



Original: French

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

Date: 16 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 THE CONGO  
IN THE CASE OF  
THE PROSECUTOR  
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

**Public redacted version**

**Redacted urgent order on the implementation of protective measures concerning  
Intermediary 143**

**Decision 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  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for Germain Katanga**

Mr David Hooper  
Mr Andreas O'Shea

**Counsel for Mathieu Ngudjolo Chui**

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

**Legal Representatives of the Victims**

Mr Jean-Louis Gilissen  
Mr Fidel Nsita Luvengika

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other  
Trial Chamber I**

**TRIAL CHAMBER II** of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to article 64(2) of the Rome Statute, rule 134(3) of the Rules of Procedure and Evidence and regulation 42(3) of the Regulations of the Court, orders the following.

1. In August 2009, as part of their respective submissions in relation to Witness 267, Counsel for Mathieu Ngudjolo and for Germain Katanga requested that the identity of Intermediary 143 be disclosed.<sup>1</sup> In a decision of 18 September 2009, the Chamber noted that Intermediary 143 was already the subject of protective measures ordered by Trial Chamber I (“Chamber I”).<sup>2</sup> It therefore invited the Defence teams to move that Chamber under regulation 42(3) of the Regulations of the Court,<sup>3</sup> which they did on 5 and 6 October 2009 respectively.<sup>4</sup> Both Chamber I<sup>5</sup> and Chamber II<sup>6</sup> deemed it necessary at that time to maintain the said measures.

2. In March 2010, the Defence teams submitted to the Chamber a further application for the disclosure of the identity of Intermediary 143.<sup>7</sup> On 12 May 2010, Chamber I ordered the disclosure of the name of Intermediary 143 to the Defence for Thomas Lubanga on a confidential basis once the necessary protective measures

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<sup>1</sup> Defence for Mathieu Ngudjolo, “*Observations consolidées de la Défense de Mathieu Ngudjolo relatives aux requêtes du Procureur référencées sous les numéros ICC-01/04-01/07-1356 et ICC-01/04-01/07-1358*”, 14 August 2009, ICC-01/04-01/07-1376; Defence for Germain Katanga, “*Defence Observations on the Prosecution’s Applications relative to Witness 267*”, 18 August 2009, ICC-01/04-01/07-1402.

<sup>2</sup> *Supplementary Decision on the Situation of Witness 267*, 18 September 2009, ICC-01/04-01/07-1483-Conf-Exp-tENG, ICC-01/04-01/07-1483-Conf-Exp-Red (confidential redacted version) and ICC-01/04-01/07-1483-Red2-tENG (public redacted version), paras. 19-22.

<sup>3</sup> *Ibid.*, para. 22.

<sup>4</sup> Defence for Mathieu Ngudjolo, “*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*”, 5 October 2009, ICC-01/04-01/06-2149; Defence for Germain Katanga, “*Defence Observations following the ‘Décision complémentaire sur la situation du témoin 267’*” (ICC-01/04-01/07-1483-Red2), 6 October 2009, ICC-01/04-01/06-2150.

<sup>5</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Decision on the application to disclose the identity of intermediary 143*, 18 November 2009, ICC-01/04-01/06-2190-Conf-Exp.

<sup>6</sup> *Order in relation to the disclosure of the identity of P-143*, 1 February 2010, ICC-01/04-01/07-1817.

<sup>7</sup> Defence for Germain Katanga, “*URGENT Defence Request for the disclosure of Lubanga transcripts and of the identity of Prosecution Intermediaries*”, 12 March 2010, ICC-01/04-01/07-1960-Conf-Corr; Defence for Mathieu Ngudjolo, “*Adjonction de la Défense de Mathieu Ngudjolo à la Requête ICC-01/04-01/07-1960-Conf-Exp introduite par l’Equipe de Défense de Germain Katanga le 11 mars 2010*”, 15 March 2010, ICC-01/04-01/07-1965-Conf.

were in place.<sup>8</sup> The application for leave to appeal that decision was denied.<sup>9</sup> On 7 June 2010, the Chamber handed down an oral decision, which was not appealed, ordering the Prosecutor in turn to disclose the identity of Intermediary 143 to the Defence for Germain Katanga and the Defence for Mathieu Ngudjolo; this decision too was contingent on the implementation of the protective measures deemed necessary by Chamber I in *Lubanga*.<sup>10</sup> Accordingly, it was Chamber I, which had originally ordered the disclosure of this intermediary's identity,<sup>11</sup> which monitored the assessment and implementation of these new protective measures.

3. However, on 8 July 2010, Chamber I decided to stay the *Lubanga* trial.<sup>12</sup> The stay – currently of unknown duration – is liable to cause considerable delay in the adoption of the said protective measures.<sup>13</sup> Noting this risk and being concerned about the possible impact of Chamber I's decision on the execution of the aforementioned oral decision of 7 June 2010, the Defence teams for Germain Katanga and Mathieu Ngudjolo repeated, first orally<sup>14</sup> and then in writing,<sup>15</sup> their request for the disclosure of the identity of Intermediary 143. [REDACTED].<sup>16</sup>

4. Accordingly, being desirous of ensuring the fair and expeditious conduct of the trial, the Chamber is of the view that it is proper both in the context of this case and for the prompt execution of its oral decision of 7 June 2010<sup>17</sup> to order VWU to

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<sup>8</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Decision on Intermediaries*, 12 May 2010, ICC-01/04-01/06-2434-Conf-Exp-Corr, ICC-01/04-01/06-2434-Conf-Red-Corr (confidential redacted version) and ICC-01/04-01/06-2434-Red2 (public redacted version).

<sup>9</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Decision on the prosecution request for leave to appeal the "Decision on Intermediaries"*, 2 June 2010, ICC-01/04-01/06-2463.

<sup>10</sup> ICC-01/04-01/07-T-150-FRA ET 07/06/2010 1-63 EA T, p. 6, line 4, to p. 10, line 4.

<sup>11</sup> ICC-01/04-01/06-2434-Conf-Exp-Corr, paras. 41-42.

<sup>12</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, 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 VWU*, 8 July 2010, ICC-01/04-01/06-2517-Conf, and ICC-01/04-01/06-2517-Red (public redacted version).

<sup>13</sup> *Ibid.*, para. 6.

<sup>14</sup> ICC-01/04-01/07-T-168-FRA ET WT 09/07/2010 1-41 VR T, p. 32, line 17, to p. 43, line 2.

<sup>15</sup> Defence for Germain Katanga, "Defence Observations on Intermediary P-143", 12 July 2010, ICC-01/04-01/07-2260; Defence for Mathieu Ngudjolo, "Observations de la Défense de Mathieu Ngudjolo en exécution de l'Ordonnance de la Chambre du 09 juillet 2010", 12 July 2010, ICC-01/04-01/07-2261.

<sup>16</sup> [REDACTED].

<sup>17</sup> ICC-01/04-01/07-T-150-FRA ET 07/06/2010 1-63 EA T.

determine and implement as a matter of urgency the measures which it considers most appropriate in order to protect Intermediary 143.

**FOR THESE REASONS, the Chamber**

**ORDERS VWU**

- to determine and implement as a matter of urgency the measures which it considers most appropriate in order to protect Intermediary 143; and
- to report to the Chamber on the status of its actions by 4 p.m. on 26 July 2010.

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

          [signed]            
**Judge Bruno Cotte**  
**Presiding Judge**

          [signed]            
**Judge Fatoumata Dembele Diarra**

          [signed]            
**Judge Christine Van den Wyngaert**

Dated this 16 July 2010  
At The Hague, The Netherlands