

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/06  
Date: 4 February 2011

**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 disclosure of information from victims' application forms  
(a/0225/06, a/0229/06 and a/0270/07)**

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

**The Office of the Prosecutor**

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**Counsel for the Defence**

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Mr Jean Marie Biju-Duval

**Legal Representatives of the Victims**

Mr Luc Walley  
Mr Franck Mulenda  
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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
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**The Office of Public Counsel for the  
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**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 I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* ("Lubanga case"), issues the following Decision on the disclosure of information from victims' application forms (a/0225/06, a/0229/06 and a/0270/07):

## **I. Background**

1. Three participating victims, a/0225/06, a/0229/06 and a/0270/07, have given evidence in this case.
2. This Decision concerns the extent of the entitlement of the defence to confidential information from within the application forms from victims to participate in these proceedings. The central issue is whether any of the currently redacted information will assist the defence preparation on any of the live issues in this case. It is to be noted immediately that the issue of the true identity of some of the witnesses called by the Office of the Prosecutor ("prosecution"), as well as the participating victims, is one of the central concerns of the accused in developing his defence to the charges he faces.
3. The event that triggered this application from the defence was a question that Mr Keta sought leave to put at the end of the evidence of defence witness DRC-D01-WWWW-0032 ("defence witness 32"), after final questions from the defence had concluded on 29 April 2010.<sup>1</sup> This witness alleges that although he is the "real" victim (having filled out the relevant forms), he has been supplanted by participating victim a/0225/06. Having heard submissions, Mr Keta was given leave to ask him whether or not he knew [REDACTED], who had assisted the witness in completing the application form to participate as a victim.<sup>2</sup> The Chamber had earlier granted leave to redact entries of this kind (*i.e.* the names of individuals assisting the applicants) – along with a

<sup>1</sup> Transcript of hearing on 29 April 2010, ICC-01/04-01/06-T-276-CONF-ENG ET, page 17, line 17 to page 19, line 6.

<sup>2</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 17, line 17 to page 22, line 20.

significant body of other information – in all of the disclosed application forms.<sup>3</sup> The Chamber applied the principle of proportionality approved by the Appeals Chamber, namely, that protective measures should (1) restrict the rights of the suspect or accused only as far as necessary, and (2) be put in place where they are the only sufficient and feasible measure.<sup>4</sup> It noted that this would not, at that stage, restrict the rights of the accused, or create an irreversible result that could not be corrected later, if necessary, in order to guarantee the fairness of proceedings.<sup>5</sup>

4. The Chamber, whilst acknowledging the presumption that disclosure will be effected in full, must weigh the security concerns of the individuals and organisations referred to in the forms and the right of the accused to a fair trial, including his right, first, to exculpatory evidence under Article 67(2) of the Rome Statute (“Statute”) and, second, to inspect material in the possession or control of the prosecution that is relevant for preparation of the defence under Rule 77 of the Rules of Procedure and Evidence (“Rules”). Since authorising the redactions as set out above, the emerging evidence has led to a re-evaluation of the relevance of a number of issues in the trial. In particular, the true identities of a number of witnesses called by the prosecution, the defence and some participating victims have been extensively examined, and there is evidence before the Chamber that some false identities may have been provided to the Court.<sup>6</sup> In addition, there is evidence which suggests that witnesses who have claimed they are former child soldiers, or those who

<sup>3</sup> Decision inviting the parties’ observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07 a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08, 6 May 2008, ICC-01/04-01/06-1308, paragraphs 27 and 28.

<sup>4</sup> ICC-01/04-01/06-1308, paragraph 25.

<sup>5</sup> ICC-01/04-01/06-1308, paragraph 26.

<sup>6</sup> Decision on Intermediaries, 12 May 2010, ICC-01/04-01/06-2434-Conf-Exp, paragraphs 21 – 22, 27, 35, 36 and 39. This decision was issued as confidential *ex parte* prosecution and VWU only and a corrigendum was issued on 27 May 2010, ICC-01/04-01/06-2434-Conf-Exp-Corr. A confidential redacted version was issued on 20 May 2010, ICC-01/04-01/06-2434-Conf-Red and a corrigendum was issued on 27 May 2010, ICC-01/04-01/06-2434-Conf-Red-Corr. A public redacted version was issued on 31 May 2010, ICC-01/04-01/06-2434-Red2.

claim to be their relatives, have not told the truth.<sup>7</sup> As a result, information that hitherto was considered irrelevant may now have become disclosable under Rule 77 of the Rules, because it is material to the preparation of the defence if it is in possession of the prosecution. The Chamber notes, however, that the information currently under consideration is in the hands of the legal representative, Mr Keta, and the Victims Participation and Reparations Section ("VPRS"), and it is not with the prosecution. However, to the extent that elements of this material have been used as the basis for questioning by the legal representative in court or may assist in determining the true identities of certain individuals who are relevant to this trial – whether as victims, witnesses or otherwise – the Chamber will review the redactions previously granted.

5. Returning to the issue of [REDACTED], Mr Keta has held the non-redacted application form at all material times, and the Chamber has previously noted that this "undoubtedly raises an interesting issue as to whether or not the original redactions imposed vis-à-vis the defence are appropriate, if at a time which suits the representatives of victims, material that has hitherto been redacted is suddenly revealed".<sup>8</sup> The Chamber additionally notes that the fact that an individual assists participating victims does not mean that his or her name will be automatically redacted.
6. The defence, on 29 April 2010, indicated it intended to formulate an application for disclosure,<sup>9</sup> and later during the hearing, Mr Keta sought to redact the name of the member of his team working in the Democratic Republic of the Congo ("DRC") (a "resource" person) from the public transcript. The Chamber granted the application on a temporary basis, pending the resolution of the present issue, *viz.* the extent to which the

<sup>7</sup> ICC-01/04-01/06-2434-Red2, paragraphs 7 – 39.

<sup>8</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 23, lines 2 – 7.

<sup>9</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 22, line 21 to page 23, line 1.

relevant victims' application forms are to remain redacted, in whole or in part. The Chamber observed that the mere assertion that someone is in danger "[...] of itself does not necessarily lead to a proper conclusion that the individual is, in fact, going to be in danger – just because counsel claims it".<sup>10</sup>

## II. Submissions

7. On 3 May 2010, the defence advanced their submissions on additional disclosure of material in the victims' application forms. The request was limited to the documents relevant to victims a/0225/06, a/0229/06 and a/0270/07, each of whom is a participating victim who has given evidence as a witness during the trial (DRC-V02-WWWW-0002, DRC-V02-WWWW-0003, DRC-VO2-WWWW-0001 respectively). It was indicated that a broader request would be advanced in due course.<sup>11</sup>
8. Counsel observed that Mr Keta's question, set out above, revealed that the individuals who had assisted the victims in filling out the forms may be able to throw light on the identity of the person making the application, and it was stressed that the identity of the participating victims now "lies at the heart of the matter". In those circumstances, the defence argued that it is necessary to obtain all the information relevant to the individuals who helped the victim applicants with these forms.<sup>12</sup>
9. Put generally, it was suggested, against the backdrop of doubts as to the identities of some of the participating victims, that the additional information sought would help as regards some of the questions put to defence witnesses,

<sup>10</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 31, line 5 to page 32, line 24.

<sup>11</sup> Transcript of hearing on 3 May 2010, ICC-01/04-01/06-T-277-CONF-ENG ET, page 1, line 15 to page 2, line 3. The Chamber asked for clarification on the exact document referred to by the defence in their oral submissions. The defence specified that from page 7 onwards of the English transcript the defence was referring to Annex 2 relating to the supplementary information relating to victim a/0229/06 and not, as it appears, to Annex 3 to filing 2224. (Email communication from the defence to the Trial Chamber through the Legal Advisor to the Trial Division on 6 July 2010).

<sup>12</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 2, lines 4 – 24.

which may in turn assist with further steps that should be taken by the defence, including by way of “cross-checking”.<sup>13</sup>

10. The defence focussed its disclosure requests on the parts of the forms where the victims referred to i) the individuals or organisations they had spoken to about their security concerns; ii) the name of the individual who, in each instance, witnessed the signature on the form; iii) the names of those from whom relevant information was received; iv) the names of those who assisted in filling out the form; v) other victims referred to in the application forms; and vi) in one instance, the name of an individual a victim tried to assist.<sup>14</sup> The defence observed that this information could only be inferred, as they did not know precisely what had been redacted.<sup>15</sup>

11. The Registry has helpfully analysed the relevant forms, and identified four categories of information within them that has not been disclosed to the defence. First, certain intermediaries. The relevant organisations are [REDACTED], and the principal individuals are [REDACTED]. Second, certain participating victims. Third, an individual whose name is mentioned, but who otherwise is unknown: [REDACTED] (see above). Fourth, certain other miscellaneous information in the documents.<sup>16</sup>

12. The prosecution submitted that it does not oppose the request, absent any adverse security implications. However, it seeks greater particularity as to the detail of the defence request.<sup>17</sup>

<sup>13</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 4, line 11 to page 5, line 5.

<sup>14</sup> First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 14 April 2008, ICC-01/04-01/06-1275-Conf-Exp-Anx81, page 10.

<sup>15</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 5, line 6 to page 8, line 8.

<sup>16</sup> Observations of the Registry on the further disclosure of information from the victims' applications a/0225/06, a/0229/06 and a/0270/07, 5 May 2010, ICC-01/04-01/06-2420-Conf-Exp.

<sup>17</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 9, lines 13 – 24.

13. Principal Counsel for the Office of Public Counsel for Victims (“OPCV”) submitted that elements of the information that is sought could endanger the security not only of some of the victims who have been identified but also those currently participating on an anonymous basis. Furthermore, parts of the form may reveal the identity of other victims currently before Trial Chamber II or who feature in the DRC situation (*viz.* section A of the application form and section H, question 3 in page 13 of the form), and it was suggested that the views of the relevant legal representatives should be sought prior to any order for disclosure. It was argued that there are concerns as to the security of other individuals if there is disclosure of the information set out in pages 15 and 17 of the standard application forms. As regards victim a/0270/07, principal counsel submitted that there are similar security concerns as to disclosure of certain information on page 6, as this potentially relates to other victims.<sup>18</sup>

14. Principal Counsel was instructed to revert to the Chamber within 24 hours on the security implications for victims if redaction orders are reversed (by 12.00 4 May 2010).<sup>19</sup>

15. Principal Counsel and the legal representatives of victims were instructed to consider seeking the consent of the individuals concerned prior to communication of their identities to the defence.<sup>20</sup>

16. Mr Keta resisted disclosure until he has the consent of the victims affected. He argued that “in principle, the permanent redactions should remain because of reasons of security, notably, names of NGOs, people in charge”, but when a

<sup>18</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 10, line 20 to page 13, line 11.

<sup>19</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 12, lines 2 – 3.

<sup>20</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 13, line 13 to page 14, line 14.



question of procedure comes to light, “counsel has the right to determine what should be done and put the question to the Chamber”.<sup>21</sup>

17. The defence, in final submissions, suggested that the redacted information is “necessary for us to be able to shed light as to what really happened”. Counsel indicated that this material may assist on the true identity of relevant individuals and other germane issues.<sup>22</sup>

18. Mr Keta, via email on 4 May 2010, maintained his objection to disclosure of the names of the identified intermediaries and NGOs in the application forms from his clients, although he agreed to disclosure of the names of the individuals who witnessed the signatures of victims a/0225/06 and a/0229/06.<sup>23</sup>

19. The OPCV (in submissions on behalf of all victims’ legal representatives) submitted observations via email on 4 May 2010.<sup>24</sup> It was argued that disclosure to the defence should be limited in two ways, in that it should only include i) the participation forms for victims a/0225/06 and a/0229/06, and ii) the names already disclosed by their legal representative. It was submitted that, pursuant to Rule 90(4) of the Rules, the interests of these two victims ought not to adversely impact on the position of other victims participating in the proceedings.

20. It was submitted that redactions to identifying information relating to certain NGOs should be maintained. The OPCV suggested that even if the Chamber decides to order disclosure, the views of any affected individuals should be sought in advance. The OPCV noted that the majority of those concerned

<sup>21</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 14, line 15 to page 15, line 25.

<sup>22</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 16, line 2 to page 17, line 19.

<sup>23</sup> Email communication from Mr Keta to the Trial Chamber through the Legal Advisor to the Trial Division on 4 May 2010.

<sup>24</sup> Email communication from the OPCV to the Trial Chamber through the Legal Advisor to the Trial Division on 4 May 2010.

reside in Ituri, where the security situation remains volatile. The lack of any available protective measures, save for anonymity, is highlighted.

21. The OPCV suggests that lifting all the redactions sought by the defence may endanger the security of other victims who are participating anonymously in the proceedings.

22. The OPCV contended that if the defence request is refused, the intelligibility and usability of the relevant documents will not be affected, and there will be no adverse impact on the rights of the accused. The OPCV referred to various decisions of the Chamber in which similar redactions have been authorised and to the criteria established by the Appeals Chamber as regards redactions that should be implemented for individuals who are at risk on account of activities of the Court.

23. The defence replied to the observations of the prosecution and the victims by email on 4 May 2010.<sup>25</sup> As regards disclosure of identities, it was suggested that the need for these redactions should be examined individually, taking into consideration the situation of those concerned, the position locally and the developments in the case. The defence suggested that insufficient justification had been provided for the proposed redactions. As to the NGOs, it is argued that these organisations are well-known. In particular, the suggested extensive role of [REDACTED] in assisting victims is analysed. [REDACTED].<sup>26</sup>

24. The Registry filed observations on 5 May 2010.<sup>27</sup> It generally opposes disclosure of the names of intermediaries and other victims. As regards the

<sup>25</sup> Email communication from the defence to the Trial Chamber through the Legal Advisor to the Trial Division on 4 May 2010.

<sup>26</sup> [REDACTED]

<sup>27</sup> Observations of the Registry on the further disclosure of information from the victims' applications a/0225/06, a/0229/06 and a/0270/07, 5 May 2010, ICC-01/04-01/06-2420-Conf-Exp.

organizations and individuals acting as intermediaries, it is suggested they are also involved with a number of other applicants and victims (including in other cases); they have considerable contact with the VPRS; and they play an important role in the field.<sup>28</sup> It is suggested that any disclosure will heighten the general security risks.<sup>29</sup>

25. As regards other victims identified in the applications of a/0225/06 and a/0229/06, the Registry notes that some of them are anonymous vis-à-vis the defence, and it is suggested that the identifying material should remain redacted (namely as regards victims a/0227/06, a/0124/08 and a/0224/08).<sup>30</sup> However, the Registry observed that the names of these three victims have already been referred to by defence witness DRC-D01-WWWW-0033 (“defence witness 33”), as well as by the prosecution during his testimony. Nonetheless, the Registry argues their identities should not be disclosed without first seeking the views of the legal representatives.<sup>31</sup>

26. The Registry additionally set out that there are redactions concerning an unknown individual, who witnessed the application of a/0225/06, is referred to in the application of a/0270/07, and who could be associated with one of the organisations working in the field. Since the name of this individual was disclosed by Mr Keta during his questioning in court, the Registry suggests that the redaction is now unnecessary.<sup>32</sup>

27. The Registry submitted that the redactions to the number of an electoral card and a reference to a “*document d’affection*” can be lifted, since the documents have been disclosed to the defence.<sup>33</sup> As regards the report submitted by [REDACTED], the Registry indicated that all the relevant information has

<sup>28</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraphs 4 and 6.

<sup>29</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraphs 13 – 17.

<sup>30</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraphs 7 – 9.

<sup>31</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 19.

<sup>32</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraphs 21 – 22.

<sup>33</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 23.

been disclosed to the defence, except for the elements relating to [REDACTED], which it is argued should not be revealed to the defence.<sup>34</sup>

28. The Registry further observed that although the names of two intermediaries [REDACTED] were mentioned by Mr Keta in court during private session, this should not lead the Registry to change its position and working methods as regards the disclosure of information, and in particular the Registry distinguishes between revelations made during questions and the information that is set out in an application form.<sup>35</sup>

29. The Registry urges the Chamber to consider alternative avenues to that of disclosure, and in any event it suggests that disclosure should only occur i) after consent has been obtained from the intermediaries; ii) restrictions have been established as to the use of the information; and iii) the defence has been forbidden from disclosing the names of the intermediaries, or their role vis-à-vis the Court, to others. Finally, the Registry anticipates that some protective measures may need to be put in place if disclosure is ordered by the Chamber.<sup>36</sup>

### **III. Relevant provisions**

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

#### **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

<sup>34</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 24.

<sup>35</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 27.

<sup>36</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraphs 32 – 33.

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 of the Rules**

##### **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 of the Rules**

##### **Restrictions on 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.

3. Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles. When the disclosure of such information may create a risk to the safety of the witness, the Court shall take measures to inform the witness in advance.

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 authorizing the non-disclosure of their identity prior to the commencement of the trial.

[...]

#### **Rule 84 of the Rules**

##### **Disclosure and additional evidence for trial**

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such

orders shall include strict time limits which shall be kept under review by the Trial Chamber.

**Rule 87 of the Rules**  
**Protective measures**

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

2. A motion or request under sub-rule 1 shall be governed by rule 134, provided that:

(a) Such a motion or request shall not be submitted *ex parte*;

(b) A request by a witness or by a victim or his or her legal representative, if any, shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;

(c) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, if any, in addition to the other party, each of whom shall have the opportunity to respond;

(d) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any witness or any victim or his or her legal representative, if any, who would be affected by such protective measure; and

(e) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conduct part of its proceedings in camera.

#### IV. Analysis and conclusions

##### *Victim a/0225/06 - Witness DRC-V02-WWWW-0002*

31. During a hearing, the Chamber was reminded that at page 13 of the form for victim a/0225/06,<sup>37</sup> he was asked about discussions with an individual or an organisation over his security concerns, once he had filled in the form. The defence requests disclosure of the relevant name, position and place of work of that individual or organisation.<sup>38</sup>

32. The victim mentions two NGOs he had contact with on the subject of his security concerns ([REDACTED]) but he does not elaborate on the issue.<sup>39</sup> As set out by the defence (email of 4 May 2010), the activities of [REDACTED] in relation to this trial have been extensively reported, and they are particularly well-known in [REDACTED] DRC. Moreover, as observed by the Registry,<sup>40</sup> Mr Keta [REDACTED], and the identity and role of this organisation is well-known. Providing the identity of these two NGOs in this context may well assist the defence in investigating the (true) identity of the victims and witnesses linked to this application, because it is potentially relevant for the defence to establish who assisted them in this process, and the influence or impact they may have had. Lifting these redactions will not materially increase the security risks to any relevant individual or organisation, given the extent of the information already known publicly. Accordingly, protective measures and prior consultation are otiose (although advance notice of this Decision should be provided to those concerned before it is implemented). In all the circumstances, the Chamber orders the communication of this information to the defence and the prosecution by the VPRS. In other words, to that extent, the redactions are to be removed.

<sup>37</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx11.

<sup>38</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 3, lines 6 – 17.

<sup>39</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx11, page 13 of the application.

<sup>40</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 6.

33. The defence also requests that redactions are lifted as regards the person who helped the applicant to fill in the application form at page 13. The identity of this individual, [REDACTED], has already been revealed in private sessions by Mr Keta and defence witness 33,<sup>41</sup> and lifting the redactions to his name in the relevant application forms will not increase the risk to him or the organisation where he works. Accordingly, protective measures at this stage and prior consultation are otiose (although advance notice of this Decision should be provided to those concerned before it is implemented). The Chamber is of the view that this information may well assist the defence in its attempt to establish the (true) identity of the witness. In all the circumstances, the Chamber orders the communication of this information to the defence and the prosecution by the VPRS. In other words, to that extent, the redactions are to be removed.

34. At page 15 of the application form, the name of the person who witnessed the signature has been redacted, and the defence makes a similar application in this regard.<sup>42</sup> Redactions concerning [REDACTED] are in place, and, as set out above, Mr Keta revealed his name in court.<sup>43</sup> In the circumstances, there is no reason now to withhold this information, and the Chamber orders the immediate removal of these redactions vis-à-vis the defence and the prosecution. This information is of potential use to the defence in order to establish the identity of the victim. There are no grounds for suspecting that material security risks will be created by this step.

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<sup>41</sup> ICC-01/04-01/06-2420-Conf-Exp, footnote 40.

<sup>42</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 3, lines 18 – 20.

<sup>43</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 21, lines 3 – 8.



35. Three documents appended to this application have been removed, and the defence (impliedly) raises the question as to whether they contain disclosable material.<sup>44</sup>

36. The victim has attached his birth certificate (*Acte de Naissance*), the electoral card of [REDACTED] and a document that appears to be [REDACTED] (see page 17 of the application form).<sup>45</sup> The victim is no longer anonymous, and therefore there seems to be no reason to maintain the redactions to his birth certificate. Similarly, [REDACTED] is known to the defence (see paragraph 38 below), and as observed by the Registry the information contained in these documents has already been disclosed to the defence.<sup>46</sup> Therefore, there is no reason to maintain the redactions. No grounds exist for suspecting that material security risks will be raised by communicating this information.

37. The name of the provider [REDACTED] has been redacted<sup>47</sup> from certain additional material which the defence requests,<sup>48</sup> which she appears to have transmitted to the VPRS. This individual, together with the [REDACTED], have provided extensive information to the general public on their work in relation to this case, and in the circumstances lifting the relevant redactions vis-à-vis the defence will not materially enhance the risks either for [REDACTED]. Accordingly, protective measures at this stage and prior consultation are otiose (although advance notice of this Decision should be provided to those concerned before it is implemented). Furthermore, this information may well assist the defence in its attempt to establish the identity of the relevant victim or victims, along with the circumstances in which

<sup>44</sup> ICC-01/04-01/06-T-277-CONF-FRA ET, page 3, lines 15 – 16. The English transcript states that there are four documents (ICC-01/04-01/06-T-277-CONF-ENG ET, page 3, lines 21 – 23), however this was identified as an error of translation in an email communication from the defence to the Trial Chamber through the Legal Advisor to the Trial Division on 7 July 2010.

<sup>45</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx11.

<sup>46</sup> ICC-01/04-01/06-2420-Conf-Exp, paragraph 23.

<sup>47</sup> Transmission to the parties and participants of the supplementary documents related to applications a/0225/06, a/0229/06 and a/0270/07, 8 January 2010, ICC-01/04-01/06-2224-Conf-Anx1, page 4.

<sup>48</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 3, line 24 to page 4, line 3.

information is gathered by NGOs. In all the circumstances, the Chamber orders the communication of this information to the defence and the prosecution by the VPRS. In other words, to that extent, the redactions are to be removed.

38. The defence seeks information pertaining to [REDACTED], which has been redacted at page 5 of Annex 1, within a summary of the documents.<sup>49</sup> The redaction in its current form does not cover the name of [REDACTED] (is not redacted). Instead, there is a redaction to his role as [REDACTED]. Given his identity has been revealed, it is illogical and unsustainable to maintain the redaction to the organisation [REDACTED]. This information could be useful for the defence in order to establish the identity of the victim and the process by which information is gathered by NGOs. There are no grounds for suspecting that material security risks will be created by this disclosure (although advance notice of this Decision should be provided to those concerned before it is implemented).

***Victim a/0229/06 - Witness DRC-V02-WWWW-0003***

39. The name of the individual or organisation to whom victim a/0229/06,<sup>50</sup> expressed concerns is sought, along with the person who helped the victim complete the form, together with their role and place of work and the person who witnessed the victim's signature.<sup>51</sup> The defence also seeks details from certain attached additional information, as considered hereafter.<sup>52</sup>

40. The victim mentions two NGOs he had contact with in relation to his security concerns [REDACTED], but he does not elaborate on the issue. For the reasons set out above, there is no basis for concluding that the material in this

<sup>49</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 4, lines 4 – 8.

<sup>50</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx76.

<sup>51</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx76, page 13; ICC-01/04-01/06-T-277-CONF-ENG ET, page 5, lines 6 – 19.

<sup>52</sup> ICC-01/04-01/06-2224-Anx2, pages 4 – 12.

and the preceding paragraph poses a material risk to the two organisations, and the information is potentially useful to the defence in establishing the identity of the witness.

41. On pages 13 and 14, as regards the person assisting the victim to fill in the form, he mentions the name of [REDACTED] and the fact that he is the [REDACTED]. Again, for the reasons set out above, this information will be useful to the defence in establishing the identity of the witness. There are no grounds for suspecting that material security risks will be created by revealing this information.

42. At page 15 the identity of the person who witnessed signature on the application form is set out, [REDACTED]. Although the Chamber is unaware of any disclosure of this name to the defence, he works for the [REDACTED] Mr Keta and, according to the Registry, [REDACTED]. Given the extent of the likely public knowledge of [REDACTED] and its work, the Chamber considers that the disclosure of his name to the defence will not pose any material additional risk for this individual or the organisation for which he works. Accordingly, protective measures at this stage and prior consultation are otiose (although advance notice of this Decision should be provided to those concerned before it is implemented). Furthermore, this information may well assist the defence in its attempts to establish the identity of the relevant victim or victims, along with the circumstances in which information is gathered by NGOs. In all the circumstances, the Chamber orders the communication of this information to the defence and the prosecution by the VPRS. In other words, the redactions, to that extent, are to be removed.

43. The defence requests that redactions to information provided at pages 6 – 7 of Annex 2, filing 2224, are removed.<sup>53</sup> In addition, it requests that the redactions to the name of someone who provided information are lifted on pages 4 and 5.<sup>54</sup> The Chamber has not been provided with a complete non-redacted version of the 12 page annex 2 to filing 2224 (currently the only supplementary information the Chamber is aware of is a five page Annex 14 to document 1503, which has a different date from Annex 2 to filing 2224).<sup>55</sup> The VPRS is to contact the relevant individuals to establish their views on disclosure of their identities to the defence, and thereafter it is to report to the Chamber. Depending on their reactions, if necessary, a full version of Annex 2 to filing 2224 is to be provided to the Chamber by the VPRS forthwith so that a decision can be made about lifting the redactions.

44. The defence also requests that a redaction on page 11 of Annex 2, filing 2224, is lifted, which refers to [REDACTED].<sup>56</sup> The Chamber considers that the relevant professional role of a legal representative should not be kept confidential vis-à-vis the parties and participants in the proceedings. Furthermore, this information may well assist the defence in its attempts to establish the identity of the relevant victim or victims. The Chamber thus orders the removal of this redaction vis-à-vis the defence and the prosecution.

45. In Annex 2, page 12, which contains the name of the guardian and the witness who witnessed the relevant signature, there are redactions to the names and signatures of [REDACTED].<sup>57</sup> This information is useful to the defence, so it can establish the identity of the witness. There are no grounds for suspecting

<sup>53</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 7, lines 19 – 22, referring to ICC-01/04-01/06-2224-Anx2, pages 6 – 7.

<sup>54</sup> ICC-01/04-01/06-T-277-CONF-ENG ET, page 7, lines 17 – 19, referring to ICC-01/04-01/06-2224-Anx2, pages 4 and 5.

<sup>55</sup> Second report on supplementary information concerning applications for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, ICC-01/04-01/06-1503-Conf-Exp-Anx14.

<sup>56</sup> ICC-01/04-01/06-2224-Anx2, page 11; ICC-01/04-01/06-1503-Conf-Exp-Anx14, page 4.

<sup>57</sup> ICC-01/04-01/06-2224-Anx2, page 12; ICC-01/04-01/06-1503-Conf-Exp-Anx14, page 5.

that material security risks will be created by this disclosure (although advance notice of this Decision should be provided to those concerned before it is implemented).

***Victim a/0270/07 - Witness DRC-V02-WWWW-0001***

46. The defence also requests that certain redactions are lifted from the form for victim a/0270/07<sup>58</sup>. At page 10, question 3, the victim mentions other victims who were allegedly present at the time of the relevant events: [REDACTED]. These are anonymous victims represented by Mr Keta. Disclosure of their names may assist the defence in establishing the identity of the witness. The VPRS is to contact both anonymous victims to establish their views on the defence being informed as to their identities, thereafter it is to report to the Chamber. Otherwise, various victims' codes have been redacted (e.g. a/0224/06), which is unjustified and these redactions are to be lifted.

47. At page 10, point 4 the witness refers to the names of witnesses to the relevant events, [REDACTED] acts on behalf of victim a/0057/07. The Chamber reiterates that the name of [REDACTED] has already been revealed in court and redactions are no longer warranted.<sup>59</sup> As regards [REDACTED], the Chamber considers that this information may assist the defence in establishing the identity of the witness. The VPRS is to contact this individual to establish his views on the defence being informed as to his identity, and thereafter it is to report to the Chamber.

48. On page 13, section I, the person assisting the victim to fill in the form and the name of an organisation has been redacted. The name is [REDACTED].<sup>60</sup> This information may assist the defence in establishing the identity of the witness. As observed by the Registry, the name of this individual has already been

<sup>58</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx81.

<sup>59</sup> ICC-01/04-01/06-T-276-CONF-ENG ET, page 21, lines 3-8

<sup>60</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx81, page 13.

mentioned by Mr Keta in private session.<sup>61</sup> Therefore, there are no grounds for suspecting that material security risks will be created by this disclosure.

49. On page 15, the name of a person who witnessed the signature on the application form has been redacted: [REDACTED].<sup>62</sup> He is one of [REDACTED] mentioned above, who is acting on behalf of victim a/0057/07. Despite the slightly different spelling of the name, the Chamber considers that this person is the same as [REDACTED] referred to in paragraph 49. As set out above, the VPRS is to contact this individual to establish his views on the defence being informed as to his identity, and thereafter it is to report to the Chamber.

50. The defence also requests that redactions contained in Annex 3, document 2224, page 6, are lifted, namely those which refer to the identity of those individuals the victim allegedly tried to assist. The Chamber has not received a non-redacted version of this annex. However, to the extent that some redactions in these forms involve victims currently participating in the proceedings whose names have been revealed to the defence, they are to be lifted since they are no longer justified. The latter category includes victims a/0229/06, a/0270/07 and a/0225/06. Insofar as the redactions cover other victims or individuals, the VPRS is to contact them to establish their views on the defence being informed as to their identities, thereafter reporting back to the Chamber. Depending on their reactions, if necessary, a full version of Annex 3 to filing 2224 is to be provided to the Chamber by the VPRS forthwith so that a decision can be made about lifting the redactions.

<sup>61</sup> Transcript of hearing on 28 April 2010, ICC-01/04-01/06-T-275-CONF-ENG ET, page 45, line 8.

<sup>62</sup> ICC-01/04-01/06-1275-Conf-Exp-Anx81, page 15.

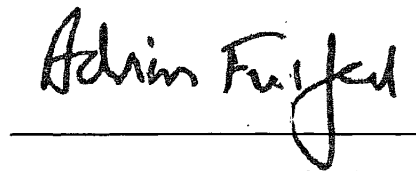
## V. Orders of the Chamber

51. The Trial Chamber hereby:


- a. Orders the VPRS to provide the information from the application forms of victims a/0225/06, a/0229/06 and a/0270/07 to the defence and the prosecution in accordance with the details of this Decision, set out above. Where specified, notice of this Decision should be provided in advance to those affected.
- b. Orders the VPRS to contact [REDACTED] in order to obtain his views on informing the defence as to his identity as soon as possible. The VPRS is ordered to report back to the Chamber once this information has been obtained.
- c. Orders the VPRS to contact [REDACTED] in order to obtain his views on informing the defence as to his identity as soon as possible. The VPRS is ordered to report back to the Chamber once this information has been obtained.
- d. Orders the VPRS to contact [REDACTED] in order to obtain his views on informing the defence of his identity to the defence as soon as possible. The VPRS is ordered to report back to the Chamber once this information has been obtained.
- e. Orders the VPRS to contact the individual who provided information on pages 4 and 5 of Annex 2 to filing 2224 in order to obtain his views on informing the defence as to his identity as soon as possible, and to transmit a complete non-redacted version of that annex to the Chamber for review.

f. Orders the VPRS to contact any individuals who are protected by the redactions on page 6 of Annex 3 to filing 2224 and who are anonymous participating victims (if any), in order to obtain their views on informing the defence as to their identities as soon as possible, and to transmit a complete non-redacted version of Annex 3 to filing 2224 to the Chamber for review.

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



**Judge Adrian Fulford**



**Judge Elizabeth Odio Benito**



**Judge René Blattmann**

Dated this 4 February 2011

At The Hague, The Netherlands