

¹¹ In filing ICC-01/04-01/06-1664, redactions to this category of information was requested under both Rule 81(4) and Article 54(3)(f), see paras. 2 and 25.

request for redactions to the previous residence of the witness and his close family, but only to the (continuous) residence of other family members.

9. In respect of the statement of witness DRC-OTP-WWWW-0090 (which was not disclosed in the Katanga case), the Prosecution requested redactions to his identity (pursuant to Rule 81(4)) and to internal work product (pursuant to Rule 81(1)).¹² The Prosecution maintains its request.

10. In respect of the statement of witness DRC-OTP-WWWW-0102, the Prosecution requested redactions to his identity, which included the names and whereabouts of family members (pursuant to Rule 81(4)); a local interpreter (pursuant to Rule 81(2)); and two surviving victims (pursuant to Rule 81(4)).¹³ The Prosecution maintains its requests for redactions except in relation to the local interpreter.

11. In respect of the statements of witness DRC-OTP-WWWW-0149, the Prosecution requested redactions to internal work product (pursuant to Rule 81(1)), and to the names and whereabouts of the family members of the witness (pursuant to Rule 81(4)). The Prosecution maintains its request.

Additional amendments to non-substantive discrepancies

12. In addition to the above, the Prosecution informs the Chamber that at times, certain words were redacted in the present case, but not in the Katanga case. These words do not pertain to any particular category and do not create any risk for the persons involved.¹⁴ In order to streamline the redactions, the Prosecution intends to lift these redactions as well.

Annexes A and B

¹² ICC-01/04-01/06-1664, paras. 29 to 35.

¹³ ICC-01/04-01/06-1664, paras. 21 to 28.

¹⁴ In annex B, this information has been referred to as 'non-substantive discrepancies'.

13. For the sake of clarity, the Prosecution attaches Annex A to the present filing, indicating the redactions for which it maintains its previous requests, and Annex B, indicating the redactions for which it does not maintain its previous requests (i.e. the information that can now be disclosed to the defence).

Notice and Request

14. The Prosecution informs the Chamber of its intention to disclose to the defence the information, listed in Annex B that was redacted pursuant to Rule 81(2). In addition, it requests the authorisation to disclose the information listed in Annex B that was redacted pursuant to Rule 81(4).¹⁵

15. In the interests of efficiency the Prosecution suggests providing the defence with Annex B instead of re-issuing the documents for disclosure.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of September 2009
At The Hague, The Netherlands

¹⁵ On 4 December 2007, the Chamber ruled orally that redactions granted pursuant to Rule 81(2) could be lifted upon notice to the Chamber. It also ruled that for redactions covered by Rule 81(4), the Prosecution should apply to the Chamber for leave to remove the redactions (ICC-01/04-01/06-T-62-ENG-ET from page 22, line 12 to page 24, line 8). Although none of the redactions discussed in the present filing have yet been granted, the Prosecution prefers to follow the same regime.