

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 October 2010

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko
Judge Sanji Mmasenono Monageng

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

**Public redacted version of the document ICC-01/04-01/06-2551-Conf
submitted on 11 August 2010**

**"Registry's additional information relevant to the "Prosecution's Document in
Support of Appeal against Trial Chamber I's decision of 8 July 2010 to stay the
proceedings for abuse of process""**

Source: Registrar

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
Ms Fatou Bensouda

**Counsel for the Defence for Mr
Lubanga**
Catherine Mabilie
Jean-Marie Biju-Duval

Legal Representatives of Victims
Mr Paul Kabongo Tshibangu
Ms Carine Bapita Buyangandu
Mr Luc J. M. Walley

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

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit
Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the Appeal Chamber’s “Reasons for the “Decision on “Victims and Witnesses Unit’s considerations on the system of witness protection and the practice of “preventive relocation” and “Prosecution’s request for leave to file a response to “Victims and Witnesses Unit’s considerations on the system of witness protection and the practice of “preventive relocation” of 11 July 2008 (the “Reasons for the Decision on Victims and Witnesses Unit’s considerations”)¹;

NOTING Trial Chamber I’s “Corrigendum Redacted Decision on Intermediaries” of 27 May 2010 (the “Decision on Intermediaries”)²;

NOTING the hearing held on 16 June 2010 (the “Hearing”)³;

NOTING the hearing held on 6 July 2010 where Trial Chamber I ordered the disclosure of the identity of intermediary 143 under restricted conditions (the “Order on disclosure under restricted conditions”)⁴;

NOTING Trial Chamber I’s “Redacted Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU” of 8

¹ ICC-01/04-01/07-675.

² ICC-01/04-01/06-2434-Conf-Red-Corr.

³ ICC-01/04-01/06-T-302-CONF-ENG.

⁴ The Trial Chamber I ordered the disclosure to the defence “counsel and their assistants, and the “resource person” and ruled that “no investigative steps were to be taken that are based on this information in any way”, ICC-01/04-01/06-T-310-CONF-ENG, page 64, lines 15 to 25 and page 65, line 1.

July 2010 where the Chamber decided to stay the proceedings (the “Decision of 8 July 2010”)⁵;

NOTING the “Victims and Witnesses Unit's submission relevant to the stay of proceedings” of 13 July 2010 (the “Submission of 13 July 2010”)⁶;

NOTING Trial Chamber I’s “Order on the “Victims and Witnesses Unit's submission relevant to the stay of proceedings” of 14 July 2010 (the “Order”)⁷;

NOTING Trial Chamber II’s “*Ordonnance urgente relative à la mise en œuvre de mesures de protection concernant l’intermédiaire 143 expurgée*” of 16 July 2010 (the “Order of Trial Chamber II”)⁸;

NOTING the Victims and Witnesses Unit’s “Report on the implementation of protective measures for Intermediary 143” of 26 July 2010 (the “Report of 26 July 2010”)⁹;

NOTING the “Prosecution’s Document in Support of Appeal against Trial Chamber I’s decision of 8 July 2010 to stay the proceedings for abuse of process” of 30 July 2010 (the “Appeal”)¹⁰;

⁵ ICC-01/04-01/06-2517-Red.

⁶ ICC-01/04-01/06-2518-Conf-Exp.

⁷ ICC-01/04-01/06-2519-Conf.

⁸ ICC-01/04-01/07-2287-Conf.

⁹ ICC-01/04-01/07-2295.

¹⁰ ICC-01/04-01/06-2544-Conf.

NOTING articles 43(6) and 68(1), (3) and (4) of the Rome Statute, rules 16 to 19, 73, 76, 86 to 89 of the Rules of Procedure and Evidence, regulations 23bis and 41 of the Regulations of the Court and regulations 79 to 96 of the Regulations of the Registry;

RESPECTFULLY SUBMITS the Registry's additional information relevant to the "Prosecution's Document in Support of Appeal against Trial Chamber I's decision of 8 July 2010 to stay the proceedings for abuse of process".

1) Introduction

1. The Appeal is closely interlinked with the protective measures afforded to intermediary 143.
2. As it has been the responsibility of the Victims and Witnesses Unit ("VWU") to implement protective measures for this intermediary, the Registry provides the Appeals Chamber with additional information.

2) Account of events

3. In its Decision on Intermediaries Trial Chamber I ordered to "disclose confidentially to the defence the names, and other necessary identifying information, of the intermediary 143 [...] once the necessary protective measures have been implemented"¹¹. However, during the closed session of the Hearing, the "witness was shown the full name of intermediary 143, as written down by prosecution counsel on a piece of paper. He confirmed that this individual is an intermediary for the prosecution. A little later, in private session, defence counsel put the following name to the witness [REDACTED], to which he responded "that's the name of Mr 143". The prosecution accepted

¹¹ ICC-01/04-01/06-2434-Conf-Red-Corr, para. 150 (i).

that at least to a certain extent, adopting the expression of the Presiding Judge, the cover of 143 was "blown".¹²

4. On 21 June 2010 after consultation with the Office of the Prosecutor the VWU reported to the Chamber that the intermediary had been informed of what had happened in the Court and that he responded that he was satisfied with the current arrangements and had no further security concerns. The VWU also informed the Chamber that it continued its plans for the full implementation of protective measures.¹³
5. On 6 July 2010 the VWU informed the Chamber that the Unit had not been able to implement protective measures for the intermediary. For this reason the Unit recommended the Chamber against full disclosure of the identity of intermediary at this point of time.¹⁴
6. On 7 July 2010 the Court Officer as per established procedure informed the VWU of Trial Chamber I's order on disclosure of the identity of intermediary 143 under restricted conditions¹⁵. On 8 July 2010 the VWU informed the Chamber that it was of the position that disclosure to the defence under restricted conditions would not pose a threat to intermediary 143.¹⁶
7. The Appeal includes in its Annex the email correspondence whereby the VWU informed Trial Chamber I that the following information was provided to the Office of the Prosecutor on 7 July 2010:
 - "The VWU has not received any information that would indicate a change in the original assessment and recommendation;
 - The VWU took note of the order of the Chamber;
 - The VWU will inform the intermediary about the latest order;

¹² ICC-01/04-01/06-2517-Red, para. 4.

¹³ Email from the VWU to the Legal Officer of Chambers of 21 June 2010.

¹⁴ Email from the VWU to the Legal Officer of Chambers of 6 July 2010.

¹⁵ Email from the Court Officer to the VWU of 7 July 2010.

¹⁶ ICC-01/04-01/06-2544-Conf-AnxB, page 4.

- [REDACTED];
 - [REDACTED]"¹⁷.
8. In its Submission of 13 July 2010 the Unit sought Trial Chamber I's guidance in relation to the protective measures to be afforded to intermediary 143¹⁸.
 9. [REDACTED].¹⁹ [REDACTED].²⁰
 10. [REDACTED]²¹.
 11. On 16 July 2010 Trial Chamber II ordered the VWU to adopt and implement urgently protective measures for intermediary 143²². In its Report of 26 July 2010 the VWU informed the Chamber that its staff met with the intermediary to make the necessary arrangements to implement protective measures. However, the intermediary did not accept the VWU's proposals. The VWU also informed the Chamber that should intermediary 143 accept the current proposals, it was expected that the protective measures would be implemented within the next 10 days. The VWU also indicated that it would provide further updates to this report regarding intermediary 143's willingness to accept the proposals and would keep the Chamber informed on the implementation of the protective measures.²³
 12. The VWU continues its efforts to find a common solution for the implementation of protective measures for intermediary 143.

¹⁷ ICC-01/04-01/06-2544-Conf-AnxB, page 3. This information was further shared with the parties and participants, see *Ibid*, page 2.

¹⁸ ICC-01/04-01/06-2518-Conf-Exp, para. 4.

¹⁹ [REDACTED].

²⁰ [REDACTED].

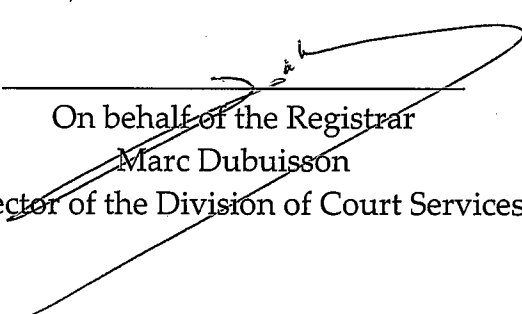
²¹ ICC-01/04-01/06-2519-Conf, para.6.

²² ICC-01/04-01/07-2287-Conf, p.6.

²³ ICC-01/04-01/07-2295-Conf-Exp-Anx, p. 2. This Report was later shared with to the Office of the Prosecutor, email from the VWU to the Legal Officer of Chambers of 27 July 2010.

3) Further considerations

14. The prosecution's submission²⁴ potentially has practical implications on the current system of protection, also to the extent that it may not be accessible equally to other parties and participants. The Registrar remains available to provide further considerations, should the Appeals Chamber consider this necessary and appropriate²⁵.


 On behalf of the Registrar
 Marc Dubuisson
 Director of the Division of Court Services

Dated this 4 October 2010

At The Hague, The Netherlands

²⁴ In its Appeal the prosecution states that the questions the Appeals Chamber is seized with also relate to its "particular duty of protection during the trial and what proper process must be followed to decide on protective measures", that it has "independent statutory obligation of protection" and that "the proper process to be followed when deciding protection measures includes the right of the Prosecution to be heard after the Chamber has received advice from VWU", see ICC-01/04-01/06-2544-Conf, paras 10, 17 and 42.

²⁵ In its "Reasons for the Decision on Victims and Witnesses Unit's considerations" the Appeals Chamber considered that by "reading articles 43 (6) and 68 (4) of the Statute together with regulation 24 bis (1) of the Regulations of the Court, and in light of the subject-matter of the instant appeal, [...] the filing by the Registrar was legitimately made" and was "appropriate and of assistance to it in the circumstances of this appeal to hear from the Registrar", see ICC-01/04-01/07-675, para 4.