



Original: English

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

Date: 21 December 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

Confidential - *Ex Parte* - Prosecution Only Annexes 1-3

**Prosecution's Request for Non-Disclosure of Information in the Statements of Three
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

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims **The Office of Public Counsel for the Defence**
Ms Paolina Massidda

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Introduction

1. On 10 December 2009, the Trial Chamber rendered its “Decision on the variation of protective measures under Regulation 42 on referral from Trial Chamber II on 22 July 2009” (Decision 2209).¹ In Decision 2209, the Trial Chamber ordered the disclosure of statements from witnesses 0047, 0052 and 0068 and ordered the Prosecution to make any applications for redactions within 48 hours of notification of the decision.²
2. The Prosecution requests authorisation to redact information in the statements of witnesses 0047, 0052 and 0068. In support of this request, the Prosecution relies on Articles 54(3)(f), 61, 64, and 68 of the Rome Statute and Rule 81 (4) and Rule 77 of the Rules of Procedure and Evidence (Rules); the latter provision expressly makes disclosure subject to the restrictions on disclosure contained in the Statute and Rules 81 and 82.
3. In relation to witnesses 0047, 0052 and 0068, the Prosecution requests authorization for redactions under Article 54(3)(f) and Rule 81(4), to the references to the identities and whereabouts of family members of the witnesses who are not in the ICCPP [REDACTED].³ In addition, the Prosecution has made one redaction pursuant to Rule 81(1) [REDACTED] on the first page of the unsigned statement of witness 0068, because it is internal work product.

¹ ICC-01/04-01/06-2209-Conf-Exp.

² ICC-01/04-01/06-2209-Conf-Exp, page 27.

³ For witness 47, the statement is [REDACTED] and is attached hereto as Confidential- *ex parte*- Prosecution Only **Annex 1** with redactions visible to the Chamber. [REDACTED]. For witness 52, the statement is [REDACTED] and is attached hereto as Confidential- *ex parte*- Prosecution Only **Annex 2** with redactions visible to the Chamber. [REDACTED]. For witness 68, the statement is [REDACTED] and is attached hereto as Confidential- *ex parte*- Prosecution Only **Annex 3** with redactions visible to the Chamber. [REDACTED].

4. The Prosecution notes that the Chamber has previously authorized permanent redactions to protect family members and their whereabouts.⁴
5. The Prosecution submits that the proposed redactions will not hinder the Defence's ability to assess the Rule 77 information contained in the statements, and they do not impact on issues that are relevant to the Defence case. Accordingly, the Prosecution submits that the redactions are not prejudicial to or inconsistent with the rights of the Accused.

Ex Parte Filing

6. The Prosecution submits that the classification of this filing and three annexes as Confidential-*Ex Parte* – Prosecution Only is necessary.⁵
7. The present filing seeks relief on the basis of provisions on protective measures. The Prosecution submits that the information discussed must be treated confidentially and cannot be disclosed to the Defence in advance of a determination as to whether disclosure is necessary.⁶
8. The Prosecution submits that no alternative procedures exist to deal with this request. The rights of the Accused are maintained to the extent that he will be

⁴ Decision on the 'Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information" of 5 December 2008, 9 April 2009, ICC-01/04-01/06-1814-Conf, paragraphs 34 and 35. Corrected version: Annex 1 to the decision issuing corrected and redacted versions of "Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information" of 5 December 2008", 2 June 2009, ICC-01/04-01/06-1924-Conf-Anx 1, paragraphs 34 and 35. Public redacted version: Annex 2 to the Decision issuing corrected and redacted versions of "Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information" of 5 December 2008", 2 June 2009, ICC-01/04-01/06-1924-Anx2, paragraphs 34 and 35.

⁵ 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).

⁶ 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.

made aware of the filing as the Prosecution will file a public redacted version of the filing and the redacted versions of all three statements will be disclosed on 17 December 2009, in accordance with Decision 2209.⁷

Requested Relief

9. Based on the foregoing, the Prosecution requests authorisation for the non-disclosure of information contained in the witness statements of WWWW-0047, 0052 and 0068, in accordance with Articles 54(3)(f), 61, 64 and 68, and Rules 77 and 81(4).



Luis Moreno-Ocampo
Prosecutor

Dated this 21st day of December 2009
At The Hague, The Netherlands

⁷ ICC-01/04-01/06-2209-Conf-Exp, page 27.