

**Cour
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Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

***SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO IN THE CASE
OF THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Redacted Decision on the Prosecution's Requests for Non-Disclosure of
Information in Witness-Related Documents**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Trial Chamber I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, issues the following Decision on the Prosecution's Requests for Non-Disclosure of Information in Witness-Related Documents.¹

I. Background and Submissions

1. On 16 June 2009, the Chamber adjourned the evidence of witness DRC-OTP-WWWW-0015 ("Witness 15") after he indicated that he had provided the Office of the Prosecutor ("prosecution" or "OTP") with a false name and that his statement was inaccurate in certain important respects.² The Chamber approved the conditions for taking a further statement, as agreed by the parties.³ During the interview that was held to take this statement, Witness 15 referred to receiving money from employees of the Court,⁴ and the defence requested disclosure from the prosecution of any relevant receipts and expenses for him,⁵ as well as the receipts and expenses for each of the prosecution's trial witnesses and for intermediary DRC-OTP-WWWW-0316 ("intermediary 316").⁶
2. On a general basis, on 27 August 2009 the defence requested disclosure from the prosecution of all the documents in its possession relating to defence witnesses.⁷

The prosecution's requests

3. In the "Prosecution's Request for Non-Disclosure of Information in Witness Related Expenses"⁸ ("first application") leave is requested to withhold

¹ Although some of the documents referred to in this Decision are not part of the public record of the case, the Chamber is satisfied that the relevant information does not require protection.

² Transcript of hearing on 16 June 2009, ICC-01/04-01/06-T-192-ENG, page 10, line 15 to page 11, line 13.

³ ICC-01/04-01/06-T-192-ENG, page 11, line 8 to page 14, line 1.

⁴ ICC-01/04-01/06-2266-Conf-Exp, paragraph 2.

⁵ ICC-01/04-01/06-2266-Red, paragraph 2.

⁶ ICC-01/04-01/06-2266-Red, paragraph 3.

⁷ ICC-01/04-01/06-2314-Conf-Exp-Corr, paragraph 1.

information in: (1) documents described as ICC Witness-Related Expenses (“expense related documents”) and (2) documents related to intermediary 316, in accordance with Rule 81(2) and (4) of the Rules of Procedure and Evidence (“Rules”). The prosecution also addresses a number of documents that contain redactions for “internal work products”, in accordance with Rule 81(1).⁹

4. This first application for redactions relates to 83 documents that form part of the materials disclosed to the defence in response to the request described in paragraph 1 above (amounting to 988 documents at the time of the application).¹⁰ They include a statement relating to intermediary 316 taken by a staff member in the Operational Support Unit (“OSU”) of the prosecution in May 2008.¹¹ Within the documents provided to the defence, 779 were disclosed in non-redacted form and 128 documents were disclosed with redactions to “internal work products” only, pursuant to Rule 81(1) of the Rules.¹²
5. In the “Prosecution’s Request for Non-Disclosure of Information in Documents related to Defence Witnesses and Re-Interviews with Prosecution Witnesses”¹³ (“second application”) leave is requested to withhold information in expense related documents and interview materials, in accordance with Articles 54(3)(f), 64 and 68 of the Rome Statute (“Statute”)

⁸ Prosecution’s Request for Non-Disclosure of Information in Witness Related Expenses, 26 January 2010, ICC-01/04-01/06-2266-Conf-Exp and 83 Confidential *ex parte* prosecution only annexes (the numbering of these annexes appears to be slightly different from what is set out in Conf-Exp-AnxA to the Request), public redacted version filed on 11 February 2010, ICC-01/04-01/06-2266-Red.

⁹ ICC-01/04-01/06-2266-Conf-Red, paragraph 5.

¹⁰ ICC-01/04-01/06-2266-Red, paragraphs 4 and 5.

¹¹ ICC-01/04-01/06-2266-Red, paragraph 3.

¹² ICC-01/04-01/06-2266-Red, paragraph 4. The 128 documents containing redactions to only internal work products are not the subject of the prosecution’s application.

¹³ Prosecution’s Request for Non-Disclosure of Information in Documents related to Defence Witnesses and Re-Interviews with Prosecution Witnesses, 26 February 2010, ICC-01/04-01/06-2314-Conf-Exp, notified on 1 March 2010; corrigendum filed on 26 February 2010, ICC-01/04-01/06-2314-Conf-Exp-Corr and notified on 3 March 2010; public redacted version filed on 2 March 2010, ICC-01/04-01/06-2314-Red and notified on 3 March 2010.

and Rule 81(2) and (4) of the Rules.¹⁴ There are fourteen documents and four electronic media files in this category.¹⁵

6. In the “Prosecution’s Request for Non-Disclosure of Information in Witness Related Expenses and Interview Transcripts”¹⁶ (“third application”) leave is requested to disclose, with redactions, forty-one expense related documents and the transcript of an interview with a non-trial witness.¹⁷

7. The proposed redactions within these three requests fall into the following seven categories of information:¹⁸

- (1) The locations of interviews with witnesses, and their accommodation;
- (2) The whereabouts of witnesses in the International Criminal Court Protection Program (“ICCP”);
- (3) Contact information for, and the whereabouts of, witnesses and others at risk on account of the activities of the Court.
- (4) The identities of intermediaries and prosecution sources or leads;
- (5) The identity of ICC staff;
- (6) The identities and the witness codes for witnesses and members of their families, or their guardians;
- (7) The identities of irrelevant individuals or bodies.

8. In each application, the prosecution submits that the proposed redactions do not affect the value of, nor do they hinder the defence ability to assess, the information in the documents. They do not affect any issues that are relevant

¹⁴ ICC-01/04-01/06-2314-Red, paragraph 4.

¹⁵ ICC-01/04-01/06-2314-Red, footnote 5.

¹⁶ Prosecution’s Request for Non-Disclosure of Information in Witness Related Expenses and Interview Transcripts, 25 May 2010, ICC-01/04-01/06-2459-Conf-Exp, public redacted version filed on 31 May 2010, ICC-01/04-01/06-2459-Red and notified on 1 June 2010.

¹⁷ ICC-01/04-01/06-2459-Red.

¹⁸ ICC-01/04-01/06-2266-Red, paragraphs 9-39; ICC-01/04-01/06-2314-Red, paragraphs 8-22; ICC-01/04-01/06-2459-Red, paragraphs 8-27.

to the defence, and they are not prejudicial to, or inconsistent with, the rights of the accused.¹⁹

9. The prosecution has provided detailed information by way of annexes on the proposed redactions, and including the legal basis that is advanced.²⁰

The defence observations

10. On 19 February 2010, the defence filed its response to the prosecution's first application,²¹ in accordance with the deadline set by the Trial Chamber on 18 February 2010.²²

11. The defence does not resist the proposed redactions to the locations of the interviews with the witnesses or their whereabouts (for instance within the ICCPP), together with other personal information and contact details, and similar information for others who are at risk on account of the activities of the Court.²³ The defence does not oppose redactions for information that tends to reveal the current whereabouts of protected witnesses,²⁴ although it objects to redactions to the remainder of the information.²⁵

12. On 18 March 2010 the defence submitted its observations on the second application,²⁶ in accordance with the instructions of the Chamber delivered on 11 March 2010.²⁷ The defence opposes the proposed redactions to "OTP contact and VWU Staff", namely intermediaries and others who assisted the

¹⁹ ICC-01/04-01/06-2266-Red, paragraph 7; ICC-01/04-01/06-2314-Red, paragraph 5; ICC-01/04-01/06-2459-Red, paragraph 5.

²⁰ ICC-01/04-01/06-2266-Conf-Exp-Anxs (83 annexes); ICC-01/04-01/06-2314-Conf-Exp-Anxs (5 annexes); ICC-01/04-01/06-2459-Conf-Exp-Anxs (43 annexes).

²¹ Réponse de la Défense à la "Prosecution's Request for Non-Disclosure of Information in Witness Related Expenses", 19 February 2010, ICC-01/04-01/06-2308.

²² Transcript of hearing on 18 February 2010, ICC-01/04-01/06-T-249-CONF-ENG CT2, page 2, lines 4–13.

²³ ICC-01/04-01/06-2308, paragraphs 3 and 4.

²⁴ ICC-01/04-01/06-2308, paragraph 4.

²⁵ ICC-01/04-01/06-2308, paragraph 5.

²⁶ Réponse de la Défense à la «Prosecution's Request for Non-Disclosure of Information in Documents related to Defence Witnesses and Re-Interviews with Prosecution Witnesses », datée du 2 mars 2010, 18 March 2010, ICC-01/04-01/06-2351.

²⁷ Transcript of hearing on 11 March 2010, ICC-01/04-01/06-T-259-CONF-ENG ET, page 29, lines 3 – 13.

OTP, along with staff members of the VWU,²⁸ but it does not resist the proposed redactions to the “location for witnesses’ interviews and accommodation”, “name(s) and whereabouts of witnesses”, the “whereabouts of witnesses in the ICCPP” and the “whereabouts of intermediaries”.²⁹

13. On 21 June 2010, the defence filed its response to the third application, once again opposing the suggested redactions to information concerning intermediaries and staff members of the OTP.³⁰ The defence repeated its acceptance of the proposed redactions to the locations of interviews, the whereabouts of non-trial witnesses, members of their families and any witnesses in the ICCPP, and the personal information for witnesses or other individuals at risk.³¹ The defence observed that as regards “unknown third parties”, the Chamber had concluded on at least one previous occasion that disclosure in this category was necessary.³²

II. Applicable law and relevant decisions

14. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered the following provisions:

Article 54 of the Statute

Duties and powers of the Prosecutor with respect to investigations

[...]

3. The Prosecutor may:

[...]

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

²⁸ ICC-01/04-01/06-2351, paragraphs 4 – 6.

²⁹ ICC-01/04-01/06-2351, paragraphs 7 – 11.

³⁰ Réponse de la Défense à la “Prosecution’s Request for Non-Disclosure of Information in Witness Related Expenses and Interview Transcripts ” déposée le 24 mai 2010, 21 June 2010, ICC-01/04-01/06-2498, paragraphs 5 – 10.

³¹ ICC-01/04-01/06-2498, paragraphs 11 – 14 and 17.

³² ICC-01/04-01/06-2498, paragraphs 15 – 16.

Article 64 of the Statute**Functions and powers of the Trial Chamber**

[...]

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims.

[...]

Article 68 of the Statute**Protection of the victims and witnesses and their participation in the proceedings**

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

Rule 81 of the Rules**Restrictions on disclosure**

1. Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

2. Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an *ex-parte* basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

[...]

4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorising the non-disclosure of their identity prior to the commencement of the trial.

[...]

15. The Appeals Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* ("Katanga case") found that:

93. [...]. The Appeals Chamber observes that rule 81(2) provides generally for the non-

disclosure of "information", without excluding per se certain categories of information from non-disclosure. Similarly, rule 81(4) does not expressly rule out the information referred to in rule 111(1) from its ambit. The Appeals Chamber therefore concludes that it will have to be determined on a case-by-case basis whether the non-disclosure of information that is required to be recorded pursuant to rule 111(1) may be authorised by a Chamber. This will be determined in light of the conditions stipulated by rule 81(2) and/or (4) of the Rules.³³

16. In the present case, the Appeals Chamber has held that "three of the most important considerations for an authorisation of non-disclosure of the identity of a witness pursuant to rule 81(4) of the Rules of Procedure and Evidence [are]: the endangerment of the witness or of members of his or her family that the disclosure of the identity of the witness may cause; the necessity of the protective measure; and why [...] the measure would not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."³⁴ The Appeals Chamber emphasised that this should include an examination of whether less restrictive protective measures are sufficient and feasible.³⁵

17. The Appeals Chamber has further held that Rule 81(4) "should be read to include the words 'persons at risk on account of the activities of the Court' so as to reflect the intention of the States that adopted the Rome Statute and the Rules [...], as expressed in article 54(3)(f) of the Statute and in other parts of the Statute and the Rules, to protect that category of persons."³⁶ The Appeals Chamber emphasised that non-disclosure of information for the protection of those at risk on account of the activities of the Court requires "a careful assessment [...] on a case by case basis, with specific regard to the rights of the [accused]."³⁷

18. Although the relevant decisions of the Appeals Chamber relate to restrictions

³³ Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, paragraph 93.

³⁴ Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81, 14 December 2006, ICC-01/04-01/06-773 OA 5, paragraph 21. See also ICC-01/04-01/07-475, paragraph 67.

³⁵ ICC-01/04-01/06-773 OA 5, paragraph 33.

³⁶ ICC-01/04-01/07-475, paragraph 1.

³⁷ ICC-01/04-01/07-475, paragraph 2.

on disclosure in the context of the pre-trial stage of this and another case, prior to a Decision on the confirmation of the charges (and accordingly, they are not strictly binding on this Trial Chamber), the Bench is of the view that the principles outlined are of high relevance generally to these proceedings. The Trial Chamber has determined that its responsibility under Article 64(6)(e) to “[p]rovide for the protection of the accused, witnesses and victims” includes providing protection for all those at risk in the context of this trial on account of the activities of the Court.³⁸

19. The Chamber has previously set out its approach to Rule 81(1) as follows:

31. Rule 81(1) of the Rules explicitly excludes from disclosure the internal documents ("reports, memoranda or other internal documents") prepared by "a party, its assistant or representatives" in connection with the investigation or preparation of the case. It is of note that the ICTY Rules of Procedure and Evidence contain an almost identical provision: Rule 70(A). It would be unhelpful to attempt in the context of this decision to define the material covered by this provision, but it includes, *inter alia*, the legal research undertaken by a party and its development of legal theories, the possible case strategies considered by a party, and its development of potential avenues of investigation. The Chamber further ensured that the relevant material was limited only to internal documents of the prosecution, and redactions were only authorised if the information was not of a kind that required disclosure under the Statute. It is to be stressed that the material covered by this provision can be entire documents or parts thereof. Furthermore, the Chamber ensured the redactions did not change the substance of the relevant parts of the documents, and in each instance they remained intelligible and usable.³⁹

The Chamber has applied this approach in the present Decision to the redactions proposed by the prosecution, on the basis of Rule 81(1) of the Rules.

20. The Trial Chamber has previously authorised non-disclosure of the identities of certain witnesses; this has been accompanied, when appropriate, by disclosure of alternative items of evidence and the admission of facts. The

³⁸ 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, paragraph 34 and 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" public redacted version issued 2 June 2009, ICC-01/04-01/06-1924-Anx2, paragraph 34.

³⁹ ICC-01/04-01/06-1814-Conf, and public redacted version, ICC-01/04-01/06-1924-Anx2, paragraph 31.

Chamber has also repeatedly approved redactions to the locations of interviews, details concerning intermediaries and other individuals who were present during interviews, prosecution sources, and the names and whereabouts of family members or guardians, and victims.⁴⁰

21. Further, the Trial Chamber has previously authorised the redaction of the names of individuals referred to as “third parties”, including NGOs and their field staff when, *inter alia*, the information was irrelevant to the known issues in the case and they did not render the document in any way unintelligible or unusable.⁴¹

22. However, as a reflection of the changing and emerging issues in the case, during the hearing of 15 March 2010, the Chamber concluded the following as regards disclosure of intermediaries:

We have formed the view, having now received competing written submissions from both the Prosecution and the Defence, that the Defence is entitled to the identity of at least some of the intermediaries who have assisted witnesses in this case.⁴²

Thereafter, on 12 May 2010, the Chamber ordered the disclosure of additional material relevant to intermediaries.⁴³

⁴⁰ Decision on the “Prosecution’s Request for Non-Disclosure of the Identity of Eight Individuals providing Rule 77 Information” of 5 December 2008 and “Prosecution’s Request for Non-Disclosure of Information in One Witness Statement containing Rule 77 Information” of 12 March 2009, 12 June 2009, ICC-01/04-01/06-1965-Conf-Exp; public redacted version filed on 24 June 2009, ICC-01/04-01/06-1980-Anx2.

⁴¹ Transcript of hearing on 13 December 2007, ICC-01/04-01/06-T-65-ENG ET WT, page 3, lines 1-13; Transcript of hearing on 18 January 2008, ICC-01/04-01/06-T-72-Conf-Exp-ENG ET, page 2, lines 8-24; Order granting prosecution’s application for non-disclosure of information provided by a witness, 31 January 2008, ICC-01/04-01/06-1146-Conf-Exp, and its confidential redacted version, notified on 11 March 2008, ICC-01/04-01/06-1221-Conf-Anx1, paragraph 8; Decision on “Prosecution’s Application for Non-Disclosure of Information” filed on 14 May, 17 December 2008 and notified on 18 December 2008, ICC-01/04-01/06-1561-Conf-Exp, paragraph 11.

⁴² Transcript of hearing of 15 March 2010, ICC-01/04-01/06-T-261-Eng-ET, page 6, lines 18 – 22.

⁴³ Decision on Intermediaries, 12 May 2010, ICC-01/04-01/06-2434-Conf-Exp. This decision was issued as confidential ex parte prosecution and VWU only and a corrigendum was issued on 27 May 2010, ICC-01/04-01/06-2434-Conf-Exp-Corr. A confidential redacted version was issued on 20 May 2010, ICC-01/04-01/06-2434-Conf-Red and a corrigendum was issued on 27 May 2010, ICC-01/04-01/06-2434-Conf-Red-Corr. A public redacted version was issued on 31 May 2010, ICC-01/04-01/06-2434-Red2.

III. Analysis and Conclusions

23. The Chamber, in line with its previous decisions, has applied a case-by-case approach to the present applications. It has applied the Court's jurisprudence, and it has borne in mind any relevant developments in the trial that may affect an assessment of the rights of the accused and the need for protective measures. The Chamber has addressed the prosecution's requests by way of the categories identified above.

(1) The locations for interviews with witnesses and their accommodation

24. In the first application the prosecution proposes redactions for the locations of the interviews with certain witnesses and their accommodation, in two documents, pursuant to Rule 81(2) of the Rules,⁴⁴ on the basis that it seeks to protect ongoing and future investigations.⁴⁵

25. In the second application, the prosecution requests similar redactions to protect ongoing investigations in two documents that contain witness-related expenses; the proposed redactions are to the name of a hotel, along with the metadata for certain relevant documents.⁴⁶

26. In the third application the prosecution requests redactions to references to hotels and a private rental address in eight expense related documents,⁴⁷ as these locations may be used in the future by the OTP.⁴⁸

⁴⁴ ICC-01/04-01/06-2266-Conf-Exp-AnxA, pages 12 (DRC-OTP-0205-0528 in Annex 58) and page 14 (DRC-OTP-0208-0116 in Annex 69).

⁴⁵ ICC-01/04-01/06-2266-Red, paragraph 22.

⁴⁶ ICC-01/04-01/06-2314-Red, paragraph 12 and ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 2 (DRC-OTP-0209-0248 in Annex 5 and DRC-OTP-0209-0249 in Annex 6).

⁴⁷ ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 2 (DRC-OTP-0191-0171 in Annex 1); page 3 (DRC-OTP-0196-0196 in Annex 6 and DRC-OTP-0196-0230 in Annex 7); pages 6 – 7 (DRC-OTP-0205-0195 in Annex 22, DRC-OTP-0216-0044 in Annex 24 and DRC-OTP-0216-0045 in Annex 25); and page 9 (DRC-OTP-0216-0644 in Annex 36 and DRC-OTP-0216-0647 in Annex 37).

27. The defence does not oppose any of these proposed redactions.⁴⁹

28. As previously indicated by the Chamber, disclosure of material in this category will be potentially detrimental to the interests of justice, because of ongoing investigations in the Democratic Republic of Congo ("DRC"), and therefore these redactions are necessary, pursuant to Rule 81(2). The locations of interviews and the accommodation used by witnesses are part of the prosecution's resources for obtaining potential relevant information in this case or as part of other investigations. It is wholly irrelevant to the issues in the current trial, and non-disclosure will not cause any prejudice to the accused.⁵⁰ No lesser protective measures are feasible.

(2) The whereabouts of witnesses in the ICCPP

29. Redactions are proposed in the prosecution's first application within seventeen documents, as regards information that may provide possible links to the whereabouts of prosecution witnesses DRC-OTP-WWWW-0012, DRC-OTP-WWWW-0015, DRC-OTP-WWWW-0041 and DRC-OTP-WWWW-0213, each of whom is in the ICCPP (see Rule 81(4) of the Rules).⁵¹

⁴⁸ ICC-01/04-01/06-2459-Red, paragraphs 13 – 14.

⁴⁹ ICC-01/04-01/06-2308, paragraphs 3 and 4; ICC-01/04-01/06-2351, paragraph 7; and ICC-01/04-01/06-2498, paragraph 11.

⁵⁰ See Redacted Decision on the prosecution's application for non-disclosure of information filed on 17 July 2009, 10 December 2009, ICC-01/04-01/06-2186-Red, paragraph 23.

⁵¹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, pages 2 and 3 (DRC-OTP-0196-0030 in Annex 5 and DRC-OTP-0196-0126 in Annex 6); page 5 (DRC-OTP-0200-0168 in Annex 21 and DRC-0201-0060 in Annex 24); page 6 (DRC-OTP-0205-0002 in Annex 27, DRC-OTP-0205-0012 in Annex 29, and DRC-OTP-0205-0013 in Annex 30); pages 6 and 7 (DRC-OTP-0205-0015 in Annex 31); pages 7 and 8 (DRC-OTP-0205-0112 in Annex 38, DRC-OTP-0205-0136 in Annex 39, DRC-OTP-0205-0137 in Annex 40 and DRC-OTP-0205-0203 in Annex 41); page 9 (DRC-OTP-0205-0218 in Annex 42, DRC-OTP-0205-0219 in Annex 43 and DRC-OTP-0205-0233 in Annex 44); page 10 (DRC-OTP-0205-0235 in Annex 45) and page 13 (DRC-OTP-0205-0558 in Annex 61).

30. In its second application, the prosecution requests similar redactions to one interview transcript⁵² for trial witness DRC-OTP-WWWW-0321 and four recordings⁵³ for trial witness DRC-OTP-WWWW-0299.⁵⁴

31. In its third application the prosecution seeks redactions to three expense related documents for DRC-OTP-WWWW-0297. The redactions are to telephone numbers, which could provide a link to the current whereabouts of this witness, who is in the ICCPP.⁵⁵

32. The defence does not oppose these redactions.⁵⁶

33. In accordance with earlier decisions of this Chamber and pursuant to Article 64(6)(e) of the Statute and Rule 81(4) of the Rules, these proposed redactions are necessary and fair, given that disclosure will put the witnesses or others at risk because of the activities of the Court; the interview records remain fully intelligible and usable. The material that will be withheld is irrelevant to any known issue in the case and no lesser measure is feasible. This material does not come within either Article 67(2) of the Statute or Rule 77 of the Rules of Procedure and Evidence. For these reasons, the requests are granted.

(3) Contact information for, and the whereabouts of, witnesses and other individuals at risk on account of the activities of the Court

34. Redactions to contact information and the whereabouts of witnesses and other persons at risk on account of activities of the Court are proposed for

⁵² ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 4 (DRC-OTP-0221-0607 in Annex 11).

⁵³ ICC-01/04-01/06-2314-Conf-Exp-AnxA, pages 4 – 5 (DRC-OTP-0221-0011_01, DRC-OTP-0221-0011_03, DRC-OTP-0221-0011_04 and DRC-OTP-0221-0011_05).

⁵⁴ ICC-01/04-01/06-2314-Red, paragraphs 18 – 20.

⁵⁵ ICC-01/04-01/06-2459-Red, paragraphs 19 – 21 and ICC-01/04-01/06-2459-Conf-Exp-AnxA, pages 2 – 3 (DRC-OTP-0196-0165 in Annex 5); page 5 (DRC-OTP-0198-0347 in Annex 15) and page 6 (DRC-OTP-0205-0453 in Annex 23).

⁵⁶ ICC-01/04-01/06-2308, paragraphs 3 and 4; ICC-01/04-01/06-2351, paragraph 10; ICC-01/04-01/06-2498, paragraph 14.

sixteen documents, pursuant to Rule 81(4) of the Rules, in the prosecution's first application.⁵⁷ These include private telephone numbers, addresses and the details from the identity-documents of trial witnesses, intermediary 316 and others (including prosecution field staff).⁵⁸ The prosecution submits that even if particular identities are disclosable, personal information of the kind set out above is irrelevant to the known issues in the case and should not be revealed without sufficient justification.⁵⁹

35. In its second application, the prosecution seeks to redact references to the address of the foster parent of prosecution witnesses DRC-OTP-WWWW-0297 and D01-WWWW-0004,⁶⁰ in one expense related document.⁶¹ The prosecution, referring to a ruling by the Single Judge in the *Katanga* case, submits that these redactions are necessary, since disclosing the names and other identifying information for these witnesses could reveal their current whereabouts, thereby endangering their safety and physical well-being.⁶² The prosecution also requests redactions to the current whereabouts of intermediary DRC-OTP-WWWW-0321, who is a witness in the case. The defence has been provided with his identity, and the proposed redactions only relate to his current residence, which, it is submitted, is irrelevant to the issues in the case.⁶³ The application relates to six statements.⁶⁴

⁵⁷ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 2 (DRC-OTP-0194-0132 in Annex 1; DRC-OTP-0194-0165 in Annex 2); pages 4 – 5 (DRC-OTP-0196-0584 in Annex 19); page 5 (DRC-OTP-0200-0272 in Annex 22); page 6 (DRC-OTP-0205-0012 in Annex 29); page 7 (DRC-OTP-0205-0050 in Annex 36); page 8 (DRC-OTP-0205-0136 in Annex 39); page 9 (DRC-OTP-0205-0218 in Annex 42; DRC-OTP-0205-0219 in Annex 43; DRC-OTP-0205-0233 in Annex 44); page 10 (DRC-OTP-0205-0235 in Annex 45, DRC-OTP-0205-0288 in Annex 46, DRC-OTP-0205-0289 in Annex 47 and DRC-OTP-0205-0294 in Annex 48); page 12 (DRC-OTP-0205-0426 in Annex 56); page 14 (DRC-OTP-0208-0109 in Annex 67 and DRC-OTP-0208-0110 in Annex 68).

⁵⁸ ICC-01/04-01/06-2266-Red, paragraphs 36 – 37.

⁵⁹ ICC-01/04-01/06-2266-Red, paragraph 38.

⁶⁰ ICC-01/04-01/06-2314-Conf-Exp-Corr, paragraph 14.

⁶¹ ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 2 (DRC-OTP-0196-0168 in Annex 3).

⁶² ICC-01/04-01/06-2314-Red, paragraph 16 and footnote 8.

⁶³ ICC-01/04-01/06-2314-Red, paragraphs 21-22.

⁶⁴ ICC-01/04-01/06-2314-Conf-Exp-AnxA, pages 3 – 4 (DRC-OTP-0221-0452 in Annex 7, DRC-OTP-0221-0476 in Annex 8, DRC-OTP-0221-0531 in Annex 10, DRC-OTP-0222-0540 in Annex 12, DRC-OTP-0222-0564 in Annex 13, and DRC-OTP-0222-0587 in Annex 14).

36. In its third application, the prosecution requests redactions to certain expense related documents which contain references to the personal information and contact details (*viz.* telephone numbers, addresses, bank account numbers and information on identity documents) for intermediary 321 and certain OSU field staff.⁶⁵ The prosecution also seeks to redact the location of non-trial witness DRC-OTP-0110 (“[REDACTED]”) in one expense related document for intermediary 321.⁶⁶

37. The defence does not oppose redactions to the whereabouts of witnesses, members of their families, their guardians, intermediaries or other individuals who are at risk.⁶⁷

38. The Chamber has previously authorised redactions to information concerning the whereabouts of protected witnesses, together with the personal information for, and contact details of, a range of individuals,⁶⁸ when the information in question is irrelevant to the known issues in the case, provided this step does not render the document in question in any way unintelligible or unusable, and the redactions are necessary to ensure the continued safety and security of those concerned. The redactions in the documents referred to in paragraphs 34 – 36 above fulfil these criteria, and they are granted pursuant to Article 68(1), Article 64(6)(e) of the Statute and Rule 81(4) of the

⁶⁵ ICC-01/04-01/06-2459-Red, paragraphs 24-27; ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0534 in Annex 13); page 5 (DRC-OTP-0196-0514 in Annex 16 and DRC-OTP-0205-0141 in Annex 19); page 7 (DRC-OTP-0216-0161 in Annex 27, DRC-OTP-0216-0163 in Annex 28 and DRC-OTP-0216-0164 in Annex 29); page 8 (DRC-OTP-0216-0170 in Annex 30, DRC-OTP-0216-0176 in Annex 32, DRC-OTP-0216-0182 in Annex 33); page 9 (DRC-OTP-0216-0189 in Annex 34, DRC-OTP- 0216 - 0200 in Annex 35 and DRC-OTP-0222-0684 in Annex 39).

⁶⁶ ICC-01/04-01/06-2459-Conf-Exp, paragraph 17 and ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 2 (DRC-OTP-0194-0197 in Annex 2).

⁶⁷ ICC-01/04-01/06-2308, paragraphs 3 and 4; ICC-01/04-01/06-2351, paragraph 8; ICC-01/04-01/06-2498, paragraph 17. However, the defence does oppose redactions to information relative to family members and others close to prosecution witnesses. ICC-01/04-01/06-2351, paragraph 8

⁶⁸ See for example ICC-01/04-01/06-1924-Conf-Anx1 and ICC-01/04-01/06-1924-Anx2 (issuing corrected and redacted versions of ICC-01/04-01/06-1814-Conf of 9 April 2009); 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, 10 December 2009, ICC-01/04-01/06-2208-Conf-Exp, public redacted version issued on 12 March 2010, ICC-01/04-01/06-2208-Red-Corr.

Rules. This step causes no unfairness to the accused, and no lesser measures are feasible.

39. However, the request for redactions of the identities of certain individuals is opposed by the defence, and this issue is addressed separately in sections (4), (5) and (6) immediately below.

(4) The identity of intermediaries and prosecution sources or leads

40. In its first application the prosecution seeks to redact references, in seven documents, to certain intermediaries and individuals who have acted as sources or who have provided leads, pursuant to Rule 81(2) of the Rules.⁶⁹ This material is considered individually below. The prosecution proposes redactions to the metadata in two documents,⁷⁰ and it highlights that in four documents there are references to the OTP's intermediary DRC-OTP-WWWW-0143, and the name of the NGO for which he works.⁷¹

41. One document relates to an intermediary named "[REDACTED]", with the code DRC-OTP-WWWW-0183.⁷² The prosecution initially requested authorisation for temporary redactions to the name of this intermediary until protective measures have been implemented.⁷³ On 8 June 2010, Trial Chamber II ordered the lifting of redactions to the intermediary's name.⁷⁴ On 26

⁶⁹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 12 (DRC-OTP-0205-0541 in Annex 59 and DRC-OTP-0205-0542 in Annex 60); page 13 (DRC-OTP-0208-0106 in Annex 65); page 14 (DRC-OTP-0208-0116 in Annex 69, DRC-OTP-0209-0332 in Annex 70, DRC-OTP-0209-0333 in Annex 71 and DRC-OTP-0209-0335 in Annex 72).

⁷⁰ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 12 (DRC-OTP-0205-0541 in Annex 59 and DRC-OTP-0205-0542 in Annex 60).

⁷¹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 12 (DRC-OTP-0205-0541 in Annex 59 and DRC-OTP-0205-0542 in Annex 60); page 13 (DRC-OTP-0208-0106 in Annex 65); page 14 (DRC-OTP-0208-0116 in Annex 69).

⁷² ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 14 (DRC-OTP-0209-0333 in Annex 71).

⁷³ ICC-01/04-01/06-2266-Conf-Exp, paragraphs 13 – 14.

⁷⁴ Transcript of hearing on 10 June 2010, ICC-01/04-01/07-T-151-CONF-ENG ET (open session), page 40, line 18 to page 42, line 13. Trial Chamber II indicated that it had no objection to the statement without redactions to the identity of the intermediary being made accessible to the Lubanga case as well. ICC-01/04-01/07-T-151-CONF-ENG ET (open session), page 42, line 21 to page 43, line 3.

October 2010, the prosecution notified Trial Chamber I that it withdrew its request for redactions to the name “[REDACTED]”.⁷⁵

42. Two other documents refer to an intermediary named “[REDACTED]”.⁷⁶ The prosecution suggests this is witness DRC-OTP-WWWW-0273, [REDACTED], therefore, the prosecution requests redactions in order to protect further and ongoing investigations and to maintain consistency with the approach of Trial Chamber II.⁷⁷

43. In its third application, the prosecution requests similar redactions relating to intermediary DRC-OTP-WWWW-0143 in one expense document.⁷⁸

44. The defence in an email of 15 February 2010, addressed to the prosecution, formally requested disclosure of the identities of all the intermediaries with a link to any witness who has appeared, at any stage, on the prosecution’s witness list.⁷⁹ It submits that the evidence it has collected, as well as that gathered by the prosecution, has raised profound doubts as to the work of some of the prosecution’s intermediaries.⁸⁰ Therefore, the defence submits that it is entitled to disclosure of the identities of the intermediaries and the prosecution sources who are linked to the witnesses in the case (whether or not they are called to give evidence), as well as the identities of the members of the prosecution’s OSU field staff who had contact with the intermediaries.⁸¹ It is submitted the defence is unable properly to understand the nature of the intermediaries’ actions without knowing the identity of those they dealt with from within the OTP. It is argued that the need for disclosure of this

⁷⁵ Email from the prosecution to the Trial Chamber through a Legal Officer for the Trial Division.

⁷⁶ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 14 (DRC-OTP-0209-0332 in Annex 70 and DRC-OTP-0209-0335 in Annex 72).

⁷⁷ ICC-01/04-01/06-2266-Conf-Exp, paragraphs 15 – 17.

⁷⁸ ICC-01/04-01/06-2459-Red, paragraphs 8 – 9; ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0526 in Annex 12).

⁷⁹ ICC-01/04-01/06-2308, paragraph 6.

⁸⁰ ICC-01/04-01/06-2308, paragraph 7.

⁸¹ ICC-01/04-01/06-2308, paragraphs 7 and 8.

information was demonstrated during the testimony of witnesses DRC-D01-0WWWW-0003 and DRC-D01-WWWW-0004.⁸²

45. Focussing on the redactions to the identity of intermediary DRC-OTP-WWWW-0143, the defence observes that in its decision of 2 June 2010, the Trial Chamber ordered disclosure of his identity to the defence.⁸³

46. In earlier decisions the Chamber has authorised non-disclosure of the identity of intermediaries to the defence. However, in light of the developments in the present case, referred to above, the Chamber has ruled that the defence is entitled to the identity of some of the intermediaries who were involved with witnesses in this case.⁸⁴ For instance, as regards intermediary DRC-OTP-WWWW-0143 and the organisation for which he works, the Chamber observed:

Given that this intermediary is one of those whose identity we are of the view now falls to be disclosed to the Defence because of the evidence that we have heard since the beginning of January, the immediate question that falls for consideration is whether protective measures need to be put in place for him before his identity is revealed and, if protective measures do need to be put in place, how long that is going to take and what are the potential consequences for the timing of the next witness's evidence [...].

As regards the name of the organisation that helped girls in the military and the name of one of the individuals with whom the victim was kidnapped, the Chamber is similarly persuaded that it is necessary for the Defence to have this information in full because the credibility of this particular individual is very much a live issue in the case, and this is relevant information for the purposes of the Defence being able to test the reliability and credibility of that individual.” [emphasis added]⁸⁵

47. On 6 July 2010, the Trial Chamber ordered disclosure of the identity and other relevant information for witness DRC-OTP-WWWW-0143 to the defence (*i.e.*

⁸² ICC-01/04-01/06-2308, paragraphs 8 and 9.

⁸³ ICC-01/04-01/06-2498, paragraph 5 and footnote 2 (see Decision on the prosecution request for leave to appeal the "Decision on Intermediaries", 2 June 2010, ICC-01/04-01/06-2463).

⁸⁴ Transcript of hearing on 15 March 2010, ICC-01/04-01/06-T-261-RED-ENG CT WT, page 6, lines 18 – 23.

⁸⁵ ICC-01/04-01/06-T-261-RED-ENG CT WT, page 6, line 24 to page 7, line 8 and page 12, lines 6 – 13.

counsel, their assistants and the “resource person”).⁸⁶ This order was repeated on 7 July 2010.⁸⁷

48. The failure by the prosecution to implement its order to disclose the identity of, and the identifying information for, witness DRC-OTP-WWWW-0143 led to the stay of proceedings on 8 July 2010.⁸⁸

49. The Appeals Chamber lifted the stay of proceedings on 8 October 2010,⁸⁹ and the identity of DRC-OTP-WWWW-0143 has been disclosed to the defence.⁹⁰

50. Finally, the Chamber addresses the material that relates to intermediary DRC-OTP-WWWW-0273, and the Chamber stresses that the information provided by the prosecution regarding this individual does not appear to have any significance in the present case. No basis has been identified for concluding that his identity is relevant to any issue in these proceedings, and, moreover, it appears that disclosure may prejudice the prosecution's ongoing and future investigations. None of the material referred to by the defence in this context comes within either Article 67(2) of the Statute or Rule 77 of the Rules of Procedure and Evidence. Disclosure would lead to material risks to one or more individuals on account of the activities of the Court, and no lesser protective measures are feasible. For these reasons, the requests for redactions are granted.

⁸⁶ Transcript of hearing on 6 July 2010, ICC-01/04-01/06-T-310-RED-ENG CT WT, page 63, line 9 to page 65, line 9.

⁸⁷ Transcript of hearing on 7 July 2010, ICC-01/04-01/06-T-311-RED-ENG WT, page 9, line 20 to page 13, line 25 and Transcript of hearing on 7 July 2010, ICC-01/04-01/06-T-312-ENG-ET WT, page 15, line 21 to page 22, line 3.

⁸⁸ Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU, 8 July 2010, ICC-01/04-01/06-2517-Conf. A public redacted version of this decision was issued on the same day, ICC-01/04-01/06-2517-Red.

⁸⁹ Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU", 8 October 2010, ICC-01/04-01/06-2582.

⁹⁰ Transcript of hearing on 11 October 2010, ICC-01/04-01/06-T-316-ENG ET WT, page 2, lines 19 – 21.

(5) The identity of ICC staff

51. In its first application, the prosecution requests authorisation to redact the references in nine documents to two individuals employed in the prosecution's OSU.⁹¹ It is said that they [REDACTED], and that redactions are necessary in order to protect ongoing and future investigations and to preserve the Court's ability to operate on the field. Furthermore, the prosecution submits that there is no basis for concluding that their identity is relevant to any issue in this case.⁹²

52. In its second application, the prosecution requested authorisation to redact the name of an OTP field contact, "[REDACTED]" who "[REDACTED]".⁹³ However, on 26 October 2010, the prosecution notified the Chamber that it withdrew this request, as the information had already been disclosed.⁹⁴

53. The prosecution seeks to withhold the identities of two staff members of the VWU ("[REDACTED]" and "[REDACTED]") and it refers to two decisions in which this Chamber has previously authorised redactions to their identities.⁹⁵ The redactions requested are within two documents.⁹⁶

54. In its third application, the prosecution seeks redactions to ten documents for two OSU field staff ("[REDACTED]" and "[REDACTED]"), [REDACTED].⁹⁷

⁹¹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 3 (DRC-OTP-0196-0145 in Annex 7, DRC-OTP-0196-0149 in Annex 8, DRC-OTP-0196-0433 in Annex 9, DRC-OTP-0196-0442 in Annex 10, and DRC-OTP-0196-0446 in Annex 11); page 4 (DRC-OTP-0196-0454 in Annex 13, DRC-OTP-0196-0458 in Annex 14 and DRC-OTP-0196-0460 in Annex 15); page 13 (DRC-OTP-0205-0593 in Annex 64).

⁹² ICC-01/04-01/06-2266-Red, paragraphs 18 – 20.

⁹³ ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 2 (DRC-OTP-0205-0455 in Annex 4).

⁹⁴ Email from the prosecution to the Trial Chamber through a Legal Officer for the Trial Division.

⁹⁵ ICC-01/04-01/06-2314-Conf-Exp-Corr, paragraphs 10 – 11. The prosecution refers to Trial Chamber I's Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp-AnxB and oral decision on 8 April 2009, ICC-01/04-01/06-T-167-ENG ET WT, page 18, lines 10 – 17.

⁹⁶ ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 3 (DRC-OTP-0221-0476 in Annex 8 and DRC-OTP-0221-0502 in Annex 9).

⁹⁷ ICC-01/04-01/06-2459-Conf-Exp, paragraph 10 and ICC-01/04-01/06-2459-Conf-Exp-AnxA page 2 (DRC-OTP-0196-0450 (redaction to metadata only) and DRC-OTP-0196-0147 in Annex 4); page 3 (DRC-OTP-0196-

The prosecution also seeks redactions in two expense related documents, for “[REDACTED]” and “[REDACTED]”, who “[REDACTED]”.⁹⁸

55. The defence opposes any redactions to the identities of those who have assisted the prosecution or who are staff members of the VWU if they have played a role that is relevant to the issues in this trial (including the abuse of process application). The defence argues that in any event there is no justification for concealing the identity of ICC staff members from the defence, especially since it is already aware of the composition of the VWU.⁹⁹ The defence suggests the identity of OSU staff is relevant because they have dealings with intermediaries in the field. It is submitted the defence is unable properly to understand the nature of the intermediaries’ actions without knowing the identity of those they dealt with from within the prosecution.¹⁰⁰

56. The Chamber has previously authorised redactions to the name of the VWU staff member “[REDACTED]”, because his name was irrelevant to the issues in the case and disclosure of his identity would put witnesses at risk.¹⁰¹ Similarly, redactions to the name “[REDACTED]” were previously granted because the Chamber then considered that his identity was “wholly irrelevant

0344 in Annex 8, DRC-OTP-0196-0437 in Annex 9 and DRC-OTP-0196-0449 in Annex 10); page 4 (DRC-OTP-0196-0456 in Annex 11); page 9 (DRC-OTP-0220-0065 in Annex 38); page 10 (DRC-OTP-0227-0203 in Annex 40, DRC-OTP-0227-0400 in Annex 41, and DRC-OTP-0227-0432 in Annex 42).

⁹⁸ ICC-01/04-01/06-2459-Conf-Exp paragraph 11 and ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 2 (DRC-OTP-0196-0079 in Annex 3); page 7 (DRC-OTP-0216-0142 in Annex 26).

⁹⁹ ICC-01/04-01/06-2351, paragraphs 4 – 6; ICC-01/04-01/06-2498, paragraphs 6 – 10.

¹⁰⁰ ICC-01/04-01/06-2308, paragraph 8.

¹⁰¹ Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters, 24 April 2008, ICC-01/04-01/06-1295-Conf-Exp, paragraph 15. This decision was originally filed under seal and reclassified as confidential *ex parte* Prosecution and Registry only on 17 July 2009, ICC-01/04-01/06-1295-Conf-Exp. Confidential and public redacted versions were issued on 24 April 2008 and notified on 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1 and ICC-01/04-01/06-1311-Anx2, respectively. Under seal *ex parte* Annex B to the decision states the following: “The prosecution contended that there is no known issue that is connected to [REDACTED] alleged role in filling out [REDACTED] application to participate as a victim in the trial. Consistent with the Chamber’s earlier decisions on irrelevant material where individuals are at risk, this application to redact this information concerning [REDACTED] role and name is granted.”

to the known issues in the case” and because “legitimate protection issues” were raised.¹⁰²

57. However, the Chamber has recently ordered disclosure of the identity and functions of two VWU staff members, given the developing issues in the case had made them relevant:

Notwithstanding these submissions, the Chamber is not persuaded that the redactions to the names of the relevant field officers are necessary to avoid undue interference with the work of the VWU's staff. In the opinion of the Chamber, less restrictive protective measures - such as those referred to hereafter - are sufficient and feasible to achieve the necessary result. (See the jurisprudence of the Appeals Chamber in the Lubanga case, document 773, paragraph 33). Furthermore, the Chamber is of the view that disclosure of the statements without the names and functions of the employees is prejudicial to the Defence given the restricted use the statements may well have for the Defence if they are communicated in the proposed redacted form. The Chamber, therefore, rejects the request for redactions and hereby orders the disclosure of the full non-redacted versions to the Defence. The Chamber notes that the concerns expressed by the unit on the confidential nature of the activities undertaken by its employees, together with its work, are vague and unsubstantiated and, in the view of the Chamber, save exceptionally, the Defence is entitled to know the names and functions of the VWU staff who form part of a neutral organ of the Court that provides services equally to the parties and the participants in the case. The concerns of the unit can be addressed appropriately by an order of the Chamber that this information shall not be disseminated to any unauthorised person, especially in the DRC. Although it is in any event part of counsel's duty to "exercise all care to ensure respect for professional secrecy and confidentiality of information" (Article 8 of the Code of Professional Conduct for Counsel), given the importance of the issue and the difficulties that sometimes confront the unit the Chamber considers it appropriate to make this order. [emphasis added]¹⁰³

58. The names of the individuals working within the OSU and the VWU, as well as other ICC “contact persons” in the field who have provided services to the OTP ([REDACTED]) have become relevant to the defence case, given the suggestion that witnesses have been improperly influenced and that expense related monies or benefits have been misused. The Chamber is not persuaded that disclosure of their identities confidentially to the defence is likely to interfere with the prosecution’s ongoing and future investigations or with the

¹⁰² Transcript of hearing on 8 April 2009, ICC-01/04-01/06-T-167-ENG ET WT, page 17, line 20 to page 18, line 17.

¹⁰³ Transcript of hearing on 15 March 2010, ICC-01/04-01/06-T-261-CONF-ENG CT, page 3, line 15 to page 4, line 21.

VWU's mandate. The Chamber is of the view that disclosure, restricted to the defence, is necessary to ensure fairness for the accused, and accordingly it orders the prosecution to lift the redactions to the identities of the ICC employees in the documents referred to in paragraphs 52 – 54 above, although contact details, personal information including bank account numbers, and evidence as to their whereabouts is to remain redacted. In order to protect the ICC staff in the field and to ensure that ongoing and future investigations of the prosecution are not hampered, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the "resource person").

(6) The identities of, and the witness codes for, witnesses and members of their families, and their guardians

59. In its first application the prosecution requests authorisation to redact references in expense related documents to the names and witness codes of three non-trial witnesses, and the names of members of the families and the guardians of five witnesses.¹⁰⁴ These are proposed in four documents relating to intermediary 316 that concern non-trial witnesses identified by the codes "0051" and "0161"¹⁰⁵ and in a further document relating to intermediary 316 in which a protected, non-trial witness is referred to: "[REDACTED]".¹⁰⁶ Redactions are sought for one document concerning prosecution witness 0041, in which his children are identified by names and ages: "[REDACTED]".¹⁰⁷ Redactions are requested within four documents relating to witness DRC-OTP-WWWW-0213, to the identity of the witness's foster

¹⁰⁴ ICC-01/04-01/06-2266-Red, paragraph 23.

¹⁰⁵ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 2 (DRC-OTP-0196-0658 (redaction to metadata only) and DRC-OTP-0194-0203 in Annex 3); page 4 (DRC-OTP-196-0514 in Annex 16 and DRC-OTP-0196-0579 in Annex 18).

¹⁰⁶ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0481 in Annex 15).

¹⁰⁷ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 3 (DRC-OTP-0196-0126 in Annex 6).

father “[REDACTED]”.¹⁰⁸ Redactions are sought in 5 documents concerning witness DRC-OTP-WWWW-0157, to the identity of the witness’s foster mother, “[REDACTED]”.¹⁰⁹

60. Redactions are requested to 10 documents relating to intermediary 316 as regards the identity of his wife, children, brother and dependants: “[REDACTED]”, as well as to one document containing the location or travel destination of intermediary 316’s dependents.¹¹⁰ The prosecution requests redactions to the identities and contact information (including school grades) for intermediary 316’s children, in seven expense related documents.¹¹¹ The prosecution seeks redactions to two documents relating to intermediary 316, where references are made to non-trial witness “[REDACTED]”, and the son of a non-trial witness called “[REDACTED]”.¹¹² Similar redactions are requested in the third application for one expense related document concerning intermediary 316 in which his children’s names, school and school grades are mentioned ([REDACTED], along with an address and contact information) and the names of “[REDACTED]” and “[REDACTED]”.¹¹³

¹⁰⁸ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 2 (DRC-OTP-0196-0013 in Annex 4); page 6 (DRC-OTP-0205-0004 in Annex 28); page 7 (DRC-OTP-0205-0111 in Annex 37); page 12 (DRC-OTP-0205-0440 in Annex 57).

¹⁰⁹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 5 (DRC-OTP-0200-0292 in Annex 23); page 11 (DRC-OTP-0205-0346 in Annex 49 and DRC-OTP-0205-0363 in Annex 50); page 13 (DRC-OTP-0205-0569 in Annex 62 and DRC-OTP-0205-0570 in Annex 63).

¹¹⁰ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 7 (DRC-OTP-0205-0028 in Annex 32, DRC-OTP-0205-0029 in Annex 33, DRC-OTP-0205-0030 in Annex 34, DRC-OTP-0205-0031 in Annex 35); page 11 (DRC-OTP-0205-0417 in Annex 51, DRC-OTP-0205-0418 in Annex 52, DRC-OTP-0205-0421 in Annex 53, DRC-OTP-0205-0424 in Annex 54 and DRC-OTP-0205-0425 in Annex 55); page 12 (DRC-OTP-0205-0426 in Annex 56); page 18 (DRC-OTP-0219-0061 in Annex 82).

¹¹¹ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 15 (DRC-OTP-0210-0257 in Annex 74, DRC-OTP-0210-0258 in Annex 75 and DRC-OTP-0210-0259 in Annex 76); pages 16 – 17 (DRC-OTP-0210-0260 in Annex 77, DRC-OTP-0216-0126 in Annex 78, DRC-OTP-0216-0131 in Annex 79 and DRC-OTP-0216-0132 in Annex 80).

¹¹² ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 13 (DRC-OTP-0208-0107 in Annex 66); pages 14 – 15 (DRC-OTP-0210-0049 in Annex 73).

¹¹³ ICC-01/04-01/06-2459-Conf-Exp, paragraph 18 and footnote 11; ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 8 (DRC-OTP-0216-0174 in Annex 31).

61. On 26 October 2010, the prosecution notified the Chamber that it withdrew its request for redactions to the name of non-trial witness “[REDACTED]”, as this information had already been disclosed.¹¹⁴
62. In its second application the prosecution requests authorisation to redact references to “[REDACTED]”, the foster parent of witnesses DRC-OTP-WWWW-0297, and D01-WWWW-0004.¹¹⁵ A similar redaction is requested in the prosecution’s third application in one expense related document for witness DRC-OTP-WWWW-0297, as it refers to “[REDACTED]”.¹¹⁶
63. In its third application the prosecution requests redactions to the name of non-trial witness DRC-OTP-WWWW-0158, “[REDACTED]”, in one expense related document concerning intermediary 316, since, it is suggested, his name is irrelevant to the known issues in the case.¹¹⁷
64. The prosecution refers to the approach of the Single Judge in the *Katanga* case, to the effect that disclosing the names and identifying information of family members or guardians of prosecution witnesses may pose an additional risk to their safety and physical well being. The prosecution submits that these considerations apply equally in the present case.¹¹⁸ The prosecution also relies on decisions of this Chamber authorising redactions to the identities of the families of various witnesses, on the basis that they are irrelevant to the known issues in the case, provided they did not render the documents concerned unintelligible or unusable.¹¹⁹

¹¹⁴ Email from the prosecution to the Trial Chamber through a Legal Officer for the Trial Division.

¹¹⁵ ICC-01/04-01/06-2314-Conf-Exp-Corr, paragraph 14 and ICC-01/04-01/06-2314-Conf-Exp-AnxA, page 2 (DRC-OTP-0196-0023 in Annex 1 and DRC-OTP-0196-0156 in Annex 2).

¹¹⁶ ICC-01/04-01/06-2459-Conf-Exp, paragraphs 15 and 18 and ICC-01/04-01/06-2459-Conf-Exp-AnxA, page 5 (DRC-OTP-0205-0094 in Annex 18).

¹¹⁷ ICC-01/04-01/06-2459-Conf-Exp, paragraph 16 and ICC-01/04-01/06-2459-Conf-Exp-AnxA, pages 6 – 7 (DRC-OTP-0216-0045 in Annex 25).

¹¹⁸ ICC-01/04-01/06-2314-Red, paragraph 16 and ICC-01/04-01/06-2266-Red, paragraph 28.

¹¹⁹ ICC-01/04-01/06-2314-Red, paragraph 17 and ICC-01/04-01/06-2266-Red, paragraph 29.

65. The defence relies on the suggestion that a number of prosecution witnesses have provided false information about the identities of members of their families, which, it argues, makes it necessary for the accused to be fully informed as to the family ties of the relevant prosecution witnesses.¹²⁰ The defence also submits that given the gravity of the allegations against intermediary 316, his statement should be disclosed without redactions.¹²¹

66. On a case-by-case basis, the Chamber has previously authorised redactions to the identities of certain non-trial witnesses, and to the identities of members of the families of various prosecution witnesses, if the information is “irrelevant to any live issue in the case” and the redactions “do not undermine the rights of the accused”.¹²²

67. It is necessary for the Chamber to keep the changing and emerging issues in the trial under review, and it is relevant in this regard that the defence is seeking, *inter alia*, to establish, first, that a number of prosecution witnesses provided false information as regards the identities of members of their families; second, that certain intermediaries, including intermediary 316, encouraged a number of prosecution witnesses to give false testimony; and, third, that expense related monies or benefits might have been misused.¹²³

68. In light of these allegations, the identity of non-trial witness 0158 (“[REDACTED]”) has become relevant to the defence abuse of process application, as the receipt for which the prosecution requests redactions indicates that intermediary 316 was reimbursed for hotel costs relating to this

¹²⁰ ICC-01/04-01/06-2308, paragraph 10; ICC-01/04-01/06-2351, paragraph 9.

¹²¹ ICC-01/04-01/06-2308, paragraph 12.

¹²² See for: ICC-01/04-01/06-2208-Red-Corr, paragraphs 28, 39, 42, 58, 59, 63, 69, 74, 77 and 80; ICC-01/04-01/06-1924-Anx2, paragraphs 34 – 35.

¹²³ Transcript of hearing on 27 January 2010, ICC-01/04-01/06-T-236-CONF-ENG ET, page 20, lines 21-23 and page 21, line 15 to page 22, line 25; Transcript of hearing on 25 October 2010, ICC-01/04-01/06-T-317-ENG RT, page 83, line 19 to page 85, line 5.

witness.¹²⁴ Thus, the prosecution is to disclose document DRC-DRC-OTP-0216-0045 without redactions to the name “[REDACTED]”. However, prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary. In order to protect this individual as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).

69. It is unnecessary and illogical to redact the codes for witnesses “0051” and “0161”, given the purpose in allocating the codes is to ensure the witnesses are not identifiable. These redactions are to be lifted forthwith.

70. As set out above, “[REDACTED]” (DRC-OTP-WWWW-0051) was considered as a potential trial witnesses by the prosecution during its investigation. “[REDACTED]” is the son of non-trial witness DRC-OTP-WWWW-0287.¹²⁵

71. The position of “[REDACTED]” was considered in a previous decision of the Chamber.¹²⁶ The prosecution identified him as a potentially exculpatory witness, but requested non-disclosure of his identity and it instead proposed various admissions to cover the potentially exculpatory material set out in his statements. The Chamber approved this approach.¹²⁷ However, given that the receipt bearing the number DRC-OTP-0196-0481 indicates that intermediary 316 purchased a phone on behalf of “[REDACTED]”,¹²⁸ the identity of this non-trial witness is now relevant to the abuse of process application. The prosecution is ordered to lift the redaction to the name “[REDACTED]” in document DRC-OTP-0196-0481. However, prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective

¹²⁴ ICC-01/04-01/06-2459-Conf-Exp-AnxA, pages 6 – 7 (DRC-OTP-0216-0045 in Annex 25).

¹²⁵ ICC-01/04-01/06-2266-Conf-Exp-AnxA, pages 14 – 15 (DRC-OTP-0210-0049 in Annex 73).

¹²⁶ ICC-01/04-01/06-1311-Anx2, paragraph 28 and ICC-01/04-01/06-1295-US-Exp-AnxC, paragraphs 65 – 68.

¹²⁷ ICC-01/04-01/06-1295-USExp-AnxC, paragraphs 65 – 68; ICC-01/04-01/06-T-106-CONF-EXP-ENG, page 2, line 24 to page 12, line 3.

¹²⁸ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0481 in Annex 15).

measures that are necessary. [REDACTED].¹²⁹ If the witness is still unreachable, disclosure of his identity is to be raised again with the Chamber.

72. No basis has been identified for concluding that the name “[REDACTED]” is relevant to any issue in these proceedings. Moreover, the redaction of this name does not render the document unintelligible or in any way unusable and no lesser measure is feasible. This material does not come within either Article 67(2) of the Statute or Rule 77 of the Rules of Procedure and Evidence. For these reasons, the request is granted.

73. Witness 0041 is not an alleged former child soldier but a person of rank within the UPC, and the redactions sought for one document relating to him, in which his children are identified by their names and ages, concern information that is irrelevant to any live issue in the case, and they do not undermine the rights of the accused. Consequently, the prosecution is entitled to maintain the redactions to “[REDACTED]” in document DRC-OTP-0196-0126 .

74. The identities of the foster parents of prosecution witnesses DRC-OTP-WWWW-213, DRC-OTP-WWWW-157 and DRC-OTP-WWWW-297 (allegedly former child soldiers) and defence witness DRC-D01-WWWW-0004 (who allegedly knows Witness 297) are relevant to the issues in the case, given the nature and the extent of the challenge to the evidence of these prosecution witnesses.¹³⁰ The prosecution is to disclose the relevant documents without redactions to the identities of the foster parents. However, prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary, and to communicate the timetable for disclosure to the Chamber no later than 16.00 on 3 November 2010. In

¹²⁹ ICC-01/04-01/06-1295-US-Exp-AnxC, paragraph 65.

¹³⁰ See testimonies of defence witnesses DRC-D01-WWWW-0002, DRC-D01-WWWW-0025, DRC-D01-WWWW-0003 and DRC-D01-WWWW-0004.

order to protect these individuals as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).¹³¹

75. The identities of the wife, children, brother and dependants of intermediary 316: “[REDACTED]”, are irrelevant to any of the live issues in the case and the redactions to documents concerning him do not render them unusable or unintelligible, or undermine the rights of the accused. The same applies to the redactions requested for references to school grades and other contact information for intermediary 316’s children and to the location or travel destination of intermediary 316’s dependents. No lesser protective measures are feasible. All of these proposed redactions are granted.

(7) The identities of irrelevant individuals or bodies

76. In its first application, the prosecution requests authorisation, pursuant to Rule 81(4) of the Rules, to redact references in certain documents relating to “third parties”. The prosecution suggests that they are irrelevant to the case, and because they merit protection, their identities should remain undisclosed. It is contended that the information that is to be withheld does not affect the remainder of the content, or the general value, of the information in the documents concerned, and it does not render them in any way unintelligible or unusable. The prosecution relies on previous rulings of the Trial Chamber in which similar redactions have been granted.¹³²

¹³¹ On 24 November 2010, the Chamber issued an order authorising the prosecution to maintain redactions to the name of the foster parent of witness DRC-OTP-WWWW-157 after an assessment by the VWU in response to the *ex parte* version of this decision raised safety concerns in relation to disclosure of the name. Order lifting a redaction to the identity of DRC-OTP-WWWW-0051 and maintaining redactions relating to witness DRC-OTP-WWWW-0157, ICC-01/04-01/06-2637-Conf, paragraphs 5 – 9.

¹³² ICC-01/04-01/06-2266-Red, paragraphs 33 – 35.

77. These proposed redactions concern two expense related documents for intermediary 316 in which various individuals or bodies are identified: “[REDACTED]” and “[REDACTED]”.¹³³ Redactions are also requested as regards one document relating to witness DRC-OTP-WWWW-0041 in which someone with the name of “[REDACTED]” is identified.¹³⁴ Redactions to one document concerning witness DRC-OTP-WWWW-0024 are sought, because “[REDACTED]” is referred to.¹³⁵ Redactions are requested to one document concerning witness DRC-OTP-WWWW-0055, where the address of an irrelevant individual or body is given: “[REDACTED]”.¹³⁶ A redaction is sought to one document relating to witness DRC-OTP-WWWW-0038 in which “[REDACTED]” is referred to.¹³⁷

78. In its third application the prosecution requests redactions to four expense related documents in which reference is made to two individuals who are unknown to the prosecution (“[REDACTED]” and “[REDACTED]”).¹³⁸

79. The defence submits that the prosecution has not advanced any grounds in support of the contention that that any of these individuals or bodies are at risk.¹³⁹ The defence suggests that it is illogical for the prosecution to suggest that they may be endangered if their identities are revealed, given they are said to be unknown.¹⁴⁰ The defence emphasises that awareness of their identities would enable the accused better to appreciate the disclosed documents in their entirety.¹⁴¹ It also submits that previously the Chamber has

¹³³ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0453 in Annex 17); page 17 (DRC-OTP-0216-0140 in Annex 81).

¹³⁴ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 5 (DRC-OTP-0200-0143 in Annex 20).

¹³⁵ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 5 (DRC-OTP-0201-0071 in Annex 25).

¹³⁶ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 6 (DRC-OTP-0202-0176 in Annex 26).

¹³⁷ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 12 (DRC-OTP-0205-0528 in Annex 58).

¹³⁸ ICC-01/04-01/06-2459-Red, paragraphs 22 – 23; ICC-01/04-01/06-2459-Red-AnxA, page 4 (DRC-OTP-0196-0573 in Annex 14); pages 5 and 6 (DRC-OTP-0205-0034 in Annex 17, DRC-OTP-0205-0144 in Annex 20 and DRC-OTP-0205-0145 in Annex 21).

¹³⁹ ICC-01/04-01/06-2308, paragraph 11.

¹⁴⁰ ICC-01/04-01/06-2308, paragraph 11.

¹⁴¹ ICC-01/04-01/06-2308, paragraph 11.

concluded that information in this category is relevant to the defence and should be communicated.¹⁴²

80. Two expense related documents for intermediary 316 identify “[REDACTED]” as, respectively, someone who was involved in [REDACTED] to intermediary 316 and others who were concerned in [REDACTED] to him.¹⁴³ The four expense related documents for intermediary 321 identify “[REDACTED]” as someone who [REDACTED] to intermediary 321 and “[REDACTED]”, who was paid for [REDACTED] for intermediary 321.¹⁴⁴ The identities of each of these five individuals are of relevance to the defence abuse of process application, in light of the allegations against intermediaries 316 and 321, particularly given the suggestion that expense related monies or benefits have been misused. Accordingly, the Chamber orders the disclosure to the defence of non-redacted versions of these six expense related documents for intermediaries 316 and 321; however, the address in document DRC-OTP-0216-0140 is to remain redacted, as it is irrelevant to the known issues in the case. Prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary. In order to protect those concerned as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).

81. As to the identities of irrelevant individuals in the documents relating to witnesses DRC-OTP-WWWW-0041, DRC-OTP-WWWW-0024, DRC-OTP-WWWW-0055 and DRC-OTP-WWWW-0038, the Chamber has previously

¹⁴² ICC-01/04-01/06-2498, paragraphs 15 – 16.

¹⁴³ ICC-01/04-01/06-2266-Conf-Exp-AnxA, page 4 (DRC-OTP-0196-0453 in Annex 17); page 17 (DRC-OTP-0216-0140 in Annex 81).

¹⁴⁴ ICC-01/04-01/06-2459-Red, paragraphs 22 – 23; ICC-01/04-01/06-2459-Red-AnxA, page 4 (DRC-OTP-0196-0573 in Annex 14); pages 5 and 6 (DRC-OTP-0205-0034 in Annex 17, DRC-OTP-0205-0144 in Annex 20 and DRC-OTP-0205-0145 in Annex 21).

authorised similar redactions to those now sought by the prosecution.¹⁴⁵ The documents relating to these four witnesses contain information which is irrelevant to any known issue in the case; the redactions do not affect the intelligibility or usability of the relevant documents; and no lesser measures are feasible. Therefore, these redactions will not adversely affect the rights of the accused, and they are granted.

IV. Orders of the Chamber

82. The Trial Chamber hereby:

- a. Orders the disclosure to the defence of non-redacted versions of the documents containing the identity and place of work of intermediary DRC-OTP-WWWW-0143, discussed in paragraphs 40 – 47 above.
- b. Orders the disclosure to the defence of non-redacted versions of the documents containing references to the identities of OTP and VWU staff members and contact staff or other individuals discussed in paragraphs 51 and 53 – 58 above; however, contact details and evidence as to their whereabouts are to remain redacted. In order to protect ICC staff in the field as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).
- c. Orders the lifting of the redaction to the name “[REDACTED]” in document DRC-OTP-0216-0045. However, prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary, and to communicate

¹⁴⁵ ICC-01/04-01/06-1924-Anx2, paragraphs 34 – 35.

the timetable for disclosure to the Chamber no later than 16.00 on 3 November 2010. In order to protect this individual as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).

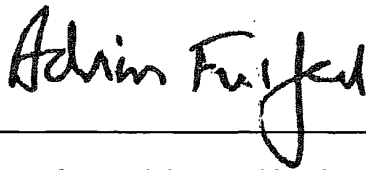
- d. Orders the lifting of the redactions to the codes for witnesses “0051” and “0161” in the documents referred to in paragraphs 59 and 69 above.
- e. Orders the lifting of the redaction to the name “[REDACTED]” in document DRC-OTP-0196-0481. However, prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary, and to communicate the timetable for disclosure to the Chamber no later than 16.00 on 3 November 2010. If the witness is unreachable, the issue is to be raised with the Chamber. In order to protect this individual as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).
- f. Orders the disclosure of the relevant documents without redactions to the identities of the foster parents of prosecution witnesses DRC-OTP-WWWW-0213, DRC-OTP-WWWW-0157, DRC-OTP-WWWW-0297 and defence witness DRC-D01-WWWW-0004. Prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put into place any protective measures that are necessary, and to communicate the timetable for disclosure to the Chamber no later than 16.00 on 3 November 2010. In order to protect these individuals as well as any other individuals who may be at risk, the Chamber orders that

this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).

- g. Authorises the redactions to the locations of interviews for witnesses and their accommodation in the documents referred to in paragraphs 24 – 28 above.
- h. Authorises the redactions to information that may reveal the whereabouts of witnesses in the ICCPP in the documents referred to in paragraphs 29 – 33 above.
- i. Authorises the redactions to contact information for, and the whereabouts of, witnesses and other individuals at risk on account of activities of the Court in the documents referred to in paragraphs 34 – 38 above.
- j. Authorises the redactions to the name of witness DRC-OTP-WWWW-0273 in the documents referred to in paragraphs 42 and 50 above.
- k. Authorises the redaction to the names and ages of witness DRC-OTP-WWWW-0041’s children in document DRC-OTP-0196-0126, referred to in paragraphs 59 and 73 above.
- l. Authorises the redactions to information relating to the identities of intermediary 316’s wife, children, brother and dependents in the documents referred to in paragraphs 60 and 75 above.
- m. Authorises the redaction to the name “[REDACTED]” in document DRC-OTP-0210-0049.

- n. Orders the disclosure to the defence of non redacted versions of the six expense related documents for intermediaries 316 and 321 discussed in paragraph 80 above; however, the address in document DRC-OTP-0216-0140 is to remain redacted. Prior to effecting disclosure, the prosecution is to liaise with the VWU in order to put in place any protective measures that are necessary, and to communicate the timetable for disclosure to the Chamber no later than 16.00 on 3 November 2010. In order to protect those concerned as well as any other individuals who may be at risk, the Chamber orders that this information is to be disclosed confidentially only to the defence (*i.e.* counsel, their assistants and the “resource person”).
- o. Authorises the redactions to the identities of irrelevant individuals in the documents relating to DRC-OTP-WWWW-0041, DRC-OTP-WWWW-0024, DRC-OTP-WWWW-0055 and DRC-OTP-WWWW-0038.

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 3 December 2010

At The Hague, The Netherlands