



Original: English

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

Date: 27 July 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

**Order on the prosecution's applications to vary protective measures under
Regulation 42**

Decision/Order/Judgment 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

Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Jean Louis Gilissen
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

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 II
Defence counsel Germain Katanga
Defence counsel Mathieu Ngudjolo Chui
Victims legal representatives, Case of the Prosecutor v. Katanga and Ngudjolo Chui

1. On 14 July 2009, the Office of the Prosecutor (“prosecution”) filed before Trial Chamber I a request to vary certain protective measures previously granted for 9 individuals pursuant to Regulation 42 of the Regulations of the Court (“Regulations”), because these measures (and their effect) have become relevant to the case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (“*Katanga and Ngudjolo Chui* case”), currently before Trial Chamber II.¹

2. In addition, on 24 July 2009, the Trial Chamber II rendered a public redacted version of the decision in which, pursuant to Regulation 42 of the Regulations, it referred the issue of protective measures, and disclosure vis-à-vis the parties and participants, for **17 individuals** in the *Katanga and Ngudjolo Chui* case to Trial Chamber I.² These are broken down into four groups, as follows. First, the pending requests from the prosecution to modify the protective measures for **7 individuals** (witnesses 33, 178 (alias 253), 179, 243, 271, 282 and 288).³ Second, Trial Chamber II referred, *proprio motu*, in accordance with Regulation 42(3) of the Regulations, the protective measures for **6 individuals** (these are in addition to witnesses 178 (alias 253) and 179 above, namely, witnesses 90, 169, 175 and 37).⁴ Third, Trial Chamber II instructed the prosecution to canvass before Trial Chamber I the protective measures for **2 individuals** (witnesses 44 and 101).⁵ Fourth, Trial Chamber II requested the views of Trial Chamber I on

¹ Prosecution’s Request Pursuant to Regulation 42 in Relation to Protective Measures Sought Before Trial Chamber II (Witnesses 33, 169, 175, 178/253, 179, 243, 271, 282, 288), 14 July 2009, ICC-01/04-01/06-2047 with Conf-Exp Annexes

² Décision sur la protection de 21 témoins relevant de l’article 67-2 du Statut et/ou de la règle du Règlement de procédure et de preuve, 22 July 2009, ICC-01/04-01/07-1332

³ *Ibid*, paragraphs 14, 52 and page 27

⁴ *Ibid.*, paragraphs 26 and 29 and page 27.

⁵ *Ibid*, paragraph 55 and page 28 See also Prosecution’s application for variation in the protective measures concerning witness 44 and witness 101, 24 July 2009, ICC-01/04-01/06-2067 + Conf-Exp-Anxs

Trial Chamber I on disclosure of the identities of **5 individuals** (witnesses 23, 47, 52, 68 and 113).⁶

3. Trial Chamber II made available to Trial Chamber I the relevant transcript of the *ex parte* hearing (8 July 2009), along with the entirety of the submissions advanced by parties in the *Katanga and Ngudjolo Chui* case on the issue of the protection of individuals referred to by Trial Chamber II.⁷
4. In light of the above, Trial Chamber I:
 - a) Orders the Registry to transmit to Trial Chamber I the entirety of the submissions made by parties in the *Katanga and Ngudjolo Chui* case on the issue of the protective measures for the 17 individuals;
 - b) Orders the Registry forthwith to notify the defence team in the *Katanga and Ngudjolo Chui* case of filing ICC-01/04-01/06-2047;
 - c) Invites the defence teams in the two trials (*viz.* the *Thomas Lubanga Dyilo* and the *Katanga and Ngudjolo Chui* cases) to file written submissions on filing ICC-01/04-01/06-2047 by 16.00 hours on 17 August 2009;
 - d) Instructs the prosecution to file a single, comprehensive document with Trial Chamber I by 16.00 hours on 17 August 2009, addressing the following issues:
 - i) Bearing in mind that all the requests to rescind, vary or, augment the redactions authorised by Trial Chamber I in accordance with Rule 81(4) of Procedure and Evidence (“Rules”) will be determined by Trial Chamber I in

⁶ *Ibid* , paragraph 65 and page 29

⁷ *Ibid* , page 27

accordance with Regulation 42(3) of the Regulations, the Chamber is to be provided with detailed information on: the security situation of any individual (including the 17 individuals referred to in Trial Chamber II's decision) who may be placed at risk following a variation of protective measures, in the circumstances identified above; the relevance of the redacted information to the defence in the *Thomas Lubanga Dyilo* and the *Katanga and Ngudjolo Chui* cases; the suggested legal bases for any proposed variation; (where relevant) any counter-balancing measures that are available; and generally any other information relevant to these requests;

- ii) Notification of all relevant information is to be provided to the Chamber on any redactions that the prosecution proposes should be lifted or varied, under Rule 81(2) of the Rules;⁸
 - iii) The feasibility of implementing inconsistent disclosure regimes between the two cases, particularly bearing in mind the risk of communication between the various accused, or by others associated, or in contact, with them.
- e) Invites the parties and participants in the *Thomas Lubanga Dyilo* case to file written submissions on the interpretation and application of Regulation 42 of the Regulations by 16.00 hours on 17 August 2009;

⁸ Transcript of hearing on 4 December 2007, ICC-01/04-01/06-T-66-ENG ET, page 23, lines 4-11

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 27 July 2009

At The Hague, The Netherlands