



Original: **English**

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

Date: **6 October 2009**

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

**Defence Observations following the «*Décision complémentaire sur la situation du
témoin 267*» (ICC-01/04-01/07-1483-Red2)**

Source: Defence for Mr Germain Katanga

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper
Mr Andreas O'Shea

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Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II
Counsels for the Defence for Mr Thomas
Lubanga Dyilo

1. On 18 September 2009, the Trial Chamber II issued a Decision in respect of Witness 267, a redacted version of which was notified to the Defence on 24 September 2009,¹ in which the Chamber invites the Defence teams for Mr. Ngudjolo and Mr. Katanga, if concerned, to request the disclosure of the identity of an intermediary whose services have been used by the Prosecution both in the instant proceedings and in the *Lubanga* proceedings, and who is mentioned, *inter alia*, in an investigator's note on Witness 267.
2. This intermediary has played a significant role in contacts with witnesses in the *Lubanga*, *Katanga* and *Ngudjolo* cases. It is important for the Defence to know who among the various Prosecution witnesses was contacted through this intermediary in order to see whether there is a similarity in answering questions or other patterns in the interviews to indicate whether the intermediary influenced witnesses. In addition, the Defence may wish to contact the intermediary given his or her close contact with and knowledge of various Prosecution witnesses who may or may not appear as *viva voce* witnesses.
3. Accordingly, the Defence for Mr. Katanga joins the *Requête de la Défense de Mathieu Ngudjolo aux fins d'obtenir la levée d'expurgation de l'identité de l'intermédiaire du Bureau du Procureur dans les éléments de preuve liés au témoin 267*.² The Defence fully supports all legal and factual arguments set out therein and further relies on its own previous filings on redactions of intermediaries and other proposed redactions.³

Respectfully submitted,



David HOOPER

Dated this 6 October 2009

The Hague

¹ Décision complémentaire sur la situation du témoin 267, ICC-01/04-01/07-1483-Conf-Exp. Cf. its confidential *ex parte* redacted version ICC-01/04-01/07-1483-Conf-Exp-Red and its public redacted version ICC-01/04-01/07-1483-Red2, 24 September 2008.

² ICC-01/04-01/06-2149, filed publicly on 5 October 2009

³ See, *inter alia*, Defence Observations on Prosecution's « Requête sollicitant le maintien de versions expurgées d'éléments de preuve », 21 August 2009, ICC-01/04-01/07-1414.