



Original: English

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

Date: 16 April 2010

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 Annex A and
Confidential *Ex Parte* – Prosecution Only Annexes 1-4**

**Prosecution's Request for Non-Disclosure of Information in
Transcripts of Re-Interviews with Prosecution Witnesses**

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

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Unrepresented Victims

**Unrepresented Applicants for
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Detention Section

**Victims Participation and Reparations
Section**

Other

The Prosecution requests authorisation, pursuant to Articles 54(3)(f), 64, and 68 of the Rome Statute (Statute) and Rule 81(4) of the Rules of Procedure and Evidence (Rules) to redact certain information in the transcripts of two re-interviews with Prosecution witnesses.

I. Background

1. On 19 November 2009, the Chamber authorised the Prosecution to contact its own witnesses for the purpose of re-interviewing them in preparation for the Defence case.¹
2. Among the materials subsequently disclosed to the Defence related to Prosecution interviews with trial and non-trial witnesses, the transcripts of two interviews² have been disclosed with redactions made pursuant to Rule 81(4).

II. Prosecution's Submissions

3. The Prosecution requests the authorisation of the Trial Chamber pursuant to Articles 54(3)(f), 64, and 68 and Rule 81(4) to apply redactions to the interview transcripts.
4. The proposed redactions do not affect the value of or hinder the Defence's ability to assess the relevant information contained in the interview materials, nor do they impact on issues that are relevant

¹ ICC-01/04-01/06-2192-Red, para. 66: the "Chamber is persuaded that it is appropriate for the prosecution to meet again with witnesses [...] for the purposes identified in the application. These meetings should be recorded by audio or video equipment, and the prosecution must apply its disclosure obligations following any re-interview. If it becomes necessary to use this procedure with other witnesses, the same approach is to be followed (once the Court and the defence have been given adequate notice)."

² The interview transcripts of trial witness 89 and non-trial witness 500, respectively.

to the Defence case. Accordingly, the Prosecution submits that the redactions are not prejudicial to or inconsistent with the rights of the Accused.

5. The overview chart attached hereto as Confidential-Ex Parte Annex A indicates (i) the category of information to which the redaction pertains, and (ii) the proposed redaction. The interview transcripts with the proposed redactions made pursuant to Rule 81(4) are attached hereto as Annexes 1 to 4 in a format that permits the Trial Chamber to view the information that the Prosecution proposes for redaction.
6. The information that the Prosecution proposes for redaction is as follows:

Whereabouts of witnesses in the ICCPP

7. The Prosecution requests authorisation, pursuant to Rule 81(4), to redact information which may reveal the current location of DRC-OTP-WWWW-0089. Trial witness DRC-OTP-WWWW-0089 has been relocated as part of the Court's protection program.
8. In the *Katanga and Ngudjolo Chui* case, the Single Judge authorised the redactions of the current whereabouts of Prosecution witnesses who have been accepted in the ICC protection program as a necessary measure to minimize the risk posed by the disclosure of their identities to the Defence.³

³ ICC-01/04-01/07-90, paras. 27–28. The redactions were authorised in a Confidential Ex Parte annex to the decision.

9. The Prosecution recalls that Trial Chamber I authorised similar redactions in its decision of 10 December 2009.⁴

Names and whereabouts of family members of non-trial witnesses

10. The Prosecution requests authorisation, pursuant to Rule 81(4), to redact the following information contained in the transcripts of DRC-OTP-WWWW-0500:

- (i) the names of various family members of DRC-OTP-WWWW-0500; and
- (ii) the words “[REDACTED]” which, in context, may reveal the current location of the witness’ father and brothers;

in order to protect the safety of these persons.

11. Witness W-0500 and her family members are not witnesses in the present case. The names and whereabouts of these individuals are otherwise not relevant to the known issues in the case.
12. The Prosecution submits, as was held by the Single Judge in the *Katanga and Ngudjolo Chui* case, that disclosing to the Defence the names and identifying information of family members of Prosecution witnesses, including information that could lead to the disclosure of their current whereabouts (particularly those currently located in the Ituri district or the Kinshasa area), could pose an additional risk to their safety and/or physical well-being.⁵

⁴ ICC-01/04-01/06-2208-Conf-Exp, paras. 34–35, 58–59.

⁵ See ICC-01/04-01/07-90, paras. 31, 35, 36 and 38; ICC-01/04-01/07-160, paras. 43, 45, 47 and 48; ICC-01/04-01/07-249, paras. 18, 19, 21 and 23; ICC-01/04-01/07-361, paras. 13, 15, 18 and 21; ICC-01/04-01/07-427, paras. 30, 33, 39 and 41; ICC-01/04-01/07-425, paras. 11, 13, 15 and 18; and ICC-01/04-01/07-568, paras. 16, 19, 21 and 24. The redactions were authorised in Confidential Ex Parte annexes to the decisions.

13. The Prosecution recalls that the Trial Chamber has previously authorised redactions to the names and identifying information of family members of witnesses and Prosecution sources, applying the reasoning that information was irrelevant to the known issues in the case, so long as this course did not render the document in any way unintelligible or unusable.⁶

Innocent third parties

14. The Prosecution requests authorisation, pursuant to Rule 81(4), to redact names and identifying information contained in the transcripts of trial witness DRC-OTP-WWWW-0089 in respect of:

- (i) “[REDACTED]” or “[REDACTED]”; and
- (ii) “[REDACTED]”.

in order to protect the safety of these persons.

15. This information concerns individuals who are not witnesses in the present case. Their names and whereabouts are otherwise not relevant to the known issues in the case.
16. The Prosecution submits that the information is irrelevant to the known issues in the case, does not affect the content or value of the

⁶ Decision on the “Prosecution’s Request for Non-Disclosure of Information” of 19 December 2008, and the “Prosecution’s Request for Non-Disclosure of Information” of 4 February 2009, ICC-01/04-01/06-2208-Conf-Exp, paras. 28, 39, 42, 58–59, 63, 69, 74, 77 and 80; 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, paras. 34–35. 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, paras. 34–35. 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, paras. 34–35.

information in the document, and does not render the document in any way unintelligible or unusable. The Prosecution recalls that the Trial Chamber has previously authorised permanent redactions to the names of those who have been referred to as "third parties" on this basis.⁷

III. *Ex Parte* Filing

17. The Prosecution submits that the classification of the present filing and annexes as *Confidential - Ex Parte - Prosecution Only* is necessary.⁸
18. 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.⁹
19. 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 made aware of the filing and its legal basis as the Prosecution will file a public redacted version of the present filing.
20. The transcripts have all been disclosed to the Defence, with the proposed redactions, in order to ensure that the Defence has access

⁷ ICC-01/04-01/06-2179-Conf-Exp, para. 18 (public redacted versions ICC-01/04-01/06-2179-Red and ICC-01/04-01/06-2179-Red2).

⁸ 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).

⁹ 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.

to these documents at the earliest opportunity. Should the Trial Chamber decline to authorise any of the proposed redactions, the Prosecution will re-disclose the relevant documents.

IV. Relief Requested

21. Based on the foregoing, the Prosecution requests that the Trial Chamber authorise the non-disclosure of information contained in the four documents as set out in the annexes, in accordance with Articles 54(3)(f), 64 and 68 and Rule 81(4).



Luis Moreno-Ocampo
Prosecutor

Dated this 16th day of April 2010
At The Hague, The Netherlands