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

Date: **29 October 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 Redacted Version
with Confidential – *Ex Parte* – Prosecution Only Annexes A and B**

**Prosecution's Update of filing # 2111 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:

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Following a decision of Trial Chamber II and instructions of the Chamber¹, the Prosecution hereby updates its 'Prosecution's Updated Requests of filings # 1567 and # 1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information'.

***Ex Parte* Filing**

1. The Prosecution submits that the classification of the filing and Annexes A and B as Confidential-*Ex Parte* – Prosecution Only is necessary² as it seeks relief on the basis of protective measures. The information discussed must be treated confidentially, and cannot be disclosed to the Defence.³
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 available to the Defence in a public redacted version with the basis for the filing.

Background

3. On 9 September, the Prosecution filed its 'Prosecution's Updated Requests of filings # 1567 and # 1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information' (Prosecution's Update).⁴
4. Some of the redactions in the Prosecution's Update were subsequently the subject of a decision of Trial Chamber II on 22 October 2009.⁵

¹ E-mail of 9 October 2009 received from the Legal Officer of the Trial Division.

² 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).

³ 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.

⁴ ICC-01/04-01/06-2111. For the background of this filing see paras. 3 to 5.

⁵ ICC-01/04-01/07-1551-Conf-Exp.

Amendment and request

5. Consequently, and in respect of the statements⁶ that were taken and disclosed in the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* (Katanga case), the Prosecution amends its request, to include only those redactions that are still requested before or granted by Trial Chamber II. For sake of clarity, the Prosecution attaches an updated Annex A and B to the present filing.
6. In respect of the statements that were taken and disclosed in the present case, the Prosecution withdraws its pending request for redactions to the identity of witness DRC-OTP-WWWW-0102 (pursuant to Rule 81(4))⁷. [REDACTED]. Although the Prosecution has not been able to contact him directly, he is [REDACTED]. Upon re-evaluation, and taking into account the relevant content of the statement, the Prosecution is satisfied that his security is adequately protected and that his identity can be disclosed to the defence in the present case.
7. Should the Chamber determine that it is necessary to seek leave to withdraw a *pending* request for redactions under Rule 81(4), the Prosecution requests authorisation to withdraw its request for Rule 81(4) redactions to the identity of witness DRC-OTP-WWWW-0102, but maintains its request for limited redactions based on Rule 81(4).



Luis Moreno-Ocampo, Prosecutor

Dated this 29th day of October 2009
At The Hague, The Netherlands

⁶ 'Statement' is defined broadly to include investigators' notes, draft statements, signed statements and transcripts.

⁷ On 4 December 2007, the Chamber ruled orally that for redactions authorized by judicial order under Rule 81(4), the Prosecution should apply to the Chamber for leave to lift the redactions (ICC-01/04-01/06-T-62-ENG-ET from page 22, line 12 to page 24, line 8). In the present case, however, the redactions to the identity of witness 102 have not yet been granted by the Chamber.