



Original: English

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

Date: 2 February 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

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

Public Redacted Version

Prosecution's Application to change date of testimony of WWWW-0360

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the***Regulations of the Court to:*****The Office of the Prosecutor****Counsel for the Defence**

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Introduction

1. At the hearing on 27 January 2009, the Prosecution informed the Trial Chamber that Gerard PRUNIER (WWWW-0360), an expert on context, will be unable to testify as its third witness. In accordance with the Chamber's request,¹ the Prosecution herewith submits an application to vary the Chamber's Order allowing the Prosecution to call Mr Prunier as its third witness and permitting Mr Prunier to be called on or after 16 March 2009.

Prosecution's Submissions

2. On 17 December 2008, the Prosecution sent an email to Mr Prunier advising that he should be available to testify at the end of January or beginning of February 2009, subject to the Trial Chamber's decision.
3. Mr Prunier responded on 20 December 2008. He confirmed his availability between 25 January and 5 February 2009.
4. In the meantime, the Prosecution submitted a request to the Victims and Witnesses Unit (VWU) on 19 December 2008, in accordance with a protocol established for this purpose.² In the Request for Provision of VWU Services for Victims/Witnesses Appearing Before the Court and Their

¹ ICC-01/04-01/06-T-109, p. 53.

² The Victim and Witnesses Unit (VWU) is responsible for facilitating the travel, accommodation and familiarization process for trial witnesses. In accordance with that division of responsibility, the Prosecution provided its request forms (Request for Provision of VWU Services for Victims/Witnesses Appearing Before the Court and Their Accompanying Persons to the VWU) for trial witnesses, including Mr Prunier, at least 35 days in advance of trial.

Accompanying Persons to the VWU (the form required by the VWU), the Prosecution provided contact details and anticipated dates of appearance.³ The Prosecution submitted a final updated form (with medical details) on 22 December, adding that Mr. Prunier had agreed to appear within the specified dates.

5. On 22 January 2009 the VWU informed the Prosecution that it had tried to reach Mr Prunier for some time by phone and had sent a message to Mr Prunier on 21 January 2009 regarding his travel to The Hague on 29 January 2009. Mr Prunier promptly responded to the VWU that he was in Ethiopia and would not be available on that date.
6. On 22 and 23 January, out of courtesy and in order to assist the VWU, the Prosecution tried to contact the expert to inquire whether he could not make himself available. Mr Prunier confirmed that he was in Ethiopia and “can be in Europe on the 8th, that is my best availability” due to previous commitments.
7. Subsequently, on the evening of 29 January 2009 Mr Prunier emailed a member of the Prosecution team to state that he was returning to Europe earlier than expected for [REDACTED] and would be available during the week of 2 February 2009. Subsequently, however, Mr Prunier indicated that his availability during the week of 2 February 2009 is strictly limited to Tuesday, 3 February 2009. At that time,

³ At that time the date of appearance was not yet defined as the decision from the Trial Chamber on the order of appearance of witness was still pending. All these caveats were made clear to the VWU in the form and by email.

the Prosecution could not guarantee that the testimony of the witness who is currently testifying would be completed in time to allow Mr Prunier to commence and complete his examination on 3 February 2009. The Prosecution requested that Mr Prunier be called during the week of 9 February 2009. Mr Prunier advised the VWU on 2 February 2009 that he has been advised [REDACTED] until 15 March 2009 due to [REDACTED].

8. The Prosecution regrets the inconvenience to the Trial Chamber and the Defence, but notes that neither it nor the VWU had reason to believe that the witness would change his schedule of availability or that he would be advised [REDACTED]. Nor could the Prosecution anticipate that the testimony of its first two witnesses would be postponed. Because the Prosecution could not compel Mr Prunier to travel to The Hague if the witness is unavailable, it could not force him to be here this week. Accordingly, the Prosecution seeks leave to call Mr Prunier on or after 16 March 2009.



Luis Moreno-Ocampo
Prosecutor

Dated this 2nd day of February 2009

At The Hague, The Netherlands