

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 March 2010

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

Corrigendum to Redacted 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

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Unrepresented Victims

Legal Representatives of the Applicants

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Trial Chamber II**

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 corrigendum¹ to the decision (“Decision”) on the “Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quo Que* Information”² and the “Prosecution’s Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts”³:

I. Background and Submissions

1. On 19 December 2008 the prosecution filed a request for leave to implement redactions in the statements of 15 witnesses providing *tu quoque* information whose identities were disclosed to the defence.⁴ A public version of the request was filed on 24 December 2008.⁵ The prosecution submitted that the proposed redactions would not be prejudicial to, or inconsistent with, the rights of the accused as they do “not hinder the defence’s ability to assess the *Tu Quoque* information contained in the Statements, nor do they impact on

¹ It has come to the attention of the Chamber that in paragraph 53 of the public redacted Decision issued on 22 February 2010 one footnote was erroneously omitted. This omission is rectified in the present version of the public redacted Decision.

² Prosecution’s Submission of a Public Redacted Version of its 19 December 2008 “Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information”, 24 December 2008, ICC-01/04-01/06-1574; Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information, 19 December 2008, ICC-01/04-01/06-1567-Conf-Exp.

³ Prosecution’s Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664; Annex A to Prosecution’s Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664-Conf-Exp-AnxA.

⁴ Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information, 19 December 2008, ICC-01/04-01/06-1567-Conf-Exp; The request concerns witnesses DRC-OTP-WWWW-0001, DRC-OTP-WWWW-0028, DRC-OTP-WWWW-0132, DRC-OTP-WWWW-0149, DRC-OTP-WWWW-0161, DRC-OTP-WWWW-0166, DRC-OTP-WWWW-0172, DRC-OTP-WWWW-0233, DRC-OTP-WWWW-0249, DRC-OTP-WWWW-0250, DRC-OTP-WWWW-0258, DRC-OTP-WWWW-0268, DRC-OTP-WWWW-0279, DRC-OTP-WWWW-0280, and DRC-OTP-WWWW-0287.

⁵ Prosecution’s Submission of a Public Redacted Version of its 19 December 2008 “Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information”, 24 December 2008, ICC-01/04-01/06-1574 with Annex1.

issues that are relevant to the Defence case”.⁶

2. The defence and the legal representatives of victims did not file any written responses to this request.
3. On 4 February 2009 the prosecution submitted requests for further redactions and an order of sufficiency for the admissions as regards undisputed facts.⁷ The prosecution submitted that the proposed redactions do not hinder the ability of the defence to assess the Rule 77 information contained in the statements, and that they did not impact on issues that are relevant to the accused’s case. Moreover, the prosecution requested an order from the Trial Chamber that it need not disclose further materials of a *tu quoque* nature. The latter request has been dealt with in a separate decision.⁸
4. On 17 February 2009 the defence responded to the requests of the prosecution filed on 4 February 2009.⁹ *Inter alia*, it partially opposed the Request for Non-Disclosure, submitting that the proposed redactions are appropriate at this stage, but that the defence may hereafter make specific applications to the Chamber, if it seeks elements of the redacted information.¹⁰
5. On 17 August 2009, the prosecution submitted the “Prosecution’s Update on

⁶ Annex I to Prosecution’s Submission of a Public Redacted Version of its 19 December 2008 “Prosecution’s Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information”, 24 December 2008, ICC-01/04-01/06-1574-Anx1, paragraph 7.

⁷ Prosecution’s Request for Non-Disclosure of Information in the Statements of Five Individuals providing rule 77 information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664. A confidential *ex parte* prosecution only version of the request was submitted as Annex A to the public filing, ICC-01/04-01/06-1664-Conf-Exp-AnxA; The request concerns witnesses DRC-OTP-WWWW-0090, DRC-OTP-WWWW-0102, DRC-OTP-WWWW-0238, DRC-OTP-WWWW-0312 and DRC-OTP-WWWW-0280. The last witness was also addressed in the previous request of 19 December 2008.

⁸ Decision on the prosecution’s request for an order on the disclosure of *tu quoque* material pursuant to Rule 77, 2 October 2009, ICC-01/04-01/06-2147.

⁹ Réponse de la Défense à la “Prosecution’s Request for Non-Disclosure of Information in the Statement of Five Individuals providing Rule 77 and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts”, depose le 4 février 2009, 17 February 2009, ICC-01/04-01/06-1702.

¹⁰ Réponse de la Défense à la “Prosecution’s Request for Non-Disclosure of Information in the Statement of Five Individuals providing Rule 77 and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts”, depose le 4 février 2009, 17 February 2009, ICC-01/04-01/06-1702, paragraphs 2 and 3.

its Requests #1567 and #1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information.”¹¹ It informed the Chamber that 16 of the 19 witnesses concerned are witnesses in the Katanga case.¹² As some statements have been disclosed in that case with fewer redactions than in the Lubanga case, and as the redactions should be harmonized, the prosecution indicated that it will file an amendment to its 19 December 2008 and 4 February 2009 request, once a decision pending before Trial Chamber II relating to further changes has been issued.¹³ In the table attached as Annex A, the prosecution included a list of decisions in which redactions had been granted for some of the documents concerned.

6. On 21 August, the prosecution submitted its “Prosecution’s notice that it will lift redactions to names of interpreters and interview locations”.¹⁴ In accordance with a previous decision of the Chamber allowing the lifting of Rule 81(2) redactions with notice to the Chamber, the prosecution notified Trial Chamber I that it is removing redactions to the names of the following interpreters and it withdraws its pending requests for redactions to these names: [REDACTED].¹⁵ Furthermore, the prosecution has withdrawn its pending requests to redact the names of the following interpreters: [REDACTED].¹⁶ The prosecution notified the Chamber that it is lifting the redactions to the interview location of [REDACTED].¹⁷ It was indicated that a list of the documents affected by the notice were to be provided as soon as practicable.¹⁸

¹¹ Prosecution’s Update on its Requests #1567 and #1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information, 17 August 2009, ICC-01/04-01/06-2082.

¹² ICC-01/04-01/06-2082, paragraph 4.

¹³ ICC-01/04-01/06-2082, paragraphs 7 and 8.

¹⁴ Prosecution’s Notice that it will lift redactions to names of interpreters and interview locations, 21 August 2009, ICC-01/04-01/06-2089-Conf.

¹⁵ ICC-01/04-01/06-2089-Conf, paragraph 3, referring to the Transcript of hearing on 4 December 2007, ICC-01/04-01/06-T-62-ENG, page 23, lines 2 – 20; ICC-01/04-01/06-2089-Conf, footnote 2.

¹⁶ ICC-01/04-01/06-2089-Conf, paragraph 4 and footnote 3.

¹⁷ ICC-01/04-01/06-2089-Conf, paragraph 5 and footnotes 4-6.

¹⁸ ICC-01/04-01/06-2089-Conf, paragraph 6.

7. On 9 September 2009, the Prosecution filed its "Prosecution's Updated Requests of filings #1567 and #1664 for Non-Disclosure of Information in the Statements of Individuals Providing Rule 77 Information".¹⁹ The prosecution amended its request so as to maintain redactions only to the following categories: (i) internal work products ("internal documents"); (ii) intermediaries, excepting the intermediary whose name was disclosed to the defence in the Lubanga case in relation to the testimony of Witness DRC-OTP-WWWW-0015; (iii) permanent prosecution sources, excluding those who have provided information only in the Katanga case; (iv) the current whereabouts of certain witnesses who are in the International Criminal Court Protection Program ("ICCPP"); and (v) the names and current whereabouts of surviving family members or guardians of the witnesses, excluding deceased family members or guardians or previous whereabouts of family members or guardians.²⁰ The prosecution provided specific information about its request for non-disclosure of information in relation to Witnesses DRC-OTP-WWWW-0001, DRC-OTP-WWWW-0090, DRC-OTP-WWWW-0102 and DRC-OTP-WWWW-0149.²¹ The prosecution informed the Chamber that, at times, certain words were redacted in the Lubanga case, but not in the Katanga case. It submitted that these words, referred to as 'non-substantive' discrepancies in Annex B to the filing, do not relate to any particular category and do not create any risk for the persons involved.²² In order to streamline redactions, the prosecution also indicated that it intends to lift these redactions.²³ The prosecution attached an Annex A indicating the redactions and why it maintains its previous requests, and an Annex B, setting out the redacted information which can now be disclosed to the defence.²⁴ It informed the

¹⁹ Prosecution's Updated Requests of filings # 1567 and # 1664 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information, 9 September 2009, ICC-01/04-01/06-2111.

²⁰ ICC-01/04-01/06-2111, paragraph 7.

²¹ ICC-01/04-01/06-2111, paragraphs 8-11. Witness DRC-OTP-WWWW-0090 is treated in a separate decision (2047).

²² ICC-01/04-01/06-2111, paragraph 12.

²³ ICC-01/04-01/06-2111, paragraph 12.

²⁴ ICC-01/04-01/06-2111, paragraph 13, referring to ICC-01/04-01/06-2111-Conf-Exp-AnxA and ICC-01/04-01/06-2111-Conf-Exp-AnxB.

Chamber of its intention to disclose to the defence the information listed in Annex B that was redacted pursuant to Rule 81(2) of the Rules; and requested authorisation to disclose the information in Annex B (that was originally redacted pursuant to Rule 81(4) of the Rules).²⁵ In the interests of efficiency, the prosecution suggested providing the defence with Annex B instead of re-issuing the documents for disclosure.²⁶

8. On request of the Chamber,²⁷ on 21 October 2009, the prosecution provided corrections and clarifications to its requests for redactions filed on 9 September 2009.²⁸
9. On 22 October 2009, Trial Chamber II issued its “*Décision relative à la levée, au maintien et au prononcé de mesures d’expurgation*” that dealt with numerous witnesses that are the subject of the prosecution’s application to Trial Chamber I.²⁹ Access to this Decision was granted to the Chamber on 26 October 2009.
10. On 29 October 2009, the prosecution filed the “*Prosecution’s Update filing # 2111 for Non-Disclosure of Information in the Statements of Individuals providing Rule 77 Information*”.³⁰ This application contains the corrections and clarifications previously communicated to the Chamber on 21 October 2009. It also includes amendments to the original request resulting from the decision issued by Trial Chamber II. The prosecution requested only those

²⁵ ICC-01/04-01/06-2111, paragraph 14.

²⁶ ICC-01/04-01/06-2111, paragraph 15.

²⁷ Email communication from the Trial Chamber to the prosecution through the Legal Adviser to the Trial Division on 9 October 2009.

²⁸ Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009.

²⁹ *Décision relative à la levée, au maintien et au prononcé de mesures d’expurgation*, 22 October 2009, ICC-01/04-01/07-1551-Conf-Exp.

³⁰ Prosecution’s Update of filing #2111 for Non-Disclosure of Information in the Statements of individuals providing Rule 77 Information, 29 October 2009, ICC-01/04-01/06-2182-Conf-Exp. The public redacted version was issued on the same day, ICC-01/04-01/06-2182-Red.

redactions that are still requested before or granted by Trial Chamber II.³¹ It withdrew the pending request for Rule 81(4) redactions to the identity of witness DRC-OTP-WWWW-0102.³² The prosecution is satisfied that his security is adequately protected and that his identity can be disclosed to the defence in the Lubanga case.³³ It requested authority to implement this step (if this is necessary)³⁴ and it maintained its request for limited redactions in the statement, based on Rule 81(4) of the Rules.³⁵

11. On 11 November 2009, the prosecution clarified that it seeks to withdraw a pending request for non-disclosure of the identity of Witness 102, and it indicates that Witness 102 and Witness 122 (the Chamber had previously authorized redactions in an investigator's note regarding the latter)³⁶ are the same person.³⁷ Accordingly, it seeks to disclose the identity of this individual to the defence.³⁸ The prosecution seeks to maintain any authorized redactions or pending requests as regards the identities of other individuals in the documents.³⁹

II. Relevant provisions and decisions

12. The following provisions of the Statute and Rules are relevant to a consideration of the prosecution's requests:

Article 54

Duties and powers of the Prosecutor with respect to investigations

³¹ ICC-01/04-01/06-2182-Red, paragraph 5.

³² ICC-01/04-01/06-2182-Red, paragraph 6.

³³ ICC-01/04-01/06-2182-Red, paragraph 6.

³⁴ ICC-01/04-01/06-2182-Red, paragraphs 6 and 7.

³⁵ ICC-01/04-01/06-2182-Red, paragraph 7.

³⁶ 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 (corrected and redacted versions were issued on 2 June 2009, ICC-0104-01/06-1924).

³⁷ Email communication from the prosecution through the Legal Adviser to the Trial Division on 11 November 2009.

³⁸ Email communication from the prosecution through the Legal Adviser to the Trial Division on 11 November 2009.

³⁹ Email communication from the prosecution through the Legal Adviser to the Trial Division on 11 November 2009.

[...]

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.

Article 64

Functions and powers of the Trial Chamber

[...]

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

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 77

Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82 permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

Rule 81

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.

[...]

Regulation 42

Application and variation of protective measures

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.

2. When the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures.

3. Any application to vary a protective measure shall first be made to the Chamber which issued the order. If that Chamber is no longer seized of the proceedings in which the protective measure was ordered, application may be made to the Chamber before which a variation of the protective measure is being requested. That Chamber shall obtain all relevant information from the proceedings in which the protective measure was first ordered.

4. Before making a determination under sub-regulation 3, the Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made.

13. In the present case, the Appeals Chamber 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."⁴⁰ The Appeals Chamber emphasised that this should include an examination of

⁴⁰ 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, 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 67.

whether less restrictive protective measures are sufficient and feasible.⁴¹

14. The Appeals Chamber held in the Katanga case that “Rule 81(4) of the Rules [...] 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.”⁴² The Appeals Chamber emphasised that the non-disclosure of information for the protection of persons 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].”⁴³

15. When dealing with the question of whether redactions could be made to interview locations in the Katanga case, the Appeals Chamber observed 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.”⁴⁴

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

⁴¹ 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 33.

⁴² 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 1.

⁴³ 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 2.

⁴⁴ 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.

on disclosure in the context of the confirmation of charges stage and strictly are not binding on the Trial Chamber, the Chamber is of the view that the principles outlined are of high relevance generally to proceedings before the Trial Chamber. Therefore, the Trial Chamber considers 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.⁴⁵

17. The Chamber has previously set out its approach concerning 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.⁴⁶

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

18. Further, the Trial Chamber has previously authorised the permanent redaction of the names of individuals referred to as “third parties”, intermediaries, and NGOs and their field staff when, *inter alia*, the information was irrelevant to the issues known in the case and they did not

⁴⁵ ICC-01/04-01/06-1814-Conf, and public redacted version, ICC-01/04-01/06-1924-Anx2, paragraph 34.

⁴⁶ 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, and public redacted version, ICC-01/04-01/06-1924-Anx2, paragraph 31.

render the document in any way unintelligible or unusable.⁴⁷

19. The Trial Chamber has previously authorised the non-disclosure of the identities of certain witnesses; this has been accompanied, as appropriate, by disclosure of alternative items of evidence and admissions of facts, as well as redactions to the interview locations, intermediaries, details relating to individuals who were present when interviews were conducted, prosecution sources, and the names and whereabouts of family members or guardians, and victims.⁴⁸

Ex parte basis of the filing

20. In the light of the substance of the 2 applications, the Trial Chamber considers that they have been properly submitted on an *ex parte* basis. The Chamber also notes that public redacted versions of the applications were filed.

Analysis

21. The Chamber notes that Trial Chamber II has already addressed many of the documents relating to the witnesses that are subject of the application of the prosecution, and that a further application concerning variations in redactions to many of the documents under consideration was recently dealt with by Trial Chamber II. It observes that the redactions the prosecution now seeks to maintain have been significantly reduced when compared to the prosecution's original requests to this Chamber.

22. Regulation 42(1) of the Regulations stipulates that protective measures, once

⁴⁷ Transcript of hearing on 13 December 2007, ICC-01/04-01/06-T-65-ENG, page 3, lines 1-13; Transcript of hearing on 18 January 2008, ICC-01/04-01/06-T-72-Conf-Exp-ENG, 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 (confidential redacted version) ICC-01/04-01/06-1221-Conf-Anx1, paragraph 8; Decision on "Prosecution's Application for Non-Disclosure of Information" filed on 7 May, 17 December 2008, ICC-01/04-01/06-1561-Conf-Exp, paragraphs 24, 40; Decision on "Prosecution's Application for Non-Disclosure of Information" filed on 14 May, 17 December 2008, ICC-01/04-01/06-1561-Conf-Exp, paragraphs 13-16.

⁴⁸ ICC-01/04-01/06-1925-Conf; ICC-01/04-01/06-1965-Conf-Exp, public redacted ICC-01/04-01/06-1980-Anx2.

granted, shall continue to have full force and effect in relation to any other proceedings before the Court, subject to revision by a Chamber. In accordance with this provision, and in the interest of harmonizing the protective measures for the witnesses relevant to both the Katanga case and the Lubanga case, the Chamber only seeks to disturb the protective measures previously ordered by Trial Chamber II if they cause prejudice to the accused.

23. In particular, the Chamber notes that all the documents that are the subject of this application contain Rule 77 information. It has ensured that the requests for non-disclosure of information, now reviewed on the basis of the protective measures ordered by Trial Chamber II for the same witnesses in the Katanga case, do not affect this information or in any other way limit the usability of the documents. The individual assessment is set out below.

24. Based on the submissions of the prosecution, the Chamber notes that some of the previous proposals for redactions are no longer requested, or in the meantime have been either lifted or denied by Trial Chamber II.

25. The Chamber takes note of the prosecution's suggestion that it would suffice to disclose to the defence the tables which describe the redactions that are to be lifted instead of re-disclosing the documents.⁴⁹ Given the many updates, corrections and clarifications concerning certain redactions, the Chamber is not persuaded that this is a helpful approach; instead the prosecution must serve on the defence the entire documents, with the revised redactions as set out below.

⁴⁹ ICC-01/04-01/06-2111, paragraph 13.

1. Witness DRC-OTP-WWWW-0001⁵⁰

26. Witness DRC-OTP-WWWW-0001 provided a witness statement comprising 65 pages.⁵¹ In the revised application, the prosecution requests the following redactions: in paragraphs 1 and 2 redactions to the names ([REDACTED]) and the place of residence of family members of the witness ([REDACTED]) pursuant to Rule 81(4) of the Rules.⁵² The prosecution informs the Chamber that as the witness and his close family have relocated, only the continuous residence of other family members needs to be redacted.⁵³

27. Redactions were initially authorized in the Katanga case by Trial Chamber II, in a decision of 10 February 2009.⁵⁴ In its decision of 22 October 2009,⁵⁵ Trial Chamber II authorized the maintenance of the same redactions now requested by the prosecution in the Lubanga case. [REDACTED].⁵⁶ [REDACTED].⁵⁷

28. Given that the redactions are irrelevant to any live issue in the case and they do not undermine the rights of the accused, in accordance with Regulation 42 of the Regulations, the Chamber does not seek to disturb the protective measures authorized by Trial Chamber II in its decision on 22 October 2009.

2. Witness DRC-OTP-WWWW-0028

29. The prosecution requests redactions to five documents relating to Witness DRC-OTP-WWWW-0028.

⁵⁰ The details for this witness and for all witnesses referred to in filing ICC-01/04-01/06-1567-Conf-Exp were set out in a chart attached as Annex A 1 to the Prosecution's Request for Non-Disclosure of Information in the Statements of Fifteen Individuals providing *Tu Quoque* Information, 19 December 2008, ICC-01/04-01/06-1567-Conf-Exp-AnxA1.

⁵¹ ICC-01/04-01/06-1567-Conf-Exp-AnxB1 (ERN: DRC-OTP-0036-0010–DRC-OTP-0036-0075).

⁵² ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 1 of the table.

⁵³ ICC-01/04-01/06-2111, paragraph 8.

⁵⁴ ICC-01/04-01/06-2111-Conf-Exp-AnxA, referring to “Motifs de la décision orale relative à la requête du Procureur aux fins d'expurger les déclarations des témoins 001,155,172,280,281,284,312 et 323 et la note d'enquêteur relative au témoin 176 (règle 81 du Règlement de procédure et de preuve)”, 10 February 2009, ICC-01/04-01/07-888-Conf-Exp.

⁵⁵ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-Conf-Exp-Red, paragraphs 34 and 35.

⁵⁶ Transcript of hearing on 24 September 2009, ICC-01/04-01/07-T-69-CONF-EXP.

⁵⁷ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 1.

30. The first and last documents are investigator's notes comprising 2 pages that have an identical content but different ERN numbers and a slightly different format.⁵⁸ In the revised application, the prosecution only seeks to maintain redactions to internal documents under Rule 81(1) in a footnote and paragraphs 6 and 10.⁵⁹ The Chamber takes note that the redacted material is not subject to disclosure pursuant to Rule 81(1) of the Rules.

31. The second document is a one page interview note,⁶⁰ in which the prosecution now seeks to redact an internal document in the last paragraph.⁶¹ Here also, the Chamber takes note that the identified passage is not subject to disclosure pursuant to Rule 81(1) of the Rules.

32. The prosecution proposes maintaining redactions to the whereabouts of the witness in paragraph 18 of the third document⁶² (a witness statement comprising 23 pages, in French) and in paragraph 9 of the fourth document⁶³ (a witness statement comprising 20 pages) under Rule 81(4) of the Rules.⁶⁴

33. Trial Chamber II authorized non-disclosure to information concerning this witness in a decision of 25 March 2009,⁶⁵ and dealt with the same witness again in the hearing of 24 September 2009.⁶⁶ The Chamber notes that the most recent decision issued by Trial Chamber II in the Katanga case refers to different documents relating to this witness.⁶⁷

⁵⁸ ICC-01/04-01/06-1567-Conf-Exp-AnxC1 (ERN: DRC-OTP-0150-0159-DRC-OTP-0150-0160); ICC-01/04-01/06-1567-Conf-Exp-AnxC5 (ERN: DRC-OTP-1016-0049-DRC-OTP-1016-0050).

⁵⁹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 1 of the table.

⁶⁰ ICC-01/04-01/06-1567-Conf-Exp-AnxC2 (ERN: DRC-OTP-0150-0177).

⁶¹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 1 of the table.

⁶² ICC-01/04-01/06-1567-Conf-Exp-AnxC3 (ERN: DRC-OTP-0155-0106-DRC-OTP-0155-0128).

⁶³ ICC-01/04-01/06-1567-Conf-Exp-AnxC4 (ERN: DRC-OTP-0171-1828-DRC-OTP-0171-1847).

⁶⁴ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 1 of the table.

⁶⁵ ICC-01/04-01/06-2182-Conf-Exp-AnxA page 1 of the table, referring to "Décision concernant trois requêtes du Procureur aux fins de maintien des suppressions ou de rétablissement de passages supprimés (ICC-01/04-01/07-859, ICC-01/04-01/07-860 et ICC-01/04-01/07-862)", 25 March 2009, ICC-01/04-01/07-987-Conf-Exp.

⁶⁶ Transcript of hearing on 24 September 2009, ICC-01/04-01/07-T-169-CONF-EXP.

⁶⁷ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraphs 14, 36, 37 and 40.

34. The Chamber is persuaded that the more limited redactions now sought by the prosecution, and authorised by Trial Chamber II, do not affect the intelligibility and usability of the documents and relate to information that is irrelevant to the present case.

35. As they will not cause prejudice to the accused, and in accordance with Regulation 42 of the Regulations, the Chamber does not seek to disturb the redactions as set out by the prosecution and authorized by Trial Chamber II.

3. Witness DRC-OTP-WWWW-0132

36. The prosecution has requested redactions to a witness statement provided by Witness DRC-OTP-WWWW-0132 in French that comprises 35 pages.⁶⁸ The prosecution now proposes to maintain the following redactions under Rule 81(4) of the Rules to the names and whereabouts of various family members: [REDACTED] in paragraphs 11, 13, 14, 27 and 134; [REDACTED] and [REDACTED] in paragraph 12; [REDACTED] in paragraph 14; [REDACTED] in paragraph 15; [REDACTED] in paragraph 126; and [REDACTED] in paragraph 128.⁶⁹

37. Redactions to this document were initially authorized in the Katanga case by Trial Chamber II in a decision of 25 March 2009.⁷⁰ Trial Chamber II again dealt with this witness in the hearing of 24 September 2009 and in its decision of 22 October 2009.⁷¹

⁶⁸ ICC-01/04-01/06-1567-Conf-Exp-AnxD1 (ERN: DRC-OTP-1016-0156-DRC-OTP-1016-0190).

⁶⁹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, pages 1 and 2 of the table.

⁷⁰ ICC-01/04-01/06-2111-Conf-Exp-AnxA, referring to “Décision concernant trois requêtes du Procureur aux fins de maintien des suppressions ou de rétablissement de passages supprimés (ICC-01/04-01/07-859, ICC-01/04-01/07-860 et ICC-01/04-01/07-862)”, 25 March 2009, ICC-01/04-01/07-987-Conf-Exp.

⁷¹ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraph 15.

38. [REDACTED].⁷² [REDACTED].⁷³

39. The Chamber is satisfied that the proposed redactions are limited; they are irrelevant to live issues in the case; and they do not cause prejudice to the accused. In accordance with Regulation 42 of the Regulations, the Chamber does not seek to disturb the redactions as set out by the prosecution and authorised by Trial Chamber II.

4. Witness DRC-OTP-WWWW-0149

40. The prosecution has requested redactions to two documents relating to Witness DRC-OTP-WWWW-0149. In the French 7-page witness statement,⁷⁴ the prosecution only seeks to redact internal documents under Rule 81(1) of the Rules in the footnotes on page 5.⁷⁵ The Chamber merely takes note that this information is not subject to authorization under Rule 81(1) of the Rules.

41. The prosecution further proposes redacting the following names of the witness's family members under Rule 81(4) of the Rules, in paragraphs 9 and 10 of the second witness statement comprising 16 pages, also submitted in French: [REDACTED].⁷⁶

42. Trial Chamber II dealt with this witness and authorized redactions to the second document in a decision of 7 April 2009,⁷⁷ and more recently in its decision of 22 October 2009.⁷⁸ As above, the Chamber has satisfied itself that the proposed redactions are limited; they are irrelevant to the live issues of

⁷² Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 2.

⁷³ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 2.

⁷⁴ ICC-01/04-01/06-1567-Conf-Exp-AnxE1 (ERN: DRC-OTP-0150-0092–DRC-OTP-0150-0098).

⁷⁵ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁷⁶ ICC-01/04-01/06-1567-Conf-Exp-AnxE2 (ERN: DRC-OTP-0155-0089–DRC-OTP-0155-0104); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁷⁷ ICC-01/04-01/06-2111-Conf-Exp-AnxA, page 2 of the table, referring to *Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de procédure et de preuve* (ICC-01/04-01/07-902), 7 April 2009, ICC-01/04-01/07-1036-Conf-Exp.

⁷⁸ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraphs 51 and 52.

the case; and they cause no identifiable prejudice to the rights of the accused. In accordance with Regulation 42 of the Regulations, the redactions are to be maintained as authorized by Trial Chamber II in its last decision.

43. [REDACTED].⁷⁹ [REDACTED].⁸⁰

5. Witness DRC-OTP-WWWW-0161

44. The prosecution no longer seeks authorization for non-disclosure of any information contained in the 15 page French witness statement.⁸¹

45. The prosecution informs the Chamber that the redactions previously pending before Trial Chamber I in the Lubanga case were pursued before Trial Chamber II before the prosecution submitted its update of 9 September 2009.⁸²

6. Witness DRC-OTP-WWWW-0166

46. The prosecution seeks redactions to the 24 page French witness statement provided by Witness DRC-OTP-WWWW-0166.⁸³ At this stage, it only seeks authorization for non-disclosure of the name of an NGO ([REDACTED]) that continues to be a prosecution source under Rule 81(2) of the Rules in paragraphs 22, 69 and 73 of the statement.⁸⁴

47. Trial Chamber II authorized redactions to this document in a decision of 25 March 2009.⁸⁵ It was also subject of an oral decision of 24 September 2009 and Trial Chamber II's decision of 22 October 2009, in which Trial Chamber II

⁷⁹ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 3.

⁸⁰ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 3.

⁸¹ ICC-01/04-01/06-1567-Conf-Exp-AnxF1 (ERN: DRC-OTP-0164-0488-DRC-OTP-0164-0502); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁸² Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009.

⁸³ ICC-01/04-01/06-1567-Conf-Exp-AnxG1 (ERN: DRC-OTP-1007-0002-DRC-OTP-1007-0025).

⁸⁴ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁸⁵ ICC-01/04-01/06-2111-Conf-Exp-AnxA page 3 of the table, referring to ICC-01/04-01/07-987-Conf-Exp.

authorized the lifting of certain redactions and confirmed the non-disclosure of the prosecution's source as set out above.⁸⁶

48. The current redaction proposals are limited; they are irrelevant to the live issues in the case; and they do not affect the intelligibility or usability of the Rule 77 information in this document. As they will not cause prejudice to the accused, in accordance with Regulation 42 of the Regulations, the Chamber does not seek to disturb the redactions as set out above and authorized by Trial Chamber II.

7. Witness DRC-OTP-WWWW-0172

49. The document relating Witness DRC-OTP-0172 is a 27 page French interview transcript.⁸⁷ The prosecution indicates that authorization for non-disclosure of the name of the interpreter is no longer requested.⁸⁸ The Chamber notes that in its decision of 10 February 2009 dealing with this document, Trial Chamber II had authorized the redaction of the name of the interpreters only on a temporary basis until 30 days before the trial.⁸⁹

8. Witness DRC-OTP-WWWW-0233

50. The prosecution no longer seeks authorization for non-disclosure of any information in the 27 page statement of Witness DRC-OTP-WWWW-0233 (recorded in French).⁹⁰

51. Trial Chamber II authorized non-disclosure of information contained in this document on 25 March 2009.⁹¹ However, in later decisions, it ordered the

⁸⁶ Transcript of hearing on 24 September 2009, ICC-0104-01/07-T-69-CONF-EXP; ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraphs 10, 12 and 46.

⁸⁷ ICC-01/04-01/06-1567-Conf-Exp-AnxH1 (ERN: DRC-OTP-0171-0280-DRC-OTP-0171-0306).

⁸⁸ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁸⁹ ICC-01/04-01/07-888-Conf-Exp, paragraph 28.

⁹⁰ ICC-01/04-01/06-1567-Conf-Exp-AnxI1 (ERN: DRC-OTP-1007-0061-DRC-OTP-1007-0061); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 2 of the table.

⁹¹ ICC-01/04-01/07-987-Conf-Exp.

lifting of redactions it had previously authorized.⁹²

9. Witness DRC-OTP-WWWW-0249

52. The documents relating to Witness DRC-OTP-WWWW-0249 are the 10 page original witness statement and the French translation thereof.⁹³ The prosecution no longer seeks to maintain any redactions.⁹⁴

53. [REDACTED].⁹⁵ [REDACTED].⁹⁶ [REDACTED].⁹⁷ [REDACTED].⁹⁸

54. In the Lubanga case, the last request of the prosecution only related to the non-disclosure of the interview location [REDACTED],⁹⁹ which it no longer seeks.

10. Witness DRC-OTP-WWWW-0250

55. The prosecution has requested redactions to 8 documents relating to Witness DRC-OTP-WWWW-0250.¹⁰⁰

56. The first 7 documents are a 37 page interview transcript,¹⁰¹ a 28 page interview transcript,¹⁰² a 36 page interview transcript,¹⁰³ a 35 page interview transcript,¹⁰⁴ another 35 page interview transcript,¹⁰⁵ a 33 page interview

⁹² ICC-01/04-01/06-2182-Conf-Exp-AnxA, pages 2 and 3, ICC-01/04-01/06-2182-Conf-Exp-AnxB, page 5, referring to an oral decision of 24 September 2009 (ICC-01/04-01/07-T-69-CONF-EXP), ICC-01/04-01/07-1515-Corr of 9 October 2009, and ICC-01/04-01/07-1551-Conf-Exp of 22 October 2009.

⁹³ ICC-01/04-01/06-1567-Conf-Exp-AnxJ1 (ERN: DRC-OTP-1004-0115-DRC-OTP-1004-0124); ICC-01/04-01/06-1567-Conf-Exp-AnxJ2 (ERN: DRC-OTP-1015-0833-DRC-OTP-0843).

⁹⁴ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 3 of the table.

⁹⁵ ICC-01/04-01/06-2111-Conf-Exp-AnxA, page 4 of the table, referring to ICC-01/04-01/07-987-Conf-Exp.

⁹⁶ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-Conf-Exp-Red, paragraph 18.

⁹⁷ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnotes 4 and 5.

⁹⁸ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnotes 4 and 5.

⁹⁹ ICC-01/04-01/06-2182-Conf-Exp-AnxB, page 6 of the table.

¹⁰⁰ ICC-01/04-01/06-1567-Conf-Exp, paragraph 23.

¹⁰¹ ICC-01/04-01/06-1567-Conf-Exp-AnxK1 (ERN: DRC-OTP-0177-0262-DRC-OTP-0177-0298).

¹⁰² ICC-01/04-01/06-1567-Conf-Exp-AnxK2 (ERN: DRC-OTP-0177-0299-DRC-OTP-0177-0326).

¹⁰³ ICC-01/04-01/06-1567-Conf-Exp-AnxK3 (ERN: DRC-OTP-0177-0327-DRC-OTP-0177-0362).

¹⁰⁴ ICC-01/04-01/06-1567-Conf-Exp-AnxK4 (ERN: DRC-OTP-0177-0363-DRC-OTP-0177-0397).

¹⁰⁵ ICC-01/04-01/06-1567-Conf-Exp-AnxK5 (ERN: DRC-OTP-0177-0398-0432).

transcript,¹⁰⁶ and a 35 page interview transcript.¹⁰⁷ For each of these documents, the prosecution no longer seeks authorization for non-disclosure of any information.¹⁰⁸ Authorization for non-disclosure of certain information had originally been granted by Trial Chamber II in a decision of 25 March 2009,¹⁰⁹ but, similarly, this is no longer sought by the prosecution.

57. For this witness, the prosecution now only seeks authorization not to disclose the name of the witness's child ([REDACTED]) and the witness's place of residence ([REDACTED]) on page 1 of the 24 page witness statement.¹¹⁰ This redaction was initially authorized by Trial Chamber II in its decision of 25 March 2009,¹¹¹ and has now been confirmed in its decision of 22 October 2009.¹¹²

58. The requested redactions are very limited; they do not affect the intelligibility and usability of the document; and they do not relate to information that is relevant to the case.

59. As the Chamber is satisfied that the non-disclosure sought by the prosecution does not cause prejudice to the accused in the Lubanga case, and in accordance with Regulation 42 of the Regulations, it does not seek to disturb the protective measures as ordered by Trial Chamber II.

11. Witness DRC-OTP-WWWW-0258

60. The prosecution no longer seeks authorization for non-disclosure of information in the four documents relating to Witness DRC-OTP-WWWW-

¹⁰⁶ ICC-01/04-01/06-1567-Conf-Exp-AnxK6 (ERN: DRC-OTP-0177-0433–DRC-OTP-0177-04650).

¹⁰⁷ ICC-01/04-01/06-1567-Conf-Exp-AnxK7 (ERN: DRC-OTP-0177-0466–DRC-OTP-0177-0500).

¹⁰⁸ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 3 of the table.

¹⁰⁹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, referring to ICC-01/04-01/07-987-Conf-Exp.

¹¹⁰ ICC-01/04-01/06-1567-Conf-Exp-AnxK8 (ERN: DRC-OTP-1013-0002–DRC-OTP-1013-0025); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 3 of the table.

¹¹¹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, referring to ICC-01/04-01/07-987-Conf-Exp.

¹¹² ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraph 19.

0258.¹¹³ Trial Chamber II had initially granted the request for non-disclosure of information pursuant to Rule 81(2) of the Rules in these documents in its decision of 25 March 2009,¹¹⁴ but non-disclosure is said no longer to be necessary.

12. Witness DRC-OTP-WWWW-0268

61. The prosecution seeks authorization to redact the following names and whereabouts of Witness DRC-OTP-WWWW-0268's family members in his 18-page French statement:¹¹⁵ [REDACTED] and [REDACTED] on page 1; [REDACTED] in paragraphs 10, 18, 41 and 111; [REDACTED] in paragraph 40; [REDACTED] and [REDACTED] in paragraph 111.¹¹⁶
62. Authorization for non-disclosure was first granted by Trial Chamber II in the Katanga case in its decision of 25 March 2009 and confirmed in its decision of 22 October 2009.¹¹⁷ It also dealt with this witness during the hearing of 24 September 2009.¹¹⁸
63. The redactions do not concern any information relevant to issues in the case; they do not diminish the Rule 77 value of the document; and they do not render the document unintelligible or unusable. The Chamber is satisfied that the requested redactions do not cause an identifiable prejudice to the accused and so the Chamber does not seek to disturb the protective measures as ordered by Trial Chamber II.

¹¹³ ICC-01/04-01/06-1567-Conf-Exp-AnxL1 (ERN: DRC-OTP-0173-0644–DRC-OTP-0173-0682); ICC-01/04-01/06-1567-Conf-Exp-AnxL2 (ERN: DRC-OTP-017-0683–DRC-OTP-0173-0717); ICC-01/04-01/06-1567-Conf-Exp-AnxL3 (ERN: DRC-OTP-0173-0813–DRC-OTP-0173-0845); ICC-01/04-01/06-1567-Conf-Exp-AnxL4 (ERN: DRC-OTP-0173-0864–DRC-OTP-0173-0872); ICC-01/04-01/06-2182-Conf-Exp-AnxA, pages 3 and 4 of the table.

¹¹⁴ ICC-01/04-01/06-2182-Conf-Exp-AnxA, pages 3 and 4 referring to ICC-01/04-01/07-987Conf-Exp.

¹¹⁵ ICC-01/04-01/06-1567-Conf-Exp-AnxM1 (ERN: DRC-OTP-1007-0095–DRC-OTP-1007-0112).

¹¹⁶ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 4 of the table.

¹¹⁷ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 4 of the table referring to ICC-01/04-01/07-987-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp.

¹¹⁸ Transcript of hearing on 24 September 2009, ICC-01/04-01/07-T-69-CONF-EXP.

13. Witness DRC-OTP-WWWW-0279

64. The prosecution no longer requests authorisation for non-disclosure of information in the 10 page statement taken from Witness DRC-OTP-WWWW-0279.¹¹⁹

65. [REDACTED].¹²⁰ [REDACTED].¹²¹

14. Witness DRC-OTP-WWWW-0280

66. The prosecution submitted 2 statements from this witness in separate filings with requests for redactions. The prosecution seeks to redact the following references to family members and their whereabouts in Witness DRC-OTP-WWWW-0280's 17-page statement: [REDACTED] and [REDACTED] on page 1; [REDACTED] in paragraph 4; [REDACTED] in paragraph 8; and [REDACTED] in paragraphs 8 and 88.¹²²

67. The prosecution requests authorization to redact the following references to family members in Witness 280's second statement, comprising 19 pages: [REDACTED] and [REDACTED] on page 1; and [REDACTED] in paragraph 4.¹²³

68. The prosecution submits that Trial Chamber II, in the Katanga case, first authorized non-disclosure of information contained in this statement and

¹¹⁹ ICC-01/04-01/06-1567-Conf-Exp-AnxN1 (ERN: DRC-OTP-1007-1077–DRC-OTP-1007-1077); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 4 of the table.

¹²⁰ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 4 of the table referring to ICC-01/04-01/07-987-Conf-Exp; ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraph 21.

¹²¹ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 6.

¹²² ICC-01/04-10/06-1567-Conf-Exp-AnxO (ERN: DRC-OTP-1007-1089–DRC-OTP-1007-1086); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 4 of the table.

¹²³ Attachment A to Prosecution's Request for Non-Disclosure of Information in the Statements of Five Individuals providing rule 77 information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664-Conf-Exp-AnxA, paragraphs 6-9; ICC-01/04-01/06-1664-Conf-Exp-Anx1; ICC-01/04-01/06-1664-Conf-Anx2 (ERN: DRC-OTP-1020-0461–DRC-OTP-1020-0479); ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 6 of the table.

dealt with this witness in numerous decisions.¹²⁴ In its decision of 22 October 2009, Trial Chamber II granted the request to lift some of the previously ordered redactions, but at the same time confirmed that certain redactions should be maintained for reasons set out by the prosecution.¹²⁵

69. The Chamber has satisfied itself that the proposed redactions are limited in their scope; they do not render the document unusable or unintelligible; and they are irrelevant to the known issues in the Lubanga case. Given that there is no identifiable prejudice to the accused, in accordance with Regulation 42 of the Regulations of the Court, the Chamber does not seek to disturb the protective measures ordered by Trial Chamber II.

15. Witness DRC-OTP-WWWW-0287

70. The prosecution no longer seeks authorization to redact information in the 14 page witness statement taken from Witness DRC-OTP-WWWW-0287.¹²⁶

71. [REDACTED].¹²⁷ [REDACTED].¹²⁸

16. Witness DRC-OTP-WWWW-0238

72. The prosecution now only seeks the following limited redactions in the 122-page interview transcript provided by Witness DRC-OTP-WWWW-0238:¹²⁹

¹²⁴ ICC-01/04-01/06-2182-Conf-Exp-AnxA, pages 4-6 of the table referring to ICC-01/04-01/07-987-Conf-Exp; Oral decision of 3 February 2009 (ICC-01/04-01/07-T-56-FRA); ICC-01/04-01/07-888-Conf-Exp; and ICC-01/04-01/07-1551-Conf-Exp.

¹²⁵ ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraph 22

¹²⁶ ICC-01/04-10/06-1567-Conf-Exp-AnxP (ERN: DRC-OTP-1013-0205–DRC-OTP-1013-0218); ICC-01/04-01/06-2182-Conf-Exp-AnxA.

¹²⁷ ICC-01/04-01/07-987-Conf-Exp.

¹²⁸ Annex A to Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 21 October 2009, footnote 8.

¹²⁹ Redacted Annex 4 to Prosecution's Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664-Conf-Anx4; Unredacted Annex 3 to Prosecution's Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664-Conf-Exp-Anx3; ERN: DRC-OTP-0173-0265–DRC-OTP-0173-0386. Given that the table contained in ICC-01/04-01/06-2182-Conf-Exp-AnxA references several documents on pages 5 and 6, it seems

[REDACTED] and [REDACTED] in line 249; [REDACTED] in line 405; [REDACTED] in line 407; [REDACTED] in lines 539 and 540; [REDACTED] in line 545; [REDACTED] in line 548; [REDACTED] in lines 550-551; [REDACTED] in line 552; [REDACTED] in line 556 ; [REDACTED] in line 557; [REDACTED] in line 568-569 ; [REDACTED] in lines 571, 572; [REDACTED] in line 573; [REDACTED] in line 593 ; [REDACTED] in line 627 ; [REDACTED] in line 871; and [REDACTED] in lines 1184-1187.

73. Trial Chamber II initially authorized protective measures for this witness in its decision of 25 March 2009.¹³⁰ It dealt with this witness in the hearing of 24 September 2009 in the Katanga case,¹³¹ and confirmed the redactions as set out above in its decision of 22 October 2009.¹³²

74. The Chamber is satisfied that the proposed redactions are limited; they do not affect the usability or intelligibility of the document; and they only affect information that is irrelevant to the case. They do not cause any identifiable prejudice to the rights of the accused. In accordance with Regulation 42 of the Regulations of the Court, the Chamber does not seek to disturb the protective measures authorized by Trial Chamber II.

17. Witness DRC-OTP-WWWW-0312

75. Witness DRC-OTP-WWWW-0312, who has consented to disclosure of her identity,¹³³ has provided a 14 page signed witness statement for which the prosecution seeks limited redactions to names of family members ([REDACTED] on page 1) and a continuing prosecution source ([REDACTED]

that the transcript was divided into separate sections for disclosure in the Katanga case. In the Lubanga case, the transcript submitted in the Lubanga case was submitted as one comprehensive document.

¹³⁰ ICC-01/04-01/06-2182-Conf-Exp-AnxA, referring to ICC-01/04-01/07-987-Conf-Exp.

¹³¹ Transcript of hearing on 24 September 2009, ICC-10/04-01/07-T-69-CONF-EXP.

¹³² ICC-01/04-01/07-1551-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp-Red, paragraph 17.

¹³³ Public Prosecution's Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664, paragraph 15.

in paragraph 53).¹³⁴

76. The prosecution has indicated that Trial Chamber II has dealt with protective measures for this witness on numerous occasions in the Katanga case.¹³⁵

77. The Chamber is satisfied that the redactions are very limited; they not affect the intelligibility and usability of the document; they are irrelevant to the known issues of the Lubanga case; and thus they do not cause any identifiable prejudice to the rights of the accused. In accordance with Regulation 42 of the Regulations of the Court, it does not seek to disturb the protective measures ordered by Trial Chamber II.

18. Witness DRC-OTP-WWWW-0102/ DRC-OTP-WWWW-0122

78. The prosecution seeks to withdraw the pending request for non-disclosure of the identity of this witness as it is satisfied that his security is adequately protected and that his identity can be disclosed in the Lubanga case.¹³⁶ It maintains its request to redact the following names of family members and their residence based on Rule 81(4) of the Rules in the 16-page witness statement:¹³⁷ [REDACTED] on page 1; [REDACTED] in paragraph 10; and [REDACTED] in paragraph 20.¹³⁸

79. The prosecution has indicated that Trial Chamber II has issued several decisions dealing with protective measures for this witness on in the Katanga case.¹³⁹

¹³⁴ Public Prosecution's Request for Non-Disclosure of Information in the Statements of Five Individuals providing Rule 77 Information and Request for an Order on Sufficiency of Admissions Regarding Undisputed Facts, 4 February 2009, ICC-01/04-01/06-1664, paragraph 20.

¹³⁵ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 6 of the table, referring to an oral decision of 3 February 2009 (ICC-01/04-01/07-T-56-FRA), ICC-01/04-01/07-888-Conf-Exp and ICC-01/04-01/07-1551-Conf-Exp.

¹³⁶ ICC-01/04-01/06-2182-Conf-Exp and ICC-01/04-01/06-2182-Red, paragraphs 6 and 7.

¹³⁷ ICC-01/04-01/06-1664-Conf-Exp-Anx7; ICC-01/04-01/06-1664-Conf-Anx8 (ERN: DRC-OTP-0132-0044-DRC-OTP-0132-0059).

¹³⁸ ICC-01/04-01/06-2182-Conf-Exp and ICC-01/04-01/06-2182-Red, paragraph 7.

¹³⁹ ICC-01/04-01/06-2182-Conf-Exp-AnxA, page 5 of the table, referring to ICC-01/04-01/07-1145-Conf-Exp, an oral decision of 24 September 2009 (ICC-01/04-01/07-T-69-FRA) and ICC-01/04-01/07-1551-Conf-Exp.

80. The Chamber is satisfied that the redactions are very limited; they do not affect the intelligibility and usability of the document; they are irrelevant to the known issues of the Lubanga case; and thus they do not cause any identifiable prejudice to the rights of the accused. In accordance with Regulation 42 of the Regulations of the Court, it does not seek to disturb the protective measures ordered by Trial Chamber II.

81. On 11 November 2009, the prosecution clarified that the prosecution also seeks authorization to lift previously authorized redactions to the identity of Witness 122 in an investigator's note.¹⁴⁰ The Chamber had authorized redactions to the identity of Witness 122 in its decision of 9 April 2009.¹⁴¹ Witness 102 and Witness 122 are the same person (see above) and, accordingly, the prosecution also seeks to disclose the identity of this individual in the Investigator's Note, while maintaining any authorized redactions to other persons.¹⁴²

82. Given that his identity will be disclosed in the first document and that the prosecution is satisfied that this person is not at risk if his identity is disclosed to the defence in the Lubanga case, the Chamber grants the request to lift the previously ordered redactions in the second document, as requested.

Conclusion

83. Based on the reasoning set out above the Chamber hereby:

(a) Authorises in their entirety the redactions requested in relation to
Witnesses DRC-OTP-WWWW-0001, DRC-OTP-WWWW-0028,

¹⁴⁰ ICC-01/04-01/06-1545-Conf-AnxVI, (ERN: DRC-OTP-0150-0017-DRC-OTP-0150-0020); Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 11 November 2009.

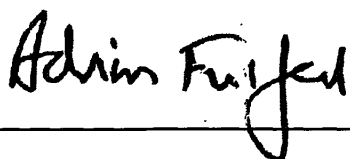
¹⁴¹ ICC-01/04-01/06-1814-Conf (corrected and redacted versions: ICC-0104-01/06-1924) and ICC-01/04-01/06-1814-Conf-Exp-Anx, pages 36-37.

¹⁴² Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 11 November 2009.

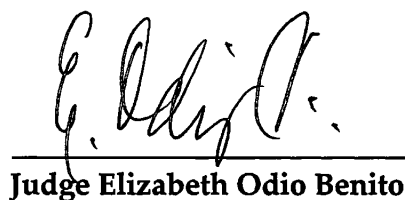
DRC-OTP-WWWW-0132, DRC-OTP-WWWW-0149, DRC-OTP-WWWW-0166, DRC-OTP-WWWW-0250, DRC-OTP-WWWW-0268, DRC-OTP-WWWW-0280, DRC-OTP-WWWW-0238, DRC-OTP-WWWW-0312, DRC-OTP-WWWW-0102/DRC-OTP-WWWW-0122.

- (b) Notes that redactions are no longer requested in relation to Witnesses DRC-OTP-WWWW-0161; DRC-OTP-WWWW-0172; DRC-OTP-WWWW-0233; DRC-OTP-WWWW-0249; DRC-OTP-WWWW-0258; DRC-OTP-WWWW-0279; DRC-OTP-WWWW-0287.
- (c) Orders the re-disclosure of all the documents addressed in this decision to the Lubanga defence, either in non-redacted form or with the revised redactions, as appropriate.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 12 March 2010

At The Hague, The Netherlands