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Pénale
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**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 Request for Non-Disclosure of Information
in Six 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 (“the Court”), in the case of the *Prosecutor v. Thomas Lubanga Dyilo*, issues the following Decision on the Prosecution’s Request for Non-Disclosure of Information in Six Documents.

I. Background and Submissions

1. On 27 October 2010, the Chamber issued its Decision on the Prosecution’s Requests for Non-Disclosure of Information in Witness-Related Documents (“Decision of 27 October 2010”).¹
2. On 7 April 2011, the Chamber issued its Decision on the Prosecution’s Request for the Non-Disclosure of Information and Notification of Application of Protective Measures pursuant to Regulation 42 (“Decision of 7 April 2011”).²

The prosecution’s request

3. On 15 April 2011, the Office of the Prosecutor (“prosecution” or “OTP”) filed the present “Request for Non-Disclosure of Information in Six Documents”.³ The prosecution indicates, in response to specific disclosure requests from the defence and as part of its ongoing disclosure obligations vis-à-vis information acquired in the course of the investigations, that it has recently disclosed six documents to the defence with redactions implemented pursuant to Article 54(3)(e) and 54(3)(f) of the Rome Statute (“Statute”) and Rule 81(4) of the

¹ Decision on the Prosecution’s Requests for Non-Disclosure of Information in Witness-Related Documents, 27 October 2010, ICC-01/04-01/06-2597-Conf-Exp; confidential redacted decision issued on 3 December 2010, ICC-01/04-01/06-2597-Conf-Red and public redacted decision issued on the same day, ICC-01/04-01/06-2597-Red.

² Decision on the Prosecution’s Request for the Non-Disclosure of Information and Notification of Application of Protective Measures pursuant to Regulation 42, 7 April 2011, ICC-01/04-01/06-2720-Conf-Exp. A confidential redacted version of this decision was issued on 13 April 2011, ICC-01/04-01/06-2720-Conf-Red.

³ Request for Non-Disclosure of Information in Six Documents, 15 April 2011, ICC-01/04-01/06-2724-Conf-Exp, with confidential *ex parte* Annexes 1 – 5. A public redacted version was filed on 26 April 2011, ICC-01/04-01/06-2724-Red with confidential redacted Annex 1.

Rules of Procedure and Evidence ("Rules").⁴ The prosecution seeks authorisation to redact certain information in these six documents, four of which are appended to the application as Annexes 2 to 5.⁵ It is submitted, as regards two of the documents, that redactions are not requested to the documents' content but instead to their source and the chain of custody metadata fields.⁶

4. The proposed redactions are to (i) the names and identifying information of non-trial witness DRC-OTP-WWWW-0064 ("Witness 64") and various third parties who are said to be at risk on account of the activities of the Court and/or whose details may reveal the identity of Witness 64, pursuant to Rule 81(4) of the Rules; (ii) the whereabouts of non-trial witness DRC-OTP-WWWW-0227 ("Witness 227") who is in the International Criminal Court Protection Programme ("ICCPP"), and the whereabouts of his family members, pursuant to Rule 81(4) of the Rules; and (iii) the names and identifying information of the sources of four documents which have been provided to the prosecution by Non-Governmental Organisations ("NGOs"), pursuant to Rules 54(3)(e) and 54(3)(f) of the Rules.

5. It is submitted that the proposed redactions do not affect the value of the relevant documents or hinder the ability of the defence to assess them. The redacted information is said to be irrelevant to the known issues in the case, and, accordingly, it is argued the redactions are not prejudicial to, or inconsistent with, the rights of the accused.⁷

⁴ ICC-01/04-01/06-2724-Red, paragraph 1.

⁵ ICC-01/04-01/06-2724-Red, paragraph 3.

⁶ ICC-01/04-01/06-2724-Red, footnote 1.

⁷ ICC-01/04-01/06-2724-Red, paragraph 4.

The defence observations

6. On 18 May 2011, the defence filed its response to the prosecution's request.⁸
7. The defence does not oppose the proposed redactions to the identities of Witness 64 or the third parties.⁹
8. However, the defence objects to the prosecution's request for non-disclosure of other information contained in the document provided by DRC-OTP-WWWW-0598 ("Witness 598"),¹⁰ including what it submits is a redaction to the date of birth of Witness 227.¹¹ The defence also opposes the proposed redactions to the identity of the source and chain of custody metadata of the four documents provided by the NGOs, arguing that the prosecution has failed to provide a sufficient justification for non-disclosure.¹²
9. Finally, it is submitted, with regard to the additional proposed redactions to the statement of Witness 227, that the defence does not have sufficient information to make observations on the relevant material.¹³

II. Applicable law

10. In accordance with Article 21(1) of the Statute, the 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:

⁸ Réponse de la Défense à la «*Prosecution's Request for Non-Disclosure of Information in Six Documents*», transmise le 26 avril 2011, 18 May 2011, ICC-01/04-01/06-2739-Conf.

⁹ ICC-01/04-01/06-2739-Conf, paragraphs 3 – 4.

¹⁰ ICC-01/04-01/06-2739-Conf, paragraph 6.

¹¹ ICC-01/04-01/06-2739-Conf, paragraph 7.

¹² ICC-01/04-01/06-2739-Conf, paragraphs 9 – 11.

¹³ ICC-01/04-01/06-2739-Conf, paragraph 8.

[...]

(e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(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.

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.

[...]

11. The Appeals Chamber has established criteria which are to be applied when a Chamber is considering whether to authorise, in exceptional circumstances, non-disclosure of the identities of witnesses to the defence. It held that three of the most important considerations are: (1) the danger to the witness or his or her family members that disclosure may entail; (2) the necessity for the protective measures; and (3) an assessment of whether the measures will be prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial.¹⁴ The Appeals Chamber additionally required an investigation into the sufficiency and feasibility of less restrictive protective measures.¹⁵ Although these criteria were established in the course of pre-trial proceedings, in the assessment of the Chamber, they are equally applicable to the trial stage of the case.

12. In the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* ("Katanga" case), the Appeals Chamber has held that:

[P]ersons other than witnesses, victims and members of their families, may, at this stage of the proceedings, be protected through the non-disclosure of their identities by analogy with other provisions of the Statute and the Rules. The aim is to secure protection of individuals at risk. Thus, by necessary implication, 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 Statute and the Rules of Procedure and Evidence, as expressed in article 54(3)(f) of the Statute and in other parts of the Statute and the Rules, to protect people at risk.¹⁶

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]".¹⁷

¹⁴ 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, paragraphs 21 – 23.

¹⁵ ICC-01/04-01/06-773, paragraph 33.

¹⁶ 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 56.

¹⁷ ICC-01/04-01/07-475, paragraph 2.

13. In the Chamber's assessment, this approach of the Appeals Chamber extending protection for the groups expressly provided for in Rule 81(4) of the Rules – i.e. witnesses, victims and members of their families – to the "*other persons at risk on account of the activities of the Court*" is to be applied during trial proceedings. Therefore, the Trial Chamber's responsibility under Article 64(6)(e) of the Statute to "[p]rovide for the protection of the accused, witnesses and victims" includes providing for the protection of other persons at risk on account of the activities of the Court.¹⁸

III. Analysis and Conclusions

14. The Chamber, consistently with its previous decisions, has applied a case-by-case approach to the present application. It has followed the Court's jurisprudence, including this Chamber's Decision of 7 April 2011,¹⁹ 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 following three categories:

(1) Information contained in the document provided by Witness 598

15. The prosecution requests redactions to an "unsigned, undated, non-ICC statement related to W-0064" which was purportedly provided to the prosecution by Witness 598.²⁰ This statement was disclosed to the defence in redacted form on 1 December 2010.²¹ The prosecution indicates that after

¹⁸ 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; 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-Anx1; public redacted version issued the same day: ICC-01/04-01/06-1924-Anx2.

¹⁹ ICC-01/04-01/06-2720-Conf-Red.

²⁰ ICC-01/04-01/06-2724-Red, paragraphs 6 – 7, referring to DRC-OTP-0235-0129.

²¹ ICC-01/04-01/06-2724-Conf-Anx1-Red, page 2.

receiving this information from Witness 598, Witness 64 was screened in "March-April 2006".²² The document is said to be unrelated to this process of screening Witness 64,²³ and since then Witness 64 has not provided any additional information and has not been contacted by the prosecution.²⁴

16. The proposed redactions are to the name and identifying information of Witness 64, and to the names and identifying details of various third parties, pursuant to Rule 81(4) of the Rules.²⁵ According to the prosecution, the third parties in question are: (1) [REDACTED] who allegedly interviewed Witness 64 in late 2004 ("[REDACTED]");²⁶ (2) [REDACTED] who allegedly housed Witness 64 for a period in order to protect his safety ("[REDACTED]");²⁷ and (3) [REDACTED] who allegedly pressured Witness 64 into participating in an assignment which included providing false information to [REDACTED] and the assassination of Witness 598 ("[REDACTED]" and "[REDACTED]").²⁸

17. Addressing the proposed redactions to the name and identifying information of Witness 64, the prosecution highlights that the Chamber has previously authorised the non-disclosure of his identity, and submits that there is no basis for concluding that this information is now relevant to any issue in the proceedings.²⁹ It is submitted that neither the prosecution nor the defence relied on this document, or the information contained therein, when Witness 598 was questioned during his testimony before the Court on 1 December 2010.³⁰ The prosecution also submits that it has no record of any contact or link between this witness and any of the impugned

²² ICC-01/04-01/06-2724-Red, paragraph 7.

²³ ICC-01/04-01/06-2724-Red, paragraph 7.

²⁴ ICC-01/04-01/06-2724-Red, paragraph 7.

²⁵ ICC-01/04-01/06-2724-Red, paragraph 6.

²⁶ ICC-01/04-01/06-2724-Conf-Exp, paragraph 10(a).

²⁷ ICC-01/04-01/06-2724-Conf-Exp, paragraph 10(c).

²⁸ ICC-01/04-01/06-2724-Conf-Exp, paragraph 10(b).

²⁹ ICC-01/04-01/06-2724-Red, paragraph 8, referring ICC-01/04-01/06-1814-Conf, ICC-01/04-01/06-1814-Conf-Exp-Anx, pages 2 – 4 and ICC-01/04-01/06-2720-Conf-Red.

³⁰ ICC-01/04-01/06-2724-Red, paragraph 8.

intermediaries.³¹ Finally, the prosecution submits that no lesser measures are available to protect this individual, and it points out that the defence has not opposed the proposed redactions to the identity of Witness 64 in its response to the prosecution's most recent request for non-disclosure.³²

18. Turning to the proposed redactions to the names and identifying information of the third parties, the prosecution submits that they are necessary to "protect these persons whose safety may be at risk on account of the activities of the Court and/or whose details may reveal the identity of W-0064".³³ It is contended that there is no basis for concluding that the identity of the third parties is relevant to any live issue in the case, that the document is not rendered unintelligible or unusable as a result of these redactions, and that no lesser measures are feasible to protect these individuals or Witness 64.³⁴ The prosecution submits that the redactions do not adversely affect the rights of the accused.³⁵ The prosecution also highlights that the Chamber has previously authorised similar redactions to the identities of irrelevant individuals.³⁶ More particularly, the prosecution submits that a previous request for the non-disclosure of [REDACTED] identity was not opposed by the defence and was approved by the Chamber.³⁷

19. The defence does not object to the proposed redactions to the identity of Witness 64 or the third parties.³⁸ Additionally, the defence indicates it has no

³¹ ICC-01/04-01/06-2724-Red, paragraph 8.

³² ICC-01/04-01/06-2724-Red, paragraph 8 (referring to Réponse de la Défense à la "Prosecution's Request for Non-Disclosure of Information and Notification of Application of Protective Measures pursuant to Regulation 42", ICC-01/04-01/06-2697-Conf, paragraph 8) and paragraph 12.

³³ ICC-01/04-01/06-2724-Red, paragraphs 9 and 12.

³⁴ ICC-01/04-01/06-2724-Red, paragraph 11.

³⁵ ICC-01/04-01/06-2724-Red, paragraph 11.

³⁶ ICC-01/04-01/06-2724-Red, paragraph 11, referring to ICC-01/04-01/06-1924-Anx2, paragraphs 34 – 35, ICC-01/04-01/06-2597-Red, paragraph 81 and ICC-01/04-01/06-2720-Conf, paragraphs 52 and 60.

³⁷ ICC-01/04-01/06-2724-Conf-Exp, paragraph 10(a), referring to ICC-01/04-01/04-01/06-2697-Conf, paragraph 21 and ICC-01/04-01/06-2720-Conf, paragraph 52.

³⁸ ICC-01/04-01/06-2739-Conf, paragraphs 3 – 4.

observations regarding the proposed redaction to the telephone numbers of Witness 598 and [REDACTED].³⁹

20. The Chamber has previously approved redactions to the names of non-trial witnesses and various third parties, together with the contact details for a range of individuals, when the material is irrelevant to the known issues in the case, provided that this does not render the document in question unintelligible or unusable, and where the redactions are necessary in order to ensure the continued safety of those concerned.⁴⁰ The requested redactions to the identity of Witness 64 and to the identities of the third parties, as well as to the personal contact details in question, fulfil these criteria and they are granted pursuant to Article 64(6)(e) of the Statute and Rule 81(4) of the Rules. This causes no unfairness to the accused, and no lesser measures are feasible.

21. The defence objects to the prosecution's request for non-disclosure of certain additional information contained in document DRC-OTP-0235-0129.⁴¹ It is submitted that, contrary to the prosecution's assertions, the redacted information does not identify Witness 64 or any of the third parties and, furthermore, that redactions of this kind are not justified on security grounds.⁴² The defence refers to three particular sentences, by way of example, to which the prosecution has proposed redactions.⁴³

22. In the confidential *ex parte* version of DRC-0235-0129, the redactions in question conceal information relating to [REDACTED],⁴⁴ [REDACTED],⁴⁵ and

³⁹ ICC-01/04-01/06-2739-Conf, paragraph 5.

⁴⁰ See, for example, Decision on the Prosecution's Request for the Non-Disclosure of Information, a Request to Lift a Rule 81(4) Redaction and the Application of Protective Measures pursuant to Regulation 42, 3 February 2011, ICC-01/04-01/06-2681-Conf-Exp. Confidential and public redacted versions of this decision were issued on 14 March 2011 and notified on 15 March 2011, ICC-01/04-01/06-2681-Conf-Red and ICC-01/04-01/06-2681-Red2.

⁴¹ ICC-01/04-01/06-2739-Conf, paragraph 6.

⁴² ICC-01/04-01/06-2739-Conf, paragraph 6.

⁴³ ICC-01/04-01/06-2739-Conf, paragraph 6, footnote 3.

⁴⁴ ICC-01/04-01/06-2724-Conf-Exp-Anx2, page 2.

⁴⁵ ICC-01/04-01/06-2724-Conf-Exp-Anx2, page 2.

the name and position of [REDACTED].⁴⁶ The Chamber is of the view that these extracts contain information which identifies, or might facilitate the identification of, either Witness 64 or one of the third parties. This conclusion applies equally to the other redactions which are proposed to the document in question. Accordingly, for the reasons outlined in paragraph 20, these redactions are granted pursuant to Article 64(6)(e) of the Statute and Rule 81(4) of the Rules.

(2) Information contained in the statement of Witness 227

23. The prosecution proposes redactions to the transcript of a telephone interview with Witness 227 in November 2010, pursuant to Rule 81(4) of the Rules.⁴⁷ This document was disclosed to the defence on 4 February 2011.⁴⁸ In particular, the redactions are sought to the ICCPP location of Witness 227 and to certain information which, it is submitted, could reveal the whereabouts of his family [REDACTED].⁴⁹

24. The prosecution submits that these redactions are necessary to protect the integrity of measures adopted in the ICCPP and to protect the family members of Witness 227.⁵⁰ Furthermore, it is submitted that this witness “is not implicated in or otherwise relevant to the contentions advanced by the Defence as part of its abuse of process application and is not relevant to any issues in the substantive case”.⁵¹

25. The defence opposes what it considers to be a redaction to the date of birth of Witness 227, arguing that his identity is already known to the defence and

⁴⁶ ICC-01/04-01/06-2724-Conf-Exp-Anx2, page 3.

⁴⁷ ICC-01/04-01/06-2724-Red, paragraphs 13 – 14 and Conf-Exp-Anx1, pages 3 – 4.

⁴⁸ Conf-Exp-Anx1, page 3.

⁴⁹ ICC-01/04-01/06-2724-Conf-Exp, paragraph 14.

⁵⁰ ICC-01/04-01/06-2724-Red, paragraph 14.

⁵¹ ICC-01/04-01/06-2724-Red, paragraph 15.

that the disclosure of his date of birth will not impact upon his security.⁵² Finally, on the other redactions, the defence suggests that it has insufficient information to make any observations to the Chamber.⁵³

26. The Chamber has previously granted redactions to the ICCPP location of witnesses, where the information is wholly irrelevant to the issues in the case and where non-disclosure will not cause any prejudice to the accused.⁵⁴ The Chamber is satisfied that these criteria are met in the instant circumstances, and that no lesser measure is feasible. The redaction to the ICCPP location of Witness 227 and to information indicating [REDACTED] is authorised in order to protect his safety, pursuant to Rule 81(4) of the Rules.

27. The remaining redactions are to the [REDACTED].⁵⁵ The particular redaction that is opposed by the defence on the assumption that it conceals Witness 227's date of birth is, in fact, to [REDACTED].⁵⁶ Accordingly, the objection by the defence on this point is without substance.

28. The Chamber has previously authorised non-disclosure of the whereabouts of family members where the information is irrelevant to the live issues in the case, and where the proposed redactions do not render the document unusable or unintelligible and they do not undermine the rights of the accused.⁵⁷ These redactions clearly fulfil these criteria, and the measures are necessary to ensure the continued safety of those concerned. No lesser protective measures are feasible. The proposed redactions to [REDACTED] are accordingly granted pursuant to Rule 81(4) of the Rules.

⁵² ICC-01/04-01/06-2739-Conf, paragraph 7.

⁵³ ICC-01/04-01/06-2739-Conf, paragraph 8.

⁵⁴ See, for example, ICC-01/04-01/06-2681-Conf-Red, paragraph 43, and ICC-01/04-01/06-2597-Red, paragraph 33.

⁵⁵ ICC-01/04-01/06-2724-Conf-Exp-Anx3.

⁵⁶ ICC-01/04-01/06-2724-Conf-Exp-Anx3, page 12.

⁵⁷ See, for example, ICC-01/04-01/06-2597-Red, paragraph 75.

(3) The source of four documents received from NGOs

29. Redactions are proposed pursuant to Articles 54(3)(e) and 54(3)(f) of the Statute to four documents that were disclosed to the defence as Rule 77 material on 11 March 2011.⁵⁸ The prosecution suggests that these documents were provided to the OTP by certain NGOs who had previously agreed to disclosure on condition that “any reference to the NGO, including and particularly as the source of the document, is removed and protected from disclosure to the Defence”.⁵⁹

30. According to the prosecution, two of the documents have been provided to the defence in non-redacted form, save for the name of the NGO and its employee in the source and chain of custody metadata fields.⁶⁰ In the other two documents, redactions have been applied to the content in order to withhold the identity of the information provider (and, in one case, the name of another NGO) as the source of the document.⁶¹

31. The prosecution submits that that the redactions are necessary to protect the confidentiality of the information provider.⁶² Moreover, it is submitted that the redactions do not affect the value of the information in the documents or otherwise prejudice the rights of the accused.⁶³ The prosecution also highlights that the Chamber has previously permitted disclosure on this basis, holding that redactions to the name of an NGO did not affect the quality of the relevant information.⁶⁴

⁵⁸ ICC-01/04-01/06-2724-Red, paragraphs 1, 2 and 16 and Conf-Exp-Anx1, pages 1 and 4.

⁵⁹ ICC-01/04-01/06-2724-Red, paragraph 16.

⁶⁰ ICC-01/04-01/06-2724-Red, paragraph 16.

⁶¹ ICC-01/04-01/06-2724-Red, paragraph 16.

⁶² ICC-01/04-01/06-2724-Red, paragraph 16.

⁶³ ICC-01/04-01/06-2724-Red, paragraph 16.

⁶⁴ ICC-01/04-01/06-2724-Red, paragraph 17, referring to Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG-ET, page 45, line 20 to page 51, line 23 and page 51, line 24 to page 53, line 7.

32. The defence opposes these redactions.⁶⁵ It is argued that the prosecution has failed to justify the existence of the confidentiality agreements as regards each of the four documents.⁶⁶ In addition, the defence contends that non-disclosure must be justified by compelling security concerns, and it should not depend simply on the consent of the information providers.⁶⁷ It is argued that, other than the wishes of the information providers, the prosecution has not provided any other reason for withholding their identities.⁶⁸

33. The Chamber has previously authorised disclosure to the defence of documents with redactions to the name of the source and the chain of custody metadata provided this did not affect the exculpatory value of the information provided.⁶⁹ With the instant material, the defence does not suggest that the proposed redactions affect the exculpatory value of the documents. Indeed, as the redactions are limited to the source and chain of custody metadata, it is clear that they do not affect the usefulness or intelligibility of the documents (for two of the documents, redactions have been applied to the metadata only).⁷⁰

34. Addressing the defence contention that the prosecution has not justified the existence of confidentiality agreements as regards each document, the Chamber notes that the prosecution explained in its filing that on the basis of Article 54(3)(e) and 54(3)(f) of the Statute it entered into agreements with the providers of the relevant documents who have agreed to disclosure to the defence on the condition that any references to the particular NGO are removed. In all the circumstances, the Chamber considers that the prosecution has provided sufficient justification for withholding the identities

⁶⁵ ICC-01/04-01/06-2739-Conf, paragraphs 9 – 11.

⁶⁶ ICC-01/04-01/06-2739-Conf, paragraph 10.

⁶⁷ ICC-01/04-01/06-2739-Conf, paragraph 11.

⁶⁸ ICC-01/04-01/06-2739-Conf, paragraph 11.

⁶⁹ Transcript of hearing on 29 October 2009, ICC-01/04-01/06-T-95-CONF-EXP-ENG-ET, page 45, line 20 to page 60, line 2.

⁷⁰ DRC-OTP-0021-0515, DRC-OTP-0197-0263, DRC-OTP-0021-0229, and DRC-OTP-0037-0204.

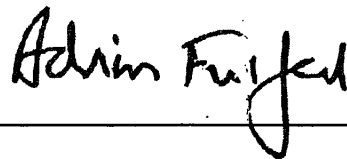
of the NGOs concerned. Given that the redacted information does not affect the exculpatory value of the material, and it is irrelevant to any live issue in the case, the proposed redactions do not cause prejudice to the right of the accused to a fair trial. No lesser measures are feasible, and accordingly, the redactions are granted in order to protect the identities of the relevant NGOs.

IV. Orders of the Chamber

35. The Trial Chamber hereby:

- a. Grants the redactions in documents DRC-OTP-0021-0515, DRC-OTP-0197-0263, DRC-OTP-0021-0229 and DRC-OTP-0037-0204 to the source and chain of custody metadata;
- b. Grants the redactions to the name and identifying information of Witness 64, the telephone number of Witness 598 and the names and identifying details of third parties, in document DRC-OTP-0235-0129; and
- c. Grants the redactions in document DRC-OTP-0235-0277 to the ICCPP location of witness 227 and other information concerning [REDACTED] and [REDACTED].

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Dated this 25 July 2011

At The Hague, The Netherlands