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Date: 17 September 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
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 Redacted Version

Prosecution's Submissions regarding Witness 267

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 Victims

Unrepresented

(Participation/Reparation)

Applicants

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**The Office of Public Counsel for the
Defence**

States' Representatives

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II

Introduction

1. On 10 September 2009 Trial Chamber II (“the Chamber”), issued a decision, regarding the disclosure of P-267’s¹ statement, interview notes and related documents. The Chamber directed the Prosecution to inform Trial Chamber I of the evolution regarding this witness’s situation. The Prosecution hereby complies with this directive.²

Background

Trial Chamber I

2. On 7 December 2007, the Prosecution requested authorization from Trial Chamber I in order to redact the name of the [REDACTED] from a document³ that was provided by its [REDACTED].⁴
3. This request was granted by Trial Chamber I on 13 December 2007.⁵
4. On 5 December 2008, the Prosecution sought leave from Trial Chamber I not to disclose the identity of P-267 and to provide a summary and certain admissions of fact in lieu of the witness’s statement.⁶
5. On 9 April 2009, Trial Chamber I granted this request.⁷

¹ This witness is also known as WWWW-0267

² ICC-01/04-01/07-1465-Conf-Exp. The public redacted version of this decision is ICC-01/04-01/07-1469.

³ DRC-OTP-0152-0099, p. 18.

⁴ ICC-01/04-01/06-1067.

⁵ REDACTED.

⁶ REDACTED

⁷ REDACTED.

Trial Chamber II

6. During the status conference of 3 February 2009 the Prosecution indicated to the Chamber that it could not disclose P-267's identity until protective measures were put into place.⁸
7. REDACTED.⁹
8. REDACTED.¹⁰
9. REDACTED.¹¹
10. On 8 May 2009, the Chamber held an *ex parte* hearing on the matter with the Prosecution and the Victims and Witnesses Unit.¹² Subsequent to the hearing, on 15 May 2009, the Prosecution filed an application requesting that the disclosure of P-267's identity be deferred to 45 days before the commencement of the trial.¹³
11. [REDACTED]¹⁴, which the Prosecution provided on 26 May 2009.¹⁵ The Chamber also ordered the Prosecution to disclose a non-redacted version of P-267's statement to the Defence, 45 days before the start of the trial.¹⁶

⁸ ICC-01/04-01/07-T-56-ENG-CT-WT, p. 23.

⁹ REDACTED .

¹⁰ REDACTED

¹¹ REDACTED

¹² ICC-01/04-01/07-1106.

¹³ ICC-01/04-01/07-1141-Conf-Exp. The public redacted version of this document is ICC-01/04-01/07-1179.

¹⁴ REDACTED.

¹⁵ It is important to note that on 18 April 2008, the Prosecution first disclosed to the Defence a summary of P-267's statement, DRC-OTP-1016-0106.

¹⁶ ICC-01/04-01/07-1179. N.B.: The trial date had originally been set for 24 September 2009, consequently the Prosecution was obliged to disclose the identity of W-267 on 10 August 2009.

12. On 4 August 2009, the Prosecution filed an Application (“the Application”) requesting authorization from the Chamber to disclose Incriminating evidence and Rule 77 evidence pertaining to P-267 to the Defence with certain redactions. In regards to P-267’s statement¹⁷, one of his interview notes,¹⁸ and five related documents,¹⁹ the Prosecution sought redactions based on Rules 81(2) and 81(4) of the Rules of Evidence and Procedure (“the Rules”), in order to protect the identity of [REDACTED], family members, the source of a document and intermediaries.²⁰
13. On 10 August 2009, the Prosecution filed an Application seeking an extension of time regarding the disclosure of P-267’s statement, his interview notes and related documents. Pending a decision of the Chamber on this matter, the Prosecution did not disclose P-267’s identity to the Defence or the above-mentioned documents in paragraph 10.²¹
14. In response to an order emanating from the Chamber,²² the Prosecution subsequently filed a reply in the matter concerning its Application on 28 August 2009.²³
15. On 31 August 2009, the trial date was postponed to 24 November 2009.²⁴
16. On 10 September 2009, the Chamber issued a decision regarding the Prosecution’s request *supra* paragraph 10.²⁵ In regards to the documents for

¹⁷ DRC-OTP-1000-0002.

¹⁸ DRC-OTP-0149-0011.

¹⁹ DRC-OTP-0164-0908, DRC-OTP-1000-00065; DRC-OTP-100-0072, DRC-OTP-1000-0083 and DRC-OTP-1000-0087.

²⁰ REDACTED. The public redacted version of this document is ICC-01/04-01/07-1356.

²¹ ICC-01/04-01/07-1358

²² ICC-01/04-01/07-1424.

²³ ICC-01/04-01/07-1439.

²⁴ ICC-01/04-01/07-1442.

²⁵ ICC-01/04-01/07-1465-Conf-Exp. The public redacted version of this decision is ICC-01/04-01/07-1469.

which no redactions are being sought the Chamber directed the Prosecution to disclose these to the Defence without delay.²⁶ REDACTED.^{27, 28}

17. The Prosecution confirms that P-267 is currently on its list of witnesses that it intends to call for trial.²⁹ In conformity with the Chamber's decision³⁰ the Prosecution intends to disclose the identity of P-267 to the Defence at the earliest on 9 October 2009.



Luis Moreno-Ocampo, Prosecutor

Dated this 17th day of September 2009

At The Hague, The Netherlands

²⁶ DRC-OTP-0152-0099, DRC-OTP-0164-0867 ; DRC-OTP-1000-0054; DRC-OTP-1000-0058; DRC-OTP-1000-0069; DRC-OTP-0152-0095; DRC-OTP-0152-0098; DRC-OTP-152-0113; DRC-OTP-152-0121; DRC-OTP-1000-0060; DRC-OTP-1000-0063; DRC-OTP-1000-0074; DRC-OTP1000-007; DRC-OTP-1000-0080.

²⁷ REDACTED

²⁸ REDACTED.

²⁹ ICC-01/04-01/07-1174-Conf-Exp-AnxA. The Prosecution submitted its list of witnesses including P-267 on 27 May 2009.

³⁰ ICC-01/04-01/07-1179, See *supra* paragraph 11.