

1 International Criminal Court

2 Trial Chamber I

3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06

4 Case against Thomas Lubanga Dyilo

5 Ex Parte - Prosecution and OPCV

6 Monday, 16 February 2009

7 The hearing starts at 12.03 p.m.

8 COURT USHER: The International Court is now in session. Please
9 be seated.

10 PRESIDING JUDGE FULFORD: Good morning.

11 This is the Chamber's ex parte decision (Prosecution and the
12 Legal Representatives of victims 0047/06, 0048/06, 0050/06, and 0052/06,
13 who are all represented by the OPCV), on the application by the
14 Prosecution, supported by the OPCV for redactions, to the applications to
15 participate made by those victims, along with a request for disclosure.
16 (See for the Prosecution documents 1672, confidential, ex parte, with a
17 public version, document 1680; and for the OPCV, document 1676, which has
18 been filed publicly).

19 These are dual-status victims and the Prosecution is in
20 possession of their original applications to participate in non-redacted
21 form. Additionally, the Prosecution has given supplementary information
22 relevant to 0050/06 in non-redacted form and supplementary information
23 for 47/06, 48/06, and 52/06 in redacted form.

24 In accordance with the Chamber's decision of the 21 January 2009
25 (see document 1367) the Prosecution consulted with the Legal

1 Representatives of each of these victims prior to effecting disclosure of
2 the application forms, together with the supplementary items, which is
3 considers should be disclosed to the Defence.

4 The OPCV has requested limited redactions to each of the
5 application forms, together with the supplementary items. The
6 Prosecution relies on Rule 81(2) and (4) as the legal basis for these
7 requests. In essence, the Prosecution submits that the Office of the
8 Prosecutor together with the OPCV should ensure that all of these items
9 are disclosed, subject to certain limited proposed redactions.

10 The suggested redactions cover the following areas:

11 a) Under Rule 81(2), the removal of the name and identifying
12 information of a particular intermediary for each victim; the removal of
13 the name and identifying information of a person who signed all four
14 application forms as a witness; the name and identifying information of a
15 local interpreter who acted as witness to one of the applications; the
16 location where one victim signed the application form; and for three of
17 the victims, the location where their interviews occurred.

18 b) Under Rule 81(4), the identity and whereabouts of family
19 members or guardians of the dual-status victims, to the extent that they
20 have not already been disclosed, along with certain addresses supplied by
21 the victims at the time of making the application.

22 It is the Prosecution's submission that these redactions will not hinder
23 the ability of the Defence to assess the exculpatory or Rule 77 value of
24 the information set out in the applications, and they do not detract from
25 the evidence and information that is relevant to the Defence case.

1 These dual-status victims are Witnesses 07, 08, 10, and 11. *(expunged)
2 (expunged), and in each case their identities
3 are known to the Defence.

4 By way of detail, the Prosecution seeks to redact: *

5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Expunged)
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18 (Expunged)
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24 (Expunged)
25 (Expunged)

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14 (Expunged)

15 (Expunged)

16 In the judgement of the Chamber, these applications are well
17 founded. The redactions proposed jointly by the Prosecution and the OPCV
18 serve to protect the dual-status victims, their families and guardians,
19 intermediaries, an interpreter, and someone who witnessed each of the
20 applications. In each case it is necessary for the Chamber to approve
21 the suggested measures in order to fulfil its obligations to victims,
22 witnesses, and others put at risk by the activities of the court under
23 Article 68(1). We have analysed each of the proposed redactions, and in
24 our judgement, the exculpatory and Rule 77 value of the material is
25 undiminished and the documents remain intelligible and usable. The

1 application is necessary and its terms are proportionate and it does not
2 cause any prejudice to the accused, in our judgement.

3 The Prosecution is to disclose the applications in the redacted
4 form it has proposed and the OPCV should assist the Prosecution in
5 effecting disclosure as regards the supplementary material, in accordance
6 with the detailed proposals set out by the OPCV in its application of
7 6 February 2009, document 1676.

8 That concludes this decision.

9 Ms. Samson, when you're reviewing the extent to which this
10 decision just delivered can be made public, for your consideration I
11 suggest that it may be sufficient if the section which concludes
12 subparagraphs A to H are simply lifted. If the remainder is intact, it
13 may be that the way that we phrased it is so general that it will not
14 have a capacity to reveal the identities of those whom we are seeking to
15 protect. It may be necessary to remove the link between the numbers of
16 the Witnesses 07, 08, 10, and 11. That may need to come out as well.
17 But I simply put that to you as a suggestion, but you will need to
18 consider this carefully and will you please come back to us in due course
19 with your proposals.

20 MS. SAMSON: Yes, your Honour. I understand that an ex parte
21 transcript is not being generated now, but I assume that there will be
22 one in due course from which we can make our observations.

23 PRESIDING JUDGE FULFORD: I think there's going to be a 30-minute
24 delay or a delay of that order.

25 MS. SAMSON: Thank you very much, your Honour.

1 PRESIDING JUDGE FULFORD: Thank you.

2 Now, Ms. Samson, who's dealing with the next witness for the
3 Prosecution?

4 MS. SAMSON: That will be Ms. Struyven, who's at my right.

5 PRESIDING JUDGE FULFORD: Right. Thank you very much.

6 Now, Ms. Struyven, are there matters that we need to consider
7 before we turn to the next witness, and I particularly have in mind
8 whether we need to review at all the issue of protective measures.

9 MS. STRUYVEN: No, your Honour. The protective measures that
10 were decided in the decision of the 16th of January, which are face
11 distortion, voice distortion, and pseudonym, are sufficient.

12 PRESIDING JUDGE FULFORD: Right. And as far as you're aware, no
13 additional requests are being made by anyone in relation to additional
14 protective measures.

15 MS. STRUYVEN: No, your Honour. That's correct.

16 PRESIDING JUDGE FULFORD: And are there any particular issues
17 which we should, as it were, be alive to during the course of this
18 witness' evidence which, if revealed, would have a tendency to reveal the
19 person's identity?

20 MS. STRUYVEN: Your Honour, the only thing we intend to discuss
21 in closed session is the profession of the witness, because at the time
22 in Bunia there was only a few cameramen. So we would like to discuss his
23 profession and his activities in Ituri in closed session. However, the
24 fact, for example, that he was present during a certain scene that we
25 will see in the videos, we believe his presence as such will not reveal

1 his identity.

2 PRESIDING JUDGE FULFORD: So am I right in understanding that
3 we -- that if we have a short session at the beginning, once he's been
4 sworn, in which his identity is given privately together with his
5 profession, we then should be able to move into open session and, as far
6 as the Prosecution's concerned, really for the entirety of his evidence.
7 Is that right?

8 MS. STRUYVEN: That's correct, your Honour. The only remark in
9 that respect is the fact that because I cannot reveal the fact that he
10 filmed certain scenes in open session, I intended to group the question
11 after, for example, the first six videos, to go into closed session and
12 at that point in time ask him whether or not he had filmed the six
13 previous scenes, so to group them. But we would need one or two
14 additional closed sessions for that.

15 PRESIDING JUDGE FULFORD: Right. But they will be short and
16 simply be by way of introduction. Is that right?

17 MS. STRUYVEN: So, after the original introduction
18 during which we will discuss his profession, after we have seen, I think,
19 more or less six scenes, I intend to go back into closed session for a
20 very short time period, just to have him confirm or not confirm whether
21 or not he filmed the previous six scenes. But then I could ask that in one
22 single question, rather than to have to move to closed session after each
23 and every scene.

24 PRESIDING JUDGE FULFORD: Would it be possible, given you know
25 the scenes that he's going to be taken to, for all of that to be done at

1 the outset during the course of your initial questioning?

2 MS. STRUYVEN: No, your Honour, and the reason is that the
3 witness has provided us with, I think, about 15 videos and he has filmed
4 or he has informed us that he has filmed those videos; however, there is
5 one or two scenes that he has not filmed from those videos. So until he
6 sees the scenes that we are showing him, he will not be able to confirm
7 at the beginning that he has filmed all of them.

8 PRESIDING JUDGE FULFORD: All right. All right. Yes, that's
9 clear. Thank you very much, Ms. Struyven.

10 MS. STRUYVEN: Thank you.

11 PRESIDING JUDGE FULFORD: Ms. Pellet, I'm sorry to go back to it,
12 but on Friday you requested us to redact the entirety of Mr. Sachdeva's
13 intervention, and as I understand your e-mail of quarter to 6.00 on
14 Friday evening, the suggestion is made that it was necessary to do this
15 because Mr. Sachdeva had referred to the witness in a way that revealed
16 her gender. Now, I've looked at the English version and the
17 Legal Advisor to the Chamber has looked at the French version and neither
18 reveals any gender reference. So I'm afraid I'm still in a state of some
19 confusion over this, Ms. Pellet.

20 MS. PELLET (interpretation): Thank you, your Honour. The
21 corrected version of the transcript shows the reference to the witness's
22 gender; however, the version you have in front of you at the time I made
23 my request was not correct and didn't have the reference to "she" and
24 that's why we didn't understand each other. However, the corrected
25 version, which was distributed 20 minutes ago, does have the gender in

1 it.

2 PRESIDING JUDGE FULFORD: Thank you, Ms. Pellet.

3 MS. PELLET (interpretation): Thank you.

4 PRESIDING JUDGE FULFORD: Well, Mr. Sachdeva, if that is right,
5 it may be, given there are only a very limited number of people who would
6 have occupied the particular role of the witness concerned as a
7 particular bodyguard for a particular person, it may be sensible for
8 there to be a redaction to your intervention to the extent that any of
9 the transcripts in existence have referred to that person's gender. Do
10 you agree?

11 MR. SACHDEVA: I do agree, Mr. President.

12 PRESIDING JUDGE FULFORD: Right. Ms. Pellet, I'm going to give
13 you the responsibility, please, to liaise with the court manager at an
14 appropriate time today to ensure that if there is any transcript still in
15 existence which has a gender reference by Mr. Sachdeva, that that short
16 section alone should be redacted. Otherwise, I don't think there's
17 anything objectionable in the intervention that he made. Good. Thank
18 you very much.

19 Right, if I'm correct, therefore, in understanding, we can now move
20 straight to this witness's testimony. The court manager will, no doubt,
21 tell me that we need to give time for the machinery to be reconfigured
22 and we will attempt, therefore, to sit at quarter to 1.00, and the first
23 thing that will happen is that the witness will be brought into court so
24 that he can sit and then take the oath. So we'll need to begin with
25 everybody present but with the blinds down.

1 Now, is there a problem with that, Ms. Struyven?

2 MS. STRUYVEN: No problem, your Honours. There's just one small
3 remark. We have compiled the translations of the portions we intend to
4 show to the witness, as well as a list of all the scenes we intend to
5 show to the witness in the order that we intend to show that. So we
6 intend -- with your permission, of course, to distribute that at the
7 beginning of the hearing, whether it's in the presence of the witness or
8 while he's still waiting to be brought in.

9 PRESIDING JUDGE FULFORD: Why not distribute them in advance to
10 save time when the witness arrives, Ms. Struyven?

11 MS. STRUYVEN: We will do so.

12 PRESIDING JUDGE FULFORD: Thank you very much.

13 Well, all things being well, we'll sit again at quarter to 1.00.
14 Thank you very much.

15 COURT USHER: All rise.

16 Recess taken at 12.24 p.m.

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7 * Pursuant the oral Order of the Chamber Trial I dated 16 February
8 2009, expunctions have been made to the transcript which therefore
9 becomes public.