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No.: ICC-01/04-01/07
Date: **6 November 2009**

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 Document

Defence submissions in respect of the application of Rule 140

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

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**Unrepresented Applicants for
Participation/Reparation**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

This submission, in making reference to victims' representatives, does not seek to anticipate or prejudge the awaited decision of the Trial Chamber in respect of the modalities for the participation of victims' representatives.

1. The Defence for Germain Katanga is content that the practice relating to the order and nature of examining witnesses as applied in the *Lubanga* case, be adopted in the present case. This practice is to be found mainly in the oral decision of 16th January 2009.¹ A further *Lubanga* decision, dealing specifically with the position of victim representatives, is to be found in the 'Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims' of 16th September 2009. The practice can be summarised as follows;

1. The party calling the witness questions the witness first. To the extent that it is known or anticipated that all or part of a witness's testimony is in dispute leading questions² should not be put by the party calling a witness in respect of contentious areas.
2. If a victims' representative is granted the right to question a witness in accordance with the procedure set out in Rule 91(3), they may then question the witness to the extent that leave has been granted. The victims' legal representative should bear in mind the presumption in favour of neutral questioning, unless there is a contrary indication from the bench³.
3. The party who did not call the witness then questions the witness. The party not calling the witness may ask questions that go beyond the scope of the witness's initial testimony. The parties are under an obligation to put such part of their case as is relevant to the testimony of the witness, inter alia, to avoid recalling the witnesses unnecessarily. The party not calling the witness may ask leading questions of the witness.
4. The party calling the witness may then ask questions of the witness if necessary. Such re-examination by the party calling the witness shall be limited to issues raised in cross examination or raised by the victims' representatives. The witness should not be asked leading questions except where the issue is plainly not in dispute.

¹ ICC-01/04-01/06-T-104, pages 35-38.

² Generally understood to be a question that inappropriately leads the witness in his evidence; a question, which suggests the answer. While the party calling the witness is not permitted to ask leading questions, the other party in cross-examination can ask them.

³ See 'Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims', 'ICC-01/04-01/06-2127, para. 30.

5. The Defence, if it is not the party calling the witness, may be permitted to ask further, non –leading questions on matters arising from the re-examination, that is to say on matters raised since the Defence first questioned the witness.
6. The Chamber may ask questions whenever the Judges consider it appropriate, ensuring that the Defence rights under Rule 140(2) are respected and that the parties generally have the opportunity to explore any new issues to the extent that is necessary.

2. The Defence further submits that where there are two accused then the order of questioning by the defence parties will be in the order that the suspects' names appear in the case name. In the present case the order is, first, Germain Katanga and then Mathieu Ngudjolo. The defence parties may, however, vary this general rule and agree, as between themselves, to vary the order of questioning of a witness, bearing in mind the relevance of that witness to a particular suspect or for reasons of convenience.

Respectfully submitted,



David HOOPER

Dated this 6 November 2009

At The Hague