

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/04-01/07**

Date: **12 July 2010**

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public

Defence Observations on Intermediary P-143

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

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Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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States Representatives

Amicus Curiae

REGISTRY

Registrar
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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

A. The issue of knowledge of the identity of 143 for the cross-examination of 267

1. The Chamber has requested the Defence for Mr Katanga to provide reasons for requiring the name of intermediary 143 for the purpose of cross-examination of 167.
2. The Defence would prefer to have this information as early as possible and will require it for the preparation of its case. It was of particular importance in the case of the previous two witnesses, 279, 280, as well as other witnesses. Not having disclosure may have had a positive impact on the effectiveness and comprehensiveness of the Defence cross-examination. However, upon reflection, it is conceded that, although it might facilitate the task, it should be possible to conduct the cross-examination of this witness without the specific disclosure.
3. This position may change during the course of the cross-examination of the witness depending upon his reactions to questions about the intermediary. He may for instance need the name of the intermediary to assist him in recalling the contact in question.
4. The Defence therefore proposes that, if there are compelling reasons for not providing the name to the Defence at this stage, that we proceed without the name subject to the answers provided by the witness. The onus rests upon the prosecution to justify non-disclosure.

B. The eventual need for this information and how this affects the current decision

5. The Defence understands that the Chamber has sought very specific information regarding the justification of this information with regard to the cross-examination of the current witness. Nonetheless, on a subsidiary note, it may be relevant for the Chamber to render its decision with the knowledge of the broader context of the intentions of the Defence. The Defence emphasizes that 143 has been the intermediary of witnesses who purport to be child soldiers in the present proceedings (P-279, P-280, P-28). It is the Defence case that clear doubts exist as to the correct age of each of these witnesses and the truthfulness of their testimonies. Intermediary 143 was also intermediary for two witnesses who gave confusing and doubtful details about their identities, and whose testimonies were, again in the Defence view, doubtful at best (P-

132, P-287). Accordingly, independently of the position with respect to the cross-examination of 267, it is of the utmost importance that the Defence is in possession of the identity of 143 in order to inquire whether 143 has played a role in encouraging witnesses to give false testimonies.

6. In the event that disclosure of 143 is denied at this stage, the Defence still seeks disclosure for effective investigations.
7. With regard to the appropriate moment to disclose the name of 143, the Defence submits that this should occur prior to the close of proceedings this side of the judicial recess, to enable the Defence to carry out effective investigations on 143 during its next major mission to the DRC. The Defence invites the Chamber to take this into account as there may be little advantage in delaying the disclosure of the information sought if it is just for a matter of days.

C. Conclusion

8. In conclusion, the Defence, having reflected upon the matter, must accept that it can technically cross-examine 267 without knowing the identification of 143. However, this is subject to the answers of the witness and on the understanding that the Chamber will satisfy itself that the Prosecutor has established a proper basis for depriving the Defence of this information. The Chamber may also wish to take into account the fact that the Defence seeks this information before the recess for the effective conduct of its investigations.

Respectfully submitted,



David HOOPER, Q.C.

Dated this 12th July 2010

At The Hague

The Netherlands