



Original: English

No.: ICC-01/04-01/07
Date: 15 January 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 Notice of Modification of the Prosecution's Witnesses

(ICC-01/04-01/07-1764)

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

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper

Mr Andreas O'Shea

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Ngudjolo Chui**

Legal Representatives of Victims

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On the 14th January 2010, the Prosecution submitted a 'Notice of modification of the Prosecution's witnesses',¹ in which it informed the Trial Chamber and the parties that it was changing its order of witnesses due to the unsolved issues of protection of Witness 28. The Prosecution further stated that "Witness 28 will be called to testify at a later stage in the Prosecution's case still to be determined and if the Prosecution is satisfied that the witness is adequately protected".

2. The Defence is surprised that the Prosecutor expresses such a difficulty at this stage. Prior to the adjournment of the case, the Defence was under the impression that Witness 28 was on the point of giving evidence and therefore available to do so at that stage.² There was a discussion in court on December 1st on the subject and the Defence even expressed a preference for P-28 to begin his evidence the next day. There were some veiled difficulties expressed by the Prosecution, but nothing to indicate a profound difficulty or that the witness was not, for example, there and then available to give evidence. That such difficulties have arisen at this stage is therefore all the more surprising.

3. It is not stated by the Prosecutor exactly what difficulties there may be as to the Witness's protection that requires this late re-ordering of his witnesses. It may be that the reason is so confidential that, exceptionally, it cannot be disclosed to the Defence. In any event, the Defence anticipates that the Trial Chamber will again protect the interests of the Defence in the matter to ensure that the Prosecutor's request is indeed based on reasonable grounds. The Defence use the word 'request', as re-ordering remains a matter requiring the consent of the Chamber, not only as a matter of good practice and courtesy, but also, to protect the interests of the Defence against prejudice caused.

¹ ICC-01/04-01/07-1764 14/1/2010.

² ICC-01/04-01/07-T-88 page 4.

Respectfully submitted,



David HOOPER

Dated this 15th day of January 2010

The Hague