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No.: ICC-01/04-01/06
Date: 6 December 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

Prosecution's Request for Lifting of Redactions to the identity of Witness 22

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-Louis Gilissen

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**

Other

1. The Prosecution requests authorisation to lift the Article 68 and Rule 81(4) redactions to the identity of witness DRC-OTP-WWWW-0022 in the witness's statement.

Prosecution's Submissions

2. On 18 January 2008, the Trial Chamber authorised permanent redactions to the statement of DRC-OTP-WWWW-0022.¹
3. On 17 December 2008 the name of the witness was inadvertently disclosed to the Defence as part of the consolidated metadata disclosure for this and a number of other documents. The inadvertent disclosure came to light in October 2010. Furthermore, as the Prosecution informed the Trial Chamber in December 2007, the witness is deceased. Given these circumstances, and acknowledging that the name of this witness is already known to the Defence, the Prosecution considers that the redactions protecting the witness's identity in the witness statement are no longer justified, and requests the Trial Chamber's authorisation to remove these redactions from the document in question.
4. The Prosecution seeks to maintain the redactions currently applied and authorised in respect of the name and whereabouts of the witness' relatives ([REDACTED]).² [REDACTED]. Given these particular

¹ See oral decision of 18 January 2008, ICC-01/04-01/06-T-72-CONF-EXP-ENG ET at page 7, lines 5-7. Redactions to this witness's statement were initially applied for in the "*Prosecution's Application pursuant to Rules 81(2) and 81(4)*", ICC-01/04-01/06-341-Conf-Exp (the statement with proposed redactions was attached as Annex 5); re-filed in ICC-01/04-01/06- 451-Conf-Exp-Anx2). These redactions were approved by Pre-Trial Chamber I in the "*Second Decision on the Prosecution Requests and Amended requests for Redactions under Rule 81*" ICC-01/04-01/06-453-Conf-Exp. The Prosecution submitted a request for the redactions to be maintained by Trial Chamber I in the "*Prosecution's Application for Lifting of Redactions and Non-Disclosure of Information*", ICC-01/04-01/06-1087 (the statement was attached as Annex 50). In Annex 74 (page 23) of this filing the Prosecution informed the Trial Chamber that the witness was deceased, but nevertheless requested to maintain the redactions in order to protect the witness' living family members.

² [REDACTED].

circumstances, the Prosecution submits that the justification for these redactions remains.

5. Should the Trial Chamber grant the Prosecution's request for lifting of redactions to the identity of witness DRC-OTP-WWWW-0022, the Prosecution will remove the redactions and re-disclose the witness's statement to the Defence.

Ex Parte Filing

6. Due the confidential nature of the information provided in paragraph 4 above, the Prosecution submits that the classification of the present filing as Confidential - *Ex Parte* Prosecution Only is necessary.³
7. The rights of the Accused are maintained to the extent that he will be made aware of the filing and its legal basis from the public redacted version of the present filing that is being submitted at the same time.

³ 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).

Relief Requested

8. Based on the foregoing, the Prosecution requests that the Trial Chamber authorise the lifting of redactions to the identity and identifying information for witness DRC-OTP-WWWW-0022, while maintaining other redactions already authorised.



Luis Moreno-Ocampo
Prosecutor

Dated this 6th day of December 2010
At The Hague, The Netherlands