

1 International Criminal Court

2 Trial Chamber I

3 Situation Democratic Republic of the Congo, ICC 01/04-01/06

4 Status Conference - Open Session

5 Tuesday, 4 December 2007

6 The hearing starts at 9.38 a.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session. Please be seated.

9 PRESIDING JUDGE FULFORD: Good morning. For the sake of the
10 record, it's appropriate to indicate that Ms. Bensouda, together with
11 Mr. Withopf and Mr. Bulmer, assisted by others, appear for the
12 Prosecution. Marc Dubuisson, Simo Vaatainen, assisted by others,
13 appear for the Registry. For the Defence Mr. Biju-Duval and
14 Ms. Buteau, assisted by others. The legal representatives are
15 Ms. Bapita and Mr. Walley. And for the Office of Public Counsel for
16 Victims Ms. Massidda appears along with Mr. Adjovi, and again assisted
17 by others.

18 We propose to take as the first issue for today's Status
19 Conference the matter concerning the broadcasting outside of this
20 courtroom of closed-session hearings. Unless in due course anybody
21 wishes to address any submissions as regards open-session hearings, it
22 seems to the Bench at the moment that insofar as a problem has been
23 identified it relates, as I've just said, to closed-session hearings.

24 There are two aspects to this. The first relates to the
25 television recording that can be viewed live throughout the building

1 of closed-session hearings; and secondly, there is the provision of
2 realtime transcripts.

3 The Registry have informed us that certain technical solutions
4 were being investigated, and in a moment I'm going to call on
5 Mr. Dubuisson to inform the Court as to where those investigations
6 have reached, but can I, before I do that, summarise as I understand
7 it the position of the Prosecution, which is to the effect that even
8 when the court is in closed session the -- the Prosecution, in a
9 general sense should have complete access rights to both realtime
10 transcripts and the television feed, and as I understand it, that
11 applies even if no ex parte hearing was envisaged, which means that
12 wide access rights would have been set for the day, and insofar as the
13 Prosecution accept that that poses a problem, the solution that is
14 suggested is that there is the two courtrooms should be used on the
15 same day with the Chamber moving between the two depending on whether
16 we are in open session or closed session.

17 Now, in the light of those -- or in bearing in mind those
18 introductory remarks, I'm going to ask Mr. Dubuisson first to assist
19 us with where we've got to in relation to the investigation of
20 technical solutions.

21 MR. DUBUISSON (interpretation): Your Honours, I'd like to thank
22 you so I'm not going to go -- state what's already been stated earlier
23 with regards to the fact that there isn't a legal basis with regards
24 to the fact that at the start it was just done with an aim to serve
25 the units, Victims and Witnesses Unit of the Registry and the

1 Interpretation and Translation Unit which exceptionally have been
2 granted this on the basis of technology which recorded the debates.

3 Our main interest with regards to this issue was, of course, the
4 protection of the information where it concerned witnesses, though we
5 took very good note of everything that was discussed prior to that.
6 And just to say very briefly, I would say to the day the technological
7 solution which we're using at the moment when it comes to recording
8 the debates isn't a technological solution to broadcast outside the
9 courtroom in a safe way what was happening in the courtroom.

10 So first of all what we have to do at first is to have a
11 technological research to be able to see what can be done. That will
12 take six months. What we have to do: We have to have an analysis.
13 We need a procurement procedure. We have to go through what's called
14 a competition with different companies, different products. We have
15 to select a product and following that we have to have a viable
16 concept which we have to test, and then there will be an
17 implementation of the system. That is with regards to the
18 technological aspects.

19 As with all technological issues, it has to be accompanied by a
20 procedure for its use for which we have a major interest in this
21 procedure being extremely strict with regards to the way in which we
22 have access to the information and how you can have access, what
23 measures, confidentiality measures are taken. This information and
24 those procedures should be generated by the Chamber. As far as I'm
25 concerned, the Chamber has to determine who and how in this building

1 people should have access to the information.

2 It's also clear that we are in a technological configuration at
3 the moment which would make it possible in a short time for a team of
4 investigators who might be in the field to have access to the
5 information and to the technology that we have here in the courtroom,
6 and this means that also it might be possible in the future that
7 somebody using Kinshasa might be able to also follow the proceedings
8 in the courtroom. So it's urgent and fundamental for us that there be
9 an extremely strict procedure with regards to the use of this access
10 to information, access to hearings which would be held here, possibly
11 in closed session or under seal.

12 That's what I'd like to say.

13 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Dubuisson.

14 Mr. Withopf, are you fielding this issue for the Prosecution?

15 MR. WITHOPF: Mr. President, your Honours, you have correctly
16 reflected and summarised our submission. Also in light of what
17 Mr. Dubuisson just said there's nothing to do add from our side.

18 PRESIDING JUDGE FULFORD: Mr. Withopf, before you sit down can I
19 just ask an a couple of questions. The first is this. You'll readily
20 appreciate that some of the issues that are discussed in closed
21 session are of very high sensitivity and concern on occasion matters
22 of great importance in relation to the security and welfare and indeed
23 the lives of some of those involved in our proceedings.

24 The Prosecution request is that the Chamber should effectively
25 lose control over who is in attendance during the course of a

1 closed-session hearing and that instead the Office of the Prosecutor
2 should be entitled to decide who outside of this courtroom should
3 effectively be in attendance. They won't be inside the courtroom, but
4 they'll be sitting at a desk with a television screen, watching what
5 is happening.

6 Now, isn't that quite a profound incursion into the power of this
7 Court to control its proceedings, particularly when material of great
8 importance is being discussed? And can I highlight the point in this
9 way: By virtue of a system which I personally praise and encourage,
10 there are a lot of interns in this court, interns in all divisions,
11 and including the Office of the Prosecutor, people who are here for a
12 short period of time and then leave. And although they may take or
13 make binding obligations in relation to confidential material, there
14 is an element of lack of control over what happens to that information
15 afterwards, and on an earlier occasion we indicated that interns
16 should not be present in this courtroom during the course of
17 closed-sessions.

18 Now, isn't that an example of the kind of problem that could
19 exist if we were to permit the Office of the Prosecutor to decide who
20 outside of this courtroom should be able to view what happens during
21 closed sessions?

22 MR. WITHOPF: Mr. President, your Honours, of course we do
23 appreciate that there comes a confidentiality issue with the broadcast
24 ^ 9.50.10 through the rules of the Office of the Prosecutor. However,
25 we can also assure you that the Office of the Prosecutor, if

1 permitted, would take all necessary measures that confidentiality is
2 protected. For example, we could provide you with a list of such
3 staff members within the Office of the Prosecutor who do or should
4 have access, in our view, and the list would certainly not go beyond
5 the Prosecutor, the Deputy Prosecutor, and the members of the trial
6 team that are not interns.

7 We do appreciate your concern in respect of interns. That's very
8 well understood. And I wish to use this opportunity to also add that
9 the Defence should have the same access rights, obviously.

10 PRESIDING JUDGE FULFORD: At the moment I think the -- the
11 technological problem is that access rights are granted, for instance,
12 to the Office of the Prosecutor in the Lubanga case, and at the moment
13 it's not feasible to further narrow those within the Office of the
14 Prosecutor who are given access rights in the sense that the live feed
15 only goes to particular named computers within the building; is that
16 right?

17 MR. WITHOPF: Mr. President, if you would please allow me to
18 confer with one of my colleagues who has a better technical
19 understanding than I.

20 PRESIDING JUDGE FULFORD: Please do.

21 [Prosecution counsel confer]

22 MR. WITHOPF: Mr. President, your Honours, we have reason to
23 believe, we have reason to believe without knowing it in detail, that
24 it's technically possible -- that it's technically possible. It
25 appears to be quite resource intensive.

1 PRESIDING JUDGE FULFORD: I mean, just using that as an example,
2 if your basic proposition were to be accepted, and can I make it clear
3 that is very much of an open question which we're going to have to
4 decide, but if it were accepted, if that kind of technological
5 narrowing of the group who could receive the broadcast was
6 implemented, it would in fact mean that anyone within the Office of
7 the Prosecutor could simply go to their machine, turn it on, and
8 access the live feed.

9 MR. WITHOPF: Mr. President, your Honours, not really. Obviously
10 we all have an individualised password, and of course the ones who
11 would have access, they would be under an obligation to ensure that
12 nobody else could have access to that broadcast.

13 PRESIDING JUDGE FULFORD: The other matter I wanted to ask you
14 about, Mr. Withopf, was this: A solution that you've advanced is that
15 on a day when it wasn't anticipated there was going to be an ex parte
16 hearing and, therefore, wide access rights were set for the day, if it
17 emerged that we had to go into closed session, your solution is that
18 we should gather up our bags and move to a different courtroom.

19 Now, on days when there are no other cases taking place in this
20 building that, although inconvenient, may be possible, but if there
21 are other cases taking place, Mr. Withopf, that's going to be a
22 practical impossibility, isn't it?

23 MR. WITHOPF: Mr. President, your Honours, we are very well aware
24 of the inconvenience that causes, and of course once there are other
25 trials or other proceedings ongoing, we will face exactly that

1 problem, and in that respect, at least based on what we do know at
2 this juncture, there appears to be no technical solution available at
3 this juncture.

4 PRESIDING JUDGE FULFORD: I'm grateful to you, Mr. Withopf, thank
5 you very much indeed.

6 Mr. Biju-Duval, do you wish to participate on this point?

7 MR. BIJU-DUVAL (interpretation): Mr. President, obviously the
8 Defence agrees with the concern of protection of information. The
9 essential point, as far as I'm concerned, is that whatever the time,
10 whether immediately or subsequently using the transcripts, only the
11 authorised parties can have access to the information. It doesn't
12 seem clear to me or obvious to me that the restrictions in the
13 immediate broadcast are of such a nature to really be useful where it
14 concerns limiting the risk given that whatever the case, these
15 hearings in closed session will be subject to transcriptions which
16 will then be made available to the teams who are authorised to look at
17 them. So I think that the essential point is that the rules be very
18 clear within each team where it concerns the persons who effectively
19 do have access to this information, which is particularly protected.
20 While the Defence today, just to simplify things, does go along with
21 the observations of the Prosecutor with regards to this issue.

22 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.

23 Mr. Dubuisson, a question, if I may, to make sure I haven't
24 misunderstood anything. The Prosecution therefore are seeking for the
25 Court to implement a system whereby access rights are securely focused

1 to particular named individuals and that in fact means particular
2 computers which can only be accessed by the use of a particular
3 password.

4 Am I right in understanding that if we were to indicate that the
5 work is worthwhile and that we would certainly be minded to consider
6 the implementation of such a system that it will take approximately
7 six months for that work to be complete?

8 MR. DUBUISSON (interpretation): Your Honours, we have to avoid
9 going into this in a way that doesn't be right. What we have is a
10 system -- what we want is a system that's going to be able to function
11 outside the courtroom. Well, independent of that. Also, independent
12 of a trial which will be held in the field, and also independent of
13 the requirements of, for example, the location of the courtroom. What
14 we want, and this is something that was effectively said, is to make
15 it possible for each individual, and this is what we're looking for,
16 to be able to have access or a right to access to information for each
17 individual, and it will be up to you to decide if that individual can
18 only log in, for example, that person's office and that person's
19 computer. These are procedural measures or a protocol for use.

20 Certainly something like that would be necessary, but in order to
21 have a system which is 100 per cent safe and secure and which will
22 make this possible on an individualised basis, the system that we are
23 using at the moment, FTR, does not allow this. This is what I've been
24 told, and this is what the technological service have written to me.

25 That's the situation at the moment. What -- I would need more or

1 less six months. It might be a bit shorter, it might be a bit longer
2 but I do hope that it will be shorter given that we all know about the
3 proceedings starting on the 31st of March, and we do hope to be able
4 to have something in place for this day.

5 PRESIDING JUDGE FULFORD: Extremely clear. Thank you very much
6 indeed.

7 Mr. Walley.

8 MR. WALLEY (interpretation): Mr. President, your Honours, we
9 were somewhat surprised, I must admit, to find out that in some closed
10 hearings, where we were not able to attend, there were broadcasts that
11 could be viewed by an indeterminate number of people. It seems
12 somewhat contrary to the idea of a closed session, I must say. So for
13 our part, if we are authorised to attend closed sessions or some of
14 these sessions, I would not dwell on asking that all participants be
15 granted such access rights. If this were to be the case, then all
16 those who are authorised to take part in the proceedings should also
17 have the ability to communicate with the members of their team, if
18 necessary from long distance, so that they can take part in this
19 hearing.

20 As I say, in my view, closed sessions must be exceptional, and
21 we're not asking that such a system be set up.

22 PRESIDING JUDGE FULFORD: Ms. Bapita.

23 MS. BAPITA (interpretation): Your Honours, I just wanted to add
24 one small thing. I agree with all the proposals made by the
25 Prosecution and the Defence. However, I should like to emphasise that

1 if a member of a team withdraws and if such member has had access to
2 the proceedings, the team in question should inform the Chamber of the
3 change in its team and make sure that although the person has left, he
4 will maintain or she will maintain confidentiality of proceedings if
5 necessary.

6 PRESIDING JUDGE FULFORD: Thank you very much.

7 The second issue today concerns the request by the Office of
8 Public Counsel for Victims to access documents in the case record and
9 certain particular applicants are identified by number in
10 Ms. Massidda's filing. And I think this can be split really into two
11 particular categories. The first is in paragraph 10 of the
12 application, three particular documents are identified by
13 Ms. Massidda. They all relate to the Prosecution's observations on
14 particular applications to participate at the pre-trial stage of these
15 proceedings, and the Prosecution variously either opposed or supported
16 the grant of participation rights into -- in relation to particular
17 applicants. So there are those particular and focused documents which
18 at this stage the Office of Public Counsel for Victims asked to have
19 access to. That's the first category.

20 The second category is a much wider type of document which in
21 turn is split into three elements. First, access is requested to the
22 index of the case record. Secondly, access is requested in relation
23 to an unredacted copy of the confirmation decision, and the third
24 element is that Ms. Massidda wishes, as I understand it, to be granted
25 the opportunity now to make representations, if she considers it to be

1 appropriate, on the case record.

2 Our preliminary view is that in relation to that second and wider
3 category, our decision on those requests will depend wholly on our
4 overall view of the role to be played by the Office of Public Counsel
5 for Victims during the course of this trial, and that is a matter that
6 we propose to list in the relatively near future for discussion at a
7 Status Conference, and therefore our preliminary view is that it would
8 be premature to investigate at this stage the more general requests
9 which I've just identified.

10 As regards the -- the three particular documents set out at
11 paragraph 10, the Office of the Prosecutor supports the -- the
12 transmission of those documents to the Office of Public Counsel for
13 Victims, and I think, although it's not developed in any detail, the
14 Defence at the moment oppose those specific documents being
15 transmitted to the Office of Public Counsel for Victims.

16 Now, in the light of those introductory remarks, I'm going to ask
17 Mr. Biju-Duval, first of all, whether in fact he maintains his
18 objection to those three particular documents that relate to
19 particular applications to participate in the proceedings, whether he
20 maintains his objections to those going to the Office of Public
21 Counsel for Victims.

22 MR. BIJU-DUVAL (interpretation): Mr. President, the Defence
23 quite understands the reasons which seem to be legitimate and which
24 have ^ impaled the OPCV to request these particular documents. We
25 understand the office's concerns. However, we would like to emphasise

1 the need to strictly follow the principle that only victims authorised
2 to participate in the proceedings have access to the case record. It
3 is true that these documents are on the boundary, but I think the
4 principle must be maintained on a pure question of principle, because
5 we do not want this principle to be gradually reduced in effect. This
6 is why we maintain our objections.

7 PRESIDING JUDGE FULFORD: Do I take it, Mr. Biju-Duval, that that
8 is -- you're stating on behalf of the defendant that you maintain your
9 objection? You've said so in terms. Thank you. You needn't answer
10 the question.

11 Ms. Massidda, can I then address you. First of all, do you agree
12 that we should postpone consideration of the wider category until we
13 focus our attention on the general role of the Office of Public
14 Counsel for Victims.

15 MS. MASSIDDA: Thank you, your Honours. The office could wait if
16 this is the wish of the Chamber to provide submissions on the request.
17 However, I would like to point out and to draw the attention of the
18 Chamber that the request by the office was done as legal
19 representative of the persons involved in the request. So maybe
20 during the discussions on the role of the Office of Public Counsel for
21 Victims, the office would like to address separately the issue of the
22 office acting as legal representative appointed by the Chamber or even
23 by an applicant or a victim and the issue of the office acting in
24 accordance with Regulation 81 of Regulation of the -- of the Court.

25 If I may, your Honours, I would also like to address in few words

1 the issue of paragraph 10 of the request.

2 PRESIDING JUDGE FULFORD: To amplify your submissions as to why
3 access should be granted to those documents.

4 MS. MASSIDDA: Simply to explain why.

5 PRESIDING JUDGE FULFORD: Please proceed.

6 MS. MASSIDDA: Thank you very much. The documents identified in
7 paragraph 10 of the OPCV request of the 10th of October are documents
8 related to the Prosecution's submissions under Rule 89. These
9 documents have always been notified to legal representative appointed,
10 and at that point in time there was no decision granting the status of
11 victims.

12 Secondly, the office is asking the document because the decision
13 on the status of these applicants in the DRC situation is still
14 pending before Pre-Trial Chamber I. The decision of 20 October 2006,
15 in fact, was only dealing with the participation of these applicants
16 except applicant 110/06 in the Lubanga case. A decision for these
17 applicants in the DRC situation is still pending before Pre-Trial
18 Chamber I. So I insist for the notification of these documents.
19 Thank you very much.

20 PRESIDING JUDGE FULFORD: Just before you sit down, Ms. Massidda,
21 I imagine you accept that the particular victims, the particular
22 applicants who wish these documents, would only be entitled to them if
23 certain criteria are met, and that criteria would of course include
24 the fact that they are going to apply to participate in these
25 proceedings before this particular Chamber.

1 MS. MASSIDDA: Yes, your Honour, indeed. Part of these
2 applicants have already reapplied requesting to participate also in
3 the trial phase.

4 PRESIDING JUDGE FULFORD: It may well be, Ms. Massidda, that if
5 we are minded to grant this application in relation to paragraph 10 a
6 precondition will be that renewed applications are made by each of
7 those who wishes to be granted access to the documents.

8 MS. MASSIDDA: Your Honour, I respectfully ^ [sic]disagree. I
9 think that the information contained in this document could also be
10 useful for the office to resubmit the application. This is indeed
11 part of the issue. But the office submits that as legal
12 representative it is entitle at this moment in time to receive
13 notification of the submission as all the other legal representative
14 had in the course of the proceedings.

15 PRESIDING JUDGE FULFORD: So you would wish to receive these in
16 advance of any application being made to assist you in the process of
17 making the application.

18 MS. MASSIDDA: This is only part of the issue, your Honour, yes.

19 PRESIDING JUDGE FULFORD: That's very clear. Thank you very
20 much. Anything else on the point, Ms. Massidda?

21 MS. MASSIDDA: No thank you.

22 PRESIDING JUDGE FULFORD: Thank you.

23 Mr. Withopf, anything you wish to say on this?

24 MR. WITHOPF: Our submission, Mr. President, will be made by
25 Mr. Bulmer.

1 PRESIDING JUDGE FULFORD: Thank you very much indeed.

2 Mr. Walley, Ms. Bapita, I imagine this doesn't directly affect
3 either of you.

4 MR. WALLEY (interpretation): I have no comment for the time
5 being, Mr. President.

6 PRESIDING JUDGE FULFORD: Sorry. You spoke so quietly,
7 Mr. Withopf, I assume that what you were saying was in accordance with
8 when you, on other occasions, have indicated to us that you're merely
9 abiding by your previous submissions. I'm sorry, I actually didn't
10 hear Mr. Bulmer's name at all.

11 Mr. Bulmer.

12 MR. BULMER: I was caught a bit off surprised, I'm sorry
13 Mr. President, your Honour. No, your Honours, you summarised the
14 Prosecution position on this issue quite fairly, and there is nothing
15 really to add subject to any questions from the Bench. Sorry about
16 that.

17 PRESIDING JUDGE FULFORD: Right. After that minor confusion, I
18 want to move next, please, to the issue of the transcription of our
19 proceedings being provided simultaneously in French and in English.

20 Now, the submission made by the Registrar on this point seems,
21 certainly to me, to focus essentially two particular issues, and they
22 can be summarised as follows: First, that the current set-up of
23 LiveNote does not allow for accented characters to appear on the
24 screen, and it's suggested by the Registrar that that, and I quote,
25 renders the transcript practically illegible, and that in the result

1 LiveNote and other providers are either being consulted or have been
2 consulted on this issue. I'm going to, in a moment, ask the parties
3 and the participants to indicate whether they accept the suggestion
4 that as the -- that under the current configuration whether in fact it
5 is really rendered illegible if accents aren't included, and as a
6 subsidiary question, to seek from the Registrar an update as to how
7 their inquiries are going with LiveNote and other providers.

8 The second focus of the Registrar's submissions is that -- and
9 again I quote, that the human resources configuration at the Rwandan
10 Tribunal for French realtime transcripts is not comparable to that of
11 the ICC. Now, I'm going to ask, please, for some greater explanation
12 in relation to this because that would appear to indicate that so long
13 as the right technology is in place it is possible to provide
14 simultaneous French and English transcripts.

15 So Mr. Dubuisson.

16 MR. DUBUISSON (interpretation): Thank you. Your Honours, it is
17 true that from the start what we have been facing is a choice between
18 good and evil. We have very advanced technology here, and of course
19 we would like all the other technology supporting this technology to
20 be compatible with it. The interest is to provide good quality
21 service.

22 We have come up against difficulties, that is, when we were
23 establishing within the court building a team of people to provide
24 reporting in French in realtime. We were faced with a challenge from
25 the Defence which said that in ICTR this technology existed. We did

1 go there, and we tried to find out why it worked elsewhere and not
2 here. We concluded two things.

3 First, with regard to the technology, the programme used in
4 Arusha is called Caseview. It is therefore not the one we have here.
5 It is not an integrate system. It is not part of a broader
6 technology. And the number of people, according to hearing, providing
7 the transcript is higher. So there are five in number.

8 Since we always try to seek a solution, we have conducted an
9 investigation, especially on the Canadian market, as to the
10 possibility of providing for trial, that is around April, so I'm not
11 saying the 31st of March in this case, I'm not sure about the 31st of
12 March, but I'm sure about mid-April. So in these circumstances we
13 were considering whether it would be possible to provide technology.

14 This technology has a cost. It would cost us on the whole
15 500.000 euros to be able to provide a transcript in French in
16 realtime. That is the price that we have to pay in order to provide
17 this facility, which, I should repeat, is not a legal obligation, but
18 I quite understand. I don't want to discuss or debate obligations.
19 500.000 euros is only for the French version. If we add the English
20 version we would add 6 to 800.000 euros. So this means at practically
21 half of the budget of the Victims and Witnesses Unit. So we can
22 provide such a service that is from ^ 10.19.00 ^ April or mid-april
23 April, we can provide advanced technology to enable the provision a
24 French transcript, and you must also know what it would have -- what
25 impact it would have on the Court's budget.

1 PRESIDING JUDGE FULFORD: Before you sit down, Mr. Dubuisson, can
2 I ask this: Is it possible to provide now a version of LiveNote in
3 both French and English with the French appearing without accented
4 characters?

5 MR. DUBUISSON (interpretation): At this time, in terms of human
6 resources, the Court only has one person who is able to do that. So
7 of course it's not in itself viable. We need to recruit more people,
8 and the choice made by the Court is no longer to recruit more people.

9 And as I said earlier, referring to something else, it shouldn't
10 work with what doesn't -- is not possible. We were trying to work for
11 the future. We are looking for something that is viable for the
12 future in time and space.

13 So this issue might enable the Defence to work better. It might
14 work for a time being. We might recruit people. It might cost less,
15 but it's not a viable solution, a comprehensive solution, and it is
16 not even compatible with our computer systems.

17 PRESIDING JUDGE FULFORD: Mr. Dubuisson, do I take it from what
18 you say, therefore, that so long as an appropriate person is
19 recruited, the technology is there to enable there to be simultaneous
20 English and French transcripts, although the French, at the moment,
21 would appear without an accent?

22 MR. DUBUISSON (interpretation): No. To be clear, the company
23 that can provide us a service can find people to provide a correct
24 transcript in French in realtime using our technology. There are
25 about four or five people in the world that can do that now. They

1 have been told that they might come to work with us.

2 Now, the temporary solution is to work with our system with our
3 own people is not compatible with our computer system. This is
4 something that we may do on sidelines, so we can recruit people who
5 are out on the market, the French market, because we are not using --
6 we're not using that technology which is the general technology of the
7 system, and with that we can produce something that would not have
8 accents.

9 So if you use a shortcut and you say if you recruit people, then
10 you can provide something of good quality in French, I would say,
11 well, no, we can't do that today.

12 [Trial Chamber confers]

13 PRESIDING JUDGE FULFORD: Thank you, Mr. Dubuisson.

14 JUDGE ODIO BENITO: Mr. Dubuisson, let me ask you something.
15 It's about the pre-trial proceedings. In the Pre-Trial Chamber I,
16 they are working in French from the beginning, and they are still
17 working in French. The transcripts are made only in English for the
18 Pre-Trial Chamber before now? Is that the situation for them as well?
19 Thank you.

20 MR. DUBUISSON (interpretation): It is true that no transcript
21 has been produced in French in realtime. What was produced was a
22 document in French two hours or perhaps a little longer in the evening
23 afterwards. That is how we've been working, which is what we have
24 been doing in the ICTR, or what the ICTR used to do for many years.

25 I would like to point out that it is not only the issue of the

1 accents that cannot be seen. It is the letter on which the accent
2 appears which will not be visible either. So it's not just a question
3 of the accent. So if you have a lot of words with lots of accents,
4 then there is no meaning in French.

5 Yes. It is a form of redacted document, yes.

6 PRESIDING JUDGE FULFORD: Thank you, Mr. Dubuisson.

7 Mr. Biju-Duval.

8 MR. BIJU-DUVAL (interpretation): Thank you, Mr. President. Just
9 a word.

10 I think that we cannot allow this to continue to be
11 institutionalised if the system is unbalanced. It seems to me
12 essential for practical reasons and for reasons of efficient work and
13 for reasons of law that affect the equality of arms, equal resources,
14 it is important in light of this for the system to allow access to
15 LiveNote both in French and in English. I think that in the final
16 analysis it boils down to finance, and in light of the quality and the
17 requirements in the International Criminal Court with regard to
18 service, I think an effort should be made to provide the financial
19 resources.

20 Regarding the accents, I have been given to understand that when
21 the accent disappears, so does the letter, and therefore the
22 transcript might well be incomprehensible. So this is not an
23 alternative solution.

24 These are my submissions.

25 MR. WITHOPF: Mr. President, your Honours, our brief submission

1 will be made by Ms. Solano.

2 PRESIDING JUDGE FULFORD: Yes.

3 MS. SOLANO: Mr. President, your Honours, just in answer to your
4 question, the Prosecution is not able to comment on the question of
5 whether the transcript would indeed be rendered illegible because we
6 have not had an opportunity to look at it, but obviously we take the
7 Registrar's point on the matter.

8 PRESIDING JUDGE FULFORD: Thank you very much indeed, Ms. Solano.
9 Mr. Walley.

10 MR. WALLEYN (interpretation): I support the Defence's position
11 on this point.

12 PRESIDING JUDGE FULFORD: Thank you. That concludes that issue.

13 We turn now to the Prosecution's filing in relation to the
14 lifting of redactions and the non-disclosure of information, which is
15 set out in their document of the 31st of October. To a -- to an
16 extent it may be that some of the issues raised in that document have
17 been overtaken by the handing down of the decision of the Chamber on
18 the 9th of November, the decision that dealt with the timing and the
19 manner of disclosure, timing and the manner of disclosure and the date
20 of trial.

21 By way of the shortest summary, in that decision the Bench
22 ordered the Prosecution to serve the entirety of its positive case by
23 the 14th of December, and any passages within witness statements or
24 documents that the Prosecution wish to remain redacted must be brought
25 to our attention in advance and justified, and we hope that that, in a

1 general sense, makes the position very clear.

2 Mr. Withopf, in relation to the other issues that may still be
3 extant arising out of the Prosecution's filing, our preliminary view
4 is as follows: That for all documents covered by 81(2), put otherwise
5 documents redacted to protect ongoing investigations, if the
6 Prosecution wish to remove a redaction which the Prosecution
7 originally sought, then that can happen without coming to the Chamber
8 requesting leave, but we should be notified on each and every occasion
9 when a redaction is going to be lifted in that way, and that is simply
10 to make sure that we are kept informed as to what the up-to-date
11 position is.

12 In contrast, for all documents and witness statements covered by
13 81(4), those are documents which -- in relation to which there have
14 been redactions to protect the safety of witnesses, our preliminary
15 view is that the Prosecution should apply to the Chamber for leave to
16 remove the redaction.

17 Given the importance of those redactions, which as we understand
18 it will always have been made, in any event, by order -- by judicial
19 order, it is necessary for there to be a judicial order permitting the
20 removal of the redaction.

21 Now, that's our -- that's our preliminary view, and really two
22 questions. First of all, does that cover the outstanding issues
23 arising out of your filing; and secondly, is it an acceptable solution
24 or do you wish to make, as it were, contrary submissions?

25 MR. WITHOPF: Mr. President, your Honours, what you have

1 summarised very much mirrors what our submission has been. Obviously,
2 in accordance with that it is an acceptable solution for the Office of
3 the Prosecutor.

4 PRESIDING JUDGE FULFORD: Well, that's short and sweet,
5 Mr. Withopf. Thank you very much.

6 Does anybody else, in those circumstances, wish to advance any
7 submissions on this issue? No. Well, that will be reflected in our
8 order in due course.

9 The next issue concerns the Victims and Witnesses Unit report on
10 security issues relating to the dual status of witnesses and victims.
11 It needs to be borne in mind when this matter is ventilated during the
12 course of this hearing that that was a confidential filing, and
13 nothing must be said during the course of this open session that could
14 possibly breach any matter in relation to which confidentiality needs
15 to be maintained. So I ask all those in court today please very much
16 to bear that in mind.

17 The focus of the issue, I think, can really be found in
18 paragraphs 20 through to 23 of the Registrar's filing. I'm for the
19 moment going to put paragraph 20 to one side, but I'm going to ask
20 whether there are any objections to the proposal made by the Victims
21 and Witnesses Unit that is set out in paragraph 21 and 22 of that
22 filing, which at the moment seem to the Bench to be sensible
23 proposals.

24 Mr. Biju-Duval, do you have any submissions on this?

25 MR. BIJU-DUVAL (interpretation): No submissions, your Honour.

1 PRESIDING JUDGE FULFORD: Thank you very much.

2 Mr. Walley? Ms. Bapita?

3 MS. BAPITA (interpretation): No comments, your Honour.

4 PRESIDING JUDGE FULFORD: Sorry, Mr. Withopf, we may be moving
5 slightly faster than you'd anticipated. Do you have any submission on
6 this.

7 MR. WITHOPF: No, your Honour. No submissions.

8 PRESIDING JUDGE FULFORD: Ms. Massidda, do I take it that you
9 would wish to intervene on this?

10 MS. MASSIDDA: Yes, your Honours. It's just a question in
11 relation to paragraph 22 of the submission. The possibility that a
12 certain part of information could be shared between Victims and
13 Witnesses Unit and VPRS. Well, when the office was appointed as legal
14 representative, we undertook consultations with all sections of the
15 Registry and also one informal consultation with the Office of the
16 Prosecutor to try to identify who has the information in relation to
17 the dual status.

18 Now, we doubt that the Victims Participation and Reparation
19 Section could always have the information in relation to the dual
20 status. So we are not sure at this point in time that it will be
21 possible for the VPRS to share this information with the Victims and
22 Witnesses Unit because simply the VPRS will not be in a position to
23 have the information.

24 PRESIDING JUDGE FULFORD: Do you have any solution to advance,
25 Ms. Massidda, if your fear is well-founded?

1 MS. MASSIDDA: Well, your Honours, in our understanding during
2 the informal consultation, there is an confidential internal
3 memorandum between the Office of the Prosecutor and the Victims
4 Participation Reparation Section. In our understanding, this internal
5 memorandum deals inter alia with the sharing of certain information
6 between the Office of the Prosecutor and the VPRS. We don't know if
7 the sharing of information concerns also the dual status of a person
8 accumulating the status of victim and the status of witness.

9 What could be suggested maybe is that the protocol include also
10 the sharing of this specific information, and this, your Honour, could
11 also solve another issue. The legal representative -- the legal
12 representatives are not in a position normally to know about the dual
13 status. Now, when the legal representative file an application, the
14 application is filed with VPRS. In a time frame of two or three
15 weeks, VPRS acknowledge the receipt of the application and inform the
16 legal representative of the number given to the application. On that
17 occasion, VPRS could also inform the legal representative of the
18 existence of the dual status if the information has passed before --
19 from the OTP or from anyone else.

20 PRESIDING JUDGE FULFORD: Ms. Massidda, I'm going to interrupt
21 you. In paragraph 20 the Registry wishes this Chamber to make an
22 order that the relevant people should communicate with each other
23 regarding the dual status of a particular individual. I think your
24 submissions thus far demonstrate in an extremely fine way how
25 important it is that the various relevant sections speak to each other

1 on this issue, and instead of us trying to resolve this issue in the
2 sense of inventing the wheel in court, the various units should return
3 to court with a joint proposal as to how this should work.

4 Now, would you be prepared to participate in that endeavour to
5 make sure that we are presented with a coherent package as to how dual
6 status individuals can best be dealt with by this Chamber?

7 MS. MASSIDDA: I will, your Honour. This is also the reason why
8 the office was not in a position before mid-November to address the
9 issue with the Chamber, because we try to have some informal
10 consultation, but the position at the moment are not common at all.

11 PRESIDING JUDGE FULFORD: Thank you.

12 Mr. Dubuisson, you've heard my suggestion. Are there any
13 objections to it?

14 MR. DUBUISSON (interpretation): Your Honours, I don't have an
15 objection to that. I would, however, like to mention just one point
16 into the discussion, which is the -- basically to say the document
17 which we made is a document which does show to you the complexity of
18 the situation within the framework we operate with regards to
19 protection. So that does reduce it. It's not about having access to
20 all types of information with regards to dual status. The dual status
21 concerns us to the point that it makes our work more complex within
22 the framework of protection.

23 With regards to saying that the unit for reparations and
24 participation is not really a solution, well, what I would say is that
25 first of all, making a reference to an agreement between the

1 Prosecutor and the Registry doesn't cover the dual status with regards
2 to the Defence. So the Defence will have witnesses themselves. So
3 that dual status shouldn't be limited just to one party or another.
4 All parties, all participants are concerned by this double status.
5 And it seems to me that all victims should at a given time be
6 registered in the database of this unit of participation and
7 reparations so to be able to solve this problem. And also to the
8 extent to which paragraph 20 is accepted, we could asked quite simply
9 that a victim who wants to participate would also have the obligation
10 to inform the VPRS as well, and in this way this victim would also be
11 registered and thereby it couldn't be said that the VPRS, the section
12 for participation and reparations, didn't have all the names of all
13 victims.

14 I think it's as simple as that as far as I'm concerned.

15 PRESIDING JUDGE FULFORD: Mr. Dubuisson, my simple question was
16 asking whether the Registry would be prepared to participate in an
17 exercise whereby everybody who is concerned with this put their heads
18 together to come up with one comprehensive document which addressed
19 the issue of the way in which we should deal with individuals who have
20 dual status.

21 Now, first of all, is -- is the Registry prepared to participate
22 in that process, and do you think it would be worthwhile?

23 MR. DUBUISSON (interpretation): Of course. Of course. I think
24 that it's very much the work of the Registry to participate and to try
25 and find solutions to complex problems. Certainly we are at the

1 availability of the Chamber and parties and participants to be able to
2 facilitate a process which would make it possible to have a rapid and
3 fair proceedings.

4 [Trial Chamber confers]

5 PRESIDING JUDGE FULFORD: We consider this to be an extremely
6 important issue which needs to be resolved with the full participation
7 of all who are concerned with it. We therefore direct that a single
8 document should be produced which is the result of discussions outside
9 of court which should include, as appropriate, the parties and the
10 participants, and also the Victims Participation and Reparations
11 Section, the Victims and Witnesses Unit, and Ms. Massidda's unit.

12 We ask that that report is delivered to the Chamber by 4.00 p.m.
13 on the 7th of January.

14 Obviously, if full agreement can be reached that will be well and
15 good. If full agreement can't be reached, we want, please, to have
16 clearly explained what the areas of disagreement are, as well as the
17 areas of agreement. And we will resolve any areas of disagreement
18 once we have received the document.

19 Finally, languages. The Bench is keen to ensure that everyone in
20 court today is aware that we wish that everything possible is done to
21 ensure that this case and its commencement is not delayed because
22 there has been a lack of clarity and a lack of communication over the
23 languages which it is reasonably anticipated may be used during the
24 course of the trial.

25 The parties and the participants have, in our view, an absolute

1 obligation to communicate with the Registry as to the languages that
2 they reasonably anticipate will be needed, and not only the languages
3 in a general sense but also any dialects or variants of languages and
4 whether those dialects and variants will need separate interpretation.

5 The following languages have thus far been revealed: Swahili,
6 Lingala, English, French, Alur, and Kilendu.

7 As in relation to Swahili, a particular issue has been
8 highlighted, namely that there are differences of varying significance
9 between the Swahili spoken in Ituri, North Kivu, East Africa, and
10 Central Africa.

11 In relation, therefore, to Swahili, the Registry will need to
12 know whether one interpretation for Swahili is sufficient or whether
13 there are going to have to be different interpreters to deal with
14 different dialects.

15 This -- what is currently and anticipated must be communicated to
16 the Registry immediately, and by that we mean by 4.00 p.m. on Friday
17 of this week. Should additional languages or dialects emerge, those
18 also must be communicated to the Registry immediately.

19 We understand that the Registry has available to it a panel of
20 experts who are in a position to advise on the interpretation services
21 that are in fact required once the -- well, are required in light of
22 the observations in relation to languages have been made by the
23 parties and participants. And I'm going to ask Mr. Dubuisson to
24 indicate now, please, to the Chamber whether there is a panel of
25 experts currently available who is -- which is in a position to advise

1 the Registry in relation to all the interpretation requirements which
2 will exist in relation to this trial.

3 MR. DUBUISSON (interpretation): Your Honours, we should be
4 careful when we speak about the word "expert." The Registry, well,
5 did make a major effort to be able to try to enlarge its list of
6 experts, particularly linguistic experts, and so we are always looking
7 for good experts.

8 Now, when -- what do we understand by "expert" with regards to
9 your request? If we're speaking about being able to determine what is
10 the Swahili that's spoken by a witness in a particular case, then I
11 think that we do today have experts who can determine if the Swahili
12 booth which we have today is able to interpret under the best
13 conditions possible what the witness says. However, if we're asked to
14 carry out an expertise with regard to the different languages which
15 are used in Ituri and within Swahili, the different types of Swahili,
16 and what those differences consist of, then that would take time. And
17 what's important for the Registry to know today is what is the end of
18 a report which would -- or the aim of the report which would determine
19 the language spoken in Ituri, because the Registry where we work in
20 accordance with the requests that we receive, we know today -- you
21 mentioned the languages which would be used by the parties and
22 participants.

23 All persons who will come within this courtroom to testify are
24 victims who are going to participate. All these persons in one way or
25 in another have had contact with persons from the court, and so in one

1 way or another they have been able to communicate in a common
2 language. So today, all the people, victims, witnesses, who have been
3 in contact with the court, well, there was communication with them.
4 So obviously within a courtroom such as this, we're never far from
5 surprises or sheltered from surprises.

6 We know, for example, with the ICTR there was the case of
7 somebody who had given a statement in French and once that person was
8 in the courtroom they say I want to express myself in a particular
9 language. And in this case the Prosecutor or the Defence could say to
10 you, "But we've always had contacts with this person in French. Our
11 statements were done in French, and we can't think that the person
12 once present in the courtroom could say that he would wish to speak a
13 language other than French."

14 So what is important for us to know today is to not only the
15 language which was used for -- by the parties and participants when
16 they had this contact with that person, but I would above all want to
17 know what is the language that that person intends to use when that
18 person is in this courtroom. It is that our problem.

19 So in accordance -- when we know what the language would be used
20 within this courtroom, then we could perhaps start to refine our
21 search and to see if our Swahili booth, perhaps with resources or
22 consecutive resources for Lingala, Kilendu, for Alur, if that is
23 enough. So I think that's why we have to be very precise in this
24 regard to answer your question. I hope I have answered your question.

25 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Dubuisson, and

1 that is precisely why we have indicated that the parties and the
2 participants have an absolute obligation to communicate with the
3 Registry as to which languages they reasonably apprehend the witnesses
4 will wish to use when appearing before this court, and this trial will
5 not be delayed because there has been a failure to communicate those
6 reasonable expectations, and so the responsibility for this lies not
7 with the Registry and not with the Court. It lies with the parties
8 and the participants, and that must be very, very clearly understood.

9 So for those currently anticipated, 4.00 p.m. on Friday. And for
10 later individuals who emerge during the course of the researches into
11 this case, as soon as a new language is reasonably anticipated that
12 must be immediately communicated to the Registry and to the Court.

13 Now, that being said does anyone else wish to make any
14 submissions on this point? No.

15 Now, in the agenda one matter that was listed related to
16 protective measures for victims applicants, and this is paragraph 16
17 of the order scheduling a hearing, originally dated the 14th of
18 November, and rescheduled on the 16th of November, and we set out
19 there that there appears to the Bench to be an apparent lack of
20 agreement as to whether the Victims and Witnesses Unit has
21 responsibility for the safety and well-being of victims who have
22 applied to participate in the trial during the period whilst the
23 applications are pending.

24 Mr. Dubuisson, can I ask whether the Registry is in a position to
25 make substantive submissions on that issue today.

1 MR. DUBUISSON (interpretation): Your Honours, I think that the
2 Registry could already give you a first line, as it were, which it
3 could then go into further.

4 PRESIDING JUDGE FULFORD: Please give us the first line then,
5 Mr. Dubuisson.

6 MR. DUBUISSON (interpretation): Thank you.

7 So the protection of victims is a very important subject because
8 there are considerable expectations with regards to it. The
9 intervention that I'm going to make today is then to give you an
10 overview, and I will give certain lines which can be explored so the
11 Registry in no way wants to prejudice any type of decision that the
12 Registry would take. We want to be very precise, so I would also like
13 to come up with a prior excuse, apology, if you think that the
14 Registry is entering into any kind of judicial aspects, but it's
15 necessary to recall before starting certain major principles. And the
16 best type protection that you can have --

17 PRESIDING JUDGE FULFORD: Do I take it that this is going to be a
18 submission wholly appropriately of some length?

19 MR. DUBUISSON (interpretation): I think we can say that, yes.

20 PRESIDING JUDGE FULFORD: In those circumstances, given it's
21 nearly 11.00 and the interpreters should be given a break, we'll pick
22 this up again at -- yes, we'll sit again at half past 11.00. Thank
23 you very much.

24 We'll rise.

25 Recess taken at 10.57 a.m.

1 On resuming at 11.34 a.m.

2 COURT USHER: All rise. Please be seated.

3 PRESIDING JUDGE FULFORD: Please continue, Mr. Dubuisson.

4 MR. DUBUISSON (interpretation): Thank you.

5 So I was actually defining what I was going to say, and I was
6 recalling certain principles. The first one, which is obvious, is
7 that prevention is the best protection. Protection must come after
8 interaction with the courts. That is the second principle. We know
9 under what conditions we need to work. We know where the people live.
10 However, the court's responsibility is engaged after interacting or
11 interaction with the court. We also know that there are limits to the
12 feasibility of protection. Furthermore, we know that the physical
13 participation of all the victims is not obligatory, so there is a
14 flexibility in the approach.

15 Lastly, as I speak to you, we are not aware of the modalities for
16 participation, so what we are doing is starting something without
17 knowing exactly how, to what extent, the victims will be exposed.
18 What is not in dispute in respect of the mandate of the Victims and
19 Witnesses Unit as far as protection is concerned. As we know it is
20 this unit which within the court is in charge of matters pertaining to
21 protection.

22 It is not challenged that the VWU is in charge of witnesses,
23 witnesses who are also victims and thus have a double status, victims
24 who appear physically here in the court, and also other persons at
25 risk. These persons may be members of a victim's, a witness's family,

1 because in relocating a witness, the family is also moved.

2 This protection which is granted without any discussion as to the
3 admissibility can be discussed on its basis, because the mechanism in
4 place requests the parties and participants to refer an application
5 for protection to the Registry, and on the basis of that application a
6 decision is taken. However, the ultimate purpose that may be obtained
7 is the -- the complete protection programme that is the ICCPP which
8 the court offers.

9 But this is too restrictive a definition in some ways, because
10 the court also has a responsibility. We might say yes, victims can
11 participate. They can participate at the situation and at the case
12 level. They may participate in the proceedings and even request
13 reparations.

14 In order to participate at a stage in the proceedings, in order
15 to apply to participate, in fact, these people may expect from the
16 court a certain form of protection. This protection is provided by
17 special protection officers, and these officers work within the
18 Registry and the VWU inside of that. The VWU also has the power to
19 establish or sign agreements with States within the framework of
20 protection. This could be relocation agreements. They could be
21 agreements to implement the protection system on the ground, and they
22 may involve national police forces.

23 Obviously, it is not as clear as it is for the first case. This
24 means that within the court one might well find parties or
25 participants who are not satisfied with the service provided and who

1 think that they themselves might be in a better position to develop a
2 certain system and consequently devise forms of protection on their
3 own. We must, therefore, avoid decentralising protection, because
4 this would imperil the protection mechanisms established by the
5 Registry. You must keep the church in the centre of the village.
6 Everyone must know what channel is used for protection.

7 The indirect responsibility, as it were, of the VWU in
8 cooperation with other organs of the court, parties, and participants,
9 and of course this involves the best practices, involve collection of
10 information on the general threats in certain places. It is an
11 advisory role which is key because of the knowledge of the issues on
12 the ground and support for protection.

13 So what are the kind of measures which we can provide? What is
14 the expert opinion or advice we can provide? We can train staff
15 members and people and stakeholders. We can advise the Chamber and
16 legal representatives on the real threat posed as regards various
17 groups of victims. We can also advise the Chamber and legal
18 representatives on adequate protection mechanisms already in place on
19 the ground so as to enable them to make an application for protection.

20 What are the options available to us? First you have good
21 practices. All contact with anyone by anyone in the court with a
22 victim, a potential victim, a victim who may also be an applicant, a
23 potential witness, anyone on the ground, any contact with anyone on
24 the ground must be done according to good practices. It must be done
25 appropriately. So I consider that the first protective measure, that

1 is preventive protection, is good practice.

2 Next you have procedural measures which are binding upon us. If
3 someone is an applicant to participate in a situation, not in this
4 Chamber, perhaps, but in another one, then it might be for procedural
5 reasons to -- well to use anonymity. I know that's not a popular
6 measure, but we could say that we could have closed sessions. So we
7 could have procedural measures which would involve this Chamber at the
8 case stage but which might involve another Chamber at the situation
9 stage, and the decisions would be taken at these levels.

10 In this approach, the preventive approach, the important thing is
11 exposure of victims or potential victims. So in this initial
12 approach, we might come to the court and say we have respected good
13 practices on all sides. You have also ensured that at the level of
14 procedure there has been confidentiality, but obviously there is a
15 group of victims living in a village which is too remote from anywhere
16 we can operate immediately, and in that case we might ask for requests
17 for cooperation. This is also a preventive measure that the Chamber
18 can take. You might ask for cooperation from the State to ensure that
19 a village, for example, is better protected by the State.

20 This might also involve creating an evacuation corridor towards a
21 protected town, and this would be -- or might be in cooperation with
22 an international organisation active locally.

23 Lastly, in respect of prevention, we can set up a communication
24 system. So if people feel themselves to be in danger they can contact
25 someone who can send people down to the ground, on the ground, or

1 soldiers to ensure that the people are protected. I'm not referring
2 to extraction here. I mean increasing military presence in a
3 particular location. Here we are talking about threats and danger.
4 We must consider death threats.

5 Who has the authority to move around armed in a country in order
6 to fight against threat? It is the State. It is not the court. The
7 court cannot go about armed in Ituri today. So we must set up a
8 mechanism, an agreement that -- with the State so that it can provide
9 such protection.

10 Perhaps this is not satisfactory to anyone because we do not know
11 the capacity of the State itself. It is a somewhat thorny issue.
12 What the Registry would need here in this case in respect of victims
13 you have first the applicant -- an applicant for participation in the
14 situation stage. This could be in the Equatoriale Province, it could
15 be in the Bas Congo Province, who wants to participate in the
16 situation stage.

17 So how are we going to deal with this person if he asks for
18 protection, whereas our cases are basically focused in the east of the
19 country. So what would be the interaction of this person with the
20 court? It is very difficult for us to gauge that at this point. This
21 means that there's another problem. If we want to be much more
22 effective, then perhaps it is thought that I am, then first and
23 foremost we must define groups. If we were able to determine specific
24 groups of victims from the outset, then we would be able to ask that
25 within these groups identification of a key person; that is, I refer

1 here to a person who would best represent a group of 50 or so victims,
2 and we could say we are going to choose three or four of such people
3 who are the most representative of the group. And in that case, for
4 this limited number of people, we could offer complete protection.
5 This means that there will be a request for cooperation made by the
6 Registry and perhaps even the Chamber as to ensure the proper
7 administration of this application.

8 We also need to follow criteria. Who must the applicant be? The
9 applicant we would like -- we would like the applicant to be the key
10 in the group, or, and we must take this into account, a victim who has
11 been endangered because they have interacted with someone in the
12 court. That is the exception. If we ourselves create danger, then we
13 must bear the responsibility for it. We also have to take account of
14 the fact that a victim could be referred to us by the Chamber itself.
15 If parties or participants or legal representatives apply to the
16 Chamber and the Chamber instructs us accordingly, we can take this
17 into account.

18 There's always a risk. As I said before, this risk if -- must
19 come as a result of the applicant's interaction with the court.
20 Security must be there. It must be described or characterised. The
21 threat must be measurable. The identity or location of the applicant
22 must be known or have been disclosed in the course of the proceedings.

23 I return to the proceedings, because I think it is the Chamber's
24 duty during the proceedings to limit the exposure of this victim. The
25 insecurity within which the applicant finds himself or herself, it

1 could hamper or prevent the participation of the applicant according
2 to modalities that will be defined by the Chamber. It arises directly
3 from his participation as a victim, and this would be within the
4 limits of the modalities to be fixed by the Chamber, and it can also
5 arise from the conduct of one of the persons or the staff members of
6 the court. This is one of the points we mentioned first.

7 So for protection to be offered, that is within the ICCPP, this
8 should be the only alternative to protect the applicant, because we
9 can also work with partners who can help us as well.

10 So I think that is a complex issue. It is fairly delicate, and
11 we cannot satisfy everyone. So what I am saying today, not knowing
12 exactly what the modalities for the participation of victims will be,
13 but bearing in mind that it will be well for the Registry, for the
14 victims to participate to the best -- in the best possible conditions
15 in the proceedings, I think that we have some avenues that we can
16 explore to ensure the effective participation of the largest possible
17 number of victims in the proceedings.

18 PRESIDING JUDGE FULFORD: Thank you very much for that full
19 explanation, Mr. Dubuisson. Do I take it from what you've said that,
20 always against the background of the difficulties you've highlighted,
21 the answer to the question posed, in our paragraph 16, is that victims
22 who are applicants are the responsibility of the Victims and Witnesses
23 Unit?

24 MR. DUBUISSON (interpretation): I might say that it is not
25 direct responsibility. Then we might think it is indirect

1 responsibility. So with regard to general responsibility, I would say
2 yes.

3 PRESIDING JUDGE FULFORD: I'm sorry, I don't find that helpful,
4 Mr. Dubuisson, distinguishing between direct and indirect
5 responsibility. That doesn't in any way provide any kind of
6 definition as to what the Victims and Witnesses Unit should do and the
7 extent of their responsibility.

8 Now, we -- we asked for attention to be given to Article 43(6)
9 and what is meant by "victims who appear before the Court who are the
10 responsibility of the Victims and Witnesses Unit."

11 Now, do you accept that victims and applicant victims are the
12 Victims and Witnesses responsibility or not?

13 MR. DUBUISSON (interpretation): Yes, I would say yes, but it is
14 complex. That is to say that it is not direct entry into the complete
15 programme, protection programme, that the VWU can offer.

16 PRESIDING JUDGE FULFORD: This is complicated, there is no doubt
17 it's difficult, and there is no doubt that it will be impossible ever
18 to provide complete protection, but that's a different issue from
19 whether or not overall responsibility lies with a particular organ of
20 the court, and I think you are agreeing that insofar as it's possible
21 to provide protection, it is the responsibility of the Victims and
22 Witnesses Unit.

23 MR. DUBUISSON (interpretation): Yes.

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 Now, in the light of what Mr. Dubuisson has said, and

1 particularly the last answer that's been given, does anybody else wish
2 to participate on this issue?

3 Mr. Biju-Duval? No.

4 Mr. Withopf?

5 MR. WITHOPF: Mr. President, Mr. Bulmer will make submissions for
6 us.

7 PRESIDING JUDGE FULFORD: Yes.

8 MR. BULMER: [No microphone]

9 THE INTERPRETER: Microphone, please, sir.

10 MR. BULMER: Oh, I'm sorry. I forgot to turn my microphone on.

11 The Prosecution's submission on this item is geared hopefully specific
12 to the indication by the Chamber made in item 3 of the agenda, and I
13 dare say it's focused specifically on the issue of statutory
14 interpretation and the specific word, Mr. President, that you focus
15 on, "victims who appear before the Chamber." So gauging that or
16 putting it in its context I make the following submissions
17 respectfully to the Chamber:

18 Based on a reading of the conjunctive nature of the class of
19 individuals described in Article 46(3) of the provision, it is
20 respectfully submitted that the common thread that runs through all
21 three of these classes of individuals; that being, "witnesses, victims
22 who appear before the court, and others who are at risk on account of
23 testimony given by such witnesses," is the identification of a
24 potential risk that is posed as a result of a presence --

25 PRESIDING JUDGE FULFORD: I'm going to interrupt. You referred

1 to Article 64(3).

2 MR. BULMER: I beg your pardon. I'm a bit dyslexic in that
3 regard.

4 PRESIDING JUDGE FULFORD: No, not at all. Did you mean 43(6)?

5 MR. BULMER: 43(6). Thank you. My notes indicate 43(6). I
6 apologise for that misstatement. In other words, in my respectful
7 submission, it's a proposed reading of this provision reveals, in my
8 respectful submission, that the mandate of VWU under 43(6) extends to
9 individuals who all have the same nexus or connection, that being they
10 require assistance as a result of a form of crystallized attendance
11 before the court. It is submitted that without this form of
12 crystallized appearance or presence by one of these delineated
13 individuals, the victim or the witness who appears before the court,
14 the mandate of VWU is not triggered by Article 43(6).

15 Specifically, to build on this submission, therefore, it is the
16 position of the Prosecution that an individual who has nothing -- I'm
17 sorry, not in the pejorative sense, who is a victim applicant under
18 Rule 89, namely person who has made an application to the Chamber for
19 participation in the case, does not solely as a result of making that
20 application become a victim who appears before the court within the
21 meaning of Article 43(6). Consequently, these individuals would fall
22 outside of the provisions of 43(6) based on that interpretation of
23 appearance before the court.

24 This position as advanced by the Prosecution should not be taken
25 to mean that advocating that victim applicants are not entitled to

1 measures to protect their anonymity at the time of the application
2 obviously. Indeed such protection would be warranted, otherwise if
3 they are granted the appearance right the fact that their anonymity
4 wasn't granted would bear on the ability to protect them. So it's not
5 intended to say that they aren't entitled to the anonymity at the
6 application process. This is a submission focused solely on the
7 application of 43(6).

8 Those effectively are the Prosecution's submissions on the
9 interpretation of that unique phrase.

10 PRESIDING JUDGE FULFORD: Therefore, do I take it that the Office
11 of the Prosecutor is saying that apart from the availability of
12 anonymity, no organ of this court has responsibility for protecting
13 victims during the process of them making an application to
14 participate?

15 MR. BULMER: No, that's not the Prosecution's position. The
16 Prosecution's is at the application stage they are entitled to
17 measures of anonymity, which is in my respectful submission, a form of
18 protection which is to be given in my respectful submission by the
19 Chamber.

20 PRESIDING JUDGE FULFORD: I predicated my question by saying
21 that, putting to one side the protection provided by anonymity, is it
22 the position of the Office of the Prosecutor that -- that apart no
23 organ of the court has responsibility for providing protection to
24 victims during the process of them applying to the court to
25 participate.

1 MR. BULMER: May I just have your indulgence one moment, please,
2 Mr. President.

3 [Prosecution counsel confer]

4 MR. BULMER: Thank you for your indulgence, Mr. President. That
5 is the logical consequence of the submission of the Prosecution on
6 that point, yes.

7 PRESIDING JUDGE FULFORD: And that submission is made
8 notwithstanding the fact that if it became known that a victim was
9 applying to participate, that individual could be as much at risk as a
10 victim who had been granted participation rights.

11 MR. BULMER: In open candour, I don't see a -- a flaw with your
12 logic, Mr. President, yes.

13 PRESIDING JUDGE FULFORD: Well, that's very clear, Mr. Bulmer.
14 Thank you very much.

15 Mr. Walley.

16 MR. WALLEYN (interpretation): Mr. President, your Honours, I
17 think that this is a -- of capital importance for the victims who are
18 participating in the proceedings before this court, and I must say
19 that once more that we are somewhat disappointed by the very
20 restrictive interpretations of the Office of the Prosecutor in respect
21 of victims.

22 The legislators who drafted the Statute were not aware of what
23 the exact proceedings would be, that is, the applications and the
24 various stages and the forms to fill and the decisions on such
25 applications and so on and so forth. And I do not think that there is

1 a contradiction in terms between Article 43(6) and Article 68 in
2 general because it might also be said that Article 68 refers to the
3 obligation to protect victims in general. In that case, one might say
4 that the victims refers to all victims, even those who have no link
5 with the court.

6 So we have a very narrow interpretation of this Article 43(6),
7 which refers to victims who appear not before the Trial Chamber, as I
8 say -- as I heard it said, but before the court.

9 In the minds of the drafters of the Statute, I think the
10 intention was not to refer to a specific phase in participation of
11 victims. What they were aiming at was to set out a general principle
12 admitted in international law in this Statute, a principle reflected
13 in the United Nations General Assembly Resolution regarding the
14 principle of the rights of the victims.

15 The first right of the victim is that the victimisation should
16 end. And when the rights of the victim to apply to a court for
17 justice is referred to, such referral also includes, and this is
18 reflected in the instrument, that such an approach should not cause a
19 new victimisation. I think this is what the drafters of the Statute
20 had in mind when they referred to victims appearing before the court
21 or the people who could be in a situation of risk due to testimony,
22 and of course victims who appear before the court. In fact, the
23 principle is emphasised there. The principle is that all must be done
24 to avoid a situation where people who have been the victims of most
25 serious crimes and who apply to your court for justice be victimised

1 again to lose their lives or members of their families simply because
2 they have trusted the court.

3 I think it is a very broad issue, and to play on words, to say
4 that as long as there has not been a decision on the application and
5 so on and so forth, everybody is responsible for his or her own
6 security, I think that such a position, forgive me, is irresponsible.
7 I think that the court as an institution as a whole has a
8 responsibility in regard to the message that would transmit to the
9 victims. There are information sessions in the Democratic Republic of
10 the Congo, on the radio, and in other media saying that victims may
11 approach the court. People have been told about the possibility of
12 seeing NGOs to make applications for participation.

13 So if in doing so people place themselves in danger, and if it is
14 said that this does not engage the responsibility of the court, I
15 cannot share this view. Of course the VWU's means are limited. We
16 are aware of that, and perhaps these witnesses might be better treated
17 in the future. The victims and their legal representatives have the
18 responsibility to protect their client and their entourage and those
19 who are close to them, but I share the view of Mr. Dubuisson that in
20 principle there is responsibility which means that will be contributed
21 by everyone. However, this responsibility exists, and this
22 responsibility also exists in the Office of the Prosecutor.

23 I think that the decision that this Chamber will take on this
24 matter should be taken together with the decision that you will take
25 on the modalities for participation, in particular in regard to the

1 possibility for victims to maintain anonymity or a certain form
2 thereof in the proceedings, because the position of the Office of the
3 Prosecutor is that you do not have right to anonymity. But if you
4 make such an application, yes, you do. If the application is accepted
5 is -- until the application is accepted they do not have right to
6 anonymity, and then you wash your hands of protection.

7 Your Honours, I think this is a very important issue, and I
8 emphasise I would like the court to give out a message that will give
9 confidence to the victims who need to be placed in a position where
10 they feel safe constantly. It is not by chance that a few victims are
11 participating in these proceedings, whereas they have thousands of
12 victims. There are thousands of children who were recruited into
13 these militias. The reason is because it is not easy do make these --
14 to follow these procedures, and at each stage of the procedure the
15 victims have to go through a lot.

16 Thank you.

17 PRESIDING JUDGE FULFORD: That's very helpful, Mr. Walley.

18 Ms. Bapita?

19 MS. BAPITA (interpretation): Thank you, your Honours. I would
20 just like to added to what my colleague said with regards to one
21 point, and what I understand by Article 43(6), particularly with
22 regards to the victims who appear before the court, and among the --
23 for example, with regards to participation, we know that you can ask
24 to -- there are forms which have to be filled in to be able to
25 participate or -- before the court, and when you have to fill in this

1 form to be able to appear before the court. This is an administrative
2 act. It's a start of appearing before the court, if you like, this
3 act. When we take a position with regards to that, I think the debate
4 can occur easily, but as far as I'm concerned, the danger that the
5 applicants undergo, this is not because they're victims but it's,
6 rather, because they have had the courage to ask to participate in the
7 proceedings, and that's where the danger starts.

8 They didn't ask to pursuant -- if they hadn't asked to
9 participate in the proceedings before the court, they wouldn't be in
10 danger. So this act of filling in the form and asking to participate,
11 as far as I consider, I think that is an act of the start of the
12 proceedings, and the danger of coming to participate before the
13 International Criminal Court. The Prosecutor says that this act is
14 not an appearance, but as far as I'm concerned, the simple fact
15 already of filling in the forms already constitutes the start of an
16 appearance before the court, and -- and that can be a reason, if we're
17 not to be careful, for these people being threatened, because the
18 danger could talk about -- about different dangers, but I think
19 somehow with regards to legislators who had to draft these texts,
20 whether it's the Office of the Prosecutor, we don't find ourselves in
21 the same situation.

22 And I certainly agree with Mr. Dubuisson when he says that with
23 regards to Article 43(6), that if there's an organisation or an
24 institution to -- can take up this responsibility for protection, this
25 would be the department or the section of the Victims and Witnesses

1 Unit, yes, but under certain conditions, because the degree of danger
2 does differ from the moment you participate as an applicant and when
3 you're accepted and when you come and give testimony before the court
4 and when you become a victim before the court. And this is why I'm in
5 agreement that the degrees of participation and dangers differ, but
6 legally the right institution to assume protection for all people
7 requesting to participate before the court is the Victims and
8 Witnesses Unit.

9 Now, together with the intermediaries, with the representatives,
10 legal representatives, we have to see how to limit the damage, and
11 there are certain number of avenues which I think we are given and to
12 take into account and we could go into further, but to say to us that
13 the request -- application for participation isn't an appearance, I
14 don't understand that attitude on the part of the Office of the
15 Prosecutor. Otherwise, what would be the legal nature of this?

16 It's an administrative act upon which the -- which we see as a
17 start of an appearance. And as far as I see it, it is the start of an
18 appearance, and it could have consequences in that it might lead to a
19 danger for the person who has asked to participate. And it is quite
20 normal that the Victims and Witnesses Unit get involved and help as
21 legal representatives and being able to help the intermediaries to
22 minimise the risk of their participation such that their participation
23 is useful, but with differing degrees of danger according to the stage
24 at which the person who is providing testimony or whatever stage that
25 person's at.

1 That is our position, and we think that we would encourage people
2 to be able to come and participate in the proceedings before the court
3 taking such a position.

4 PRESIDING JUDGE FULFORD: Very grateful, Ms. Bapita.

5 Ms. Massidda, anything to add to the positions advanced by
6 Mr. Walleyne and Ms. Bapita, bearing in mind the concession made by
7 Mr. Dubuisson?

8 MS. MASSIDDA: Thank you, your Honours. The office subscribes to
9 the observation by Mr. Walleyne and Ms. Bapita. We are not going to
10 waste the Bench's time, but simply we are going draw the attention of
11 the Chamber on Article 68(1). Article 68(1) of the statute is clear:
12 "The court shall take measures to protect the safety, physical and
13 psychological well-being, dignity and privacy of victims and
14 witnesses."

15 Article 68(1) does not define the term "victims," and we took
16 care of going and check the preparatory works for the drafting of Rome
17 Statute. In order to try to find if we could find any shares of ideas
18 or any discussions during the preparatory works to define the term
19 "victims" and then to define the terms in Article 43(6), victims who
20 appear before the court.

21 What we found, the first document was a document dated 14 April
22 1998, and at that time the discussion was on the mandate of the
23 Victims and Witnesses Unit. At that time the Article was Article 44,
24 then Article 43. Then in this first document, the terms used were
25 simply "victims," full stop, with no specification at all. The same

1 term was used later on in another documents in the recommendations of
2 the coordinator of the committee on 4 July 1998. Then suddenly the
3 issue was take back in a working group.

4 Now during the Rome Statute there is no minutes of the working
5 group, so we couldn't find why at the end of the working group Article
6 44, then Article 43(6), was changed into "victims who appear before
7 the court." The only issue that we could find was a proposal by
8 Canada on 6 July 1998, discussing the difficulties for the Victims and
9 Witnesses Unit to take care of large numbers of victims. So what we
10 can infer from the reading of the preparatory works, in our opinion,
11 is the discussion was not to limit the power of the court and the
12 obligation upon the court to give protective measures in accordance
13 with Article 68(1) to victims, but to limit the proprio motu powers of
14 the Victims and Witnesses Unit when acting, I repeat, proprio motu,
15 and this was the question addressed in Article 43(6) of the Rome
16 Statute.

17 If you want to have confirmation of this argument, I invite the
18 Judges to review all the articles in the Rome Statute and in the Rules
19 of Procedure and Evidence where the term "victims" is used and where
20 the term "victims who appear before the court," is used. We did, just
21 for the sake of curiosity.

22 Well --

23 PRESIDING JUDGE FULFORD: Ms. Massidda, I'm going to ask you to
24 provide that to us in written form, please. We're not going to have
25 it by way of oral submissions. I'm also going to ask you, please, to

1 put in a neat form, as I'm sure you will, all of the documents that
2 you've already referred to relating to the preparatory -- the pre-Rome
3 Statute meetings that you've set out. So provide us, please, in
4 writing with analysis of when "victims" are used and when "victims who
5 appear before the court" is used.

6 MS. MASSIDDA: I will do, your Honours.

7 PRESIDING JUDGE FULFORD: Is there anything else, Ms. Massidda
8 that you wanted to raise?

9 MS. MASSIDDA: Sorry to interrupt you. No. I think we can
10 easily put everything in the written submissions including the
11 documents we are referring to during these submissions.

12 PRESIDING JUDGE FULFORD: Thank you very much indeed.

13 Right. I see nobody else is seeking to intervene, so that brings
14 us to the --

15 MS. MASSIDDA: Sorry, your Honours. Do we have a deadline for
16 the submission?

17 PRESIDING JUDGE FULFORD: Quite right, Ms. Massidda. Well, it
18 shouldn't take long. Tomorrow 4.00?

19 MS. MASSIDDA: Can I ask until Friday, your Honours?

20 PRESIDING JUDGE FULFORD: Friday, 4.00.

21 MS. MASSIDA: Thank you very much.

22 PRESIDING JUDGE FULFORD: Mr. Walley, on a similar topic, you
23 referred to a United Nations Resolution. Could you provide us with
24 the reference or the document. Friday, 4.00. Thank you.

25 That concludes the issues on the agenda for this Status

1 Conference. We hope that by close of play on Friday the Chamber will
2 have circulated to the parties and the participants the various
3 subjects that we've identified as being issues that are likely to
4 require or it would be convenient to require resolution prior to the
5 commencement of the trial.

6 If the list in its preliminary form survives, it may well be that
7 somewhere between two and four court days are going to be needed to
8 resolve those issues and any other issues that are likely to be
9 identified by the parties and the participants.

10 We are conscious that Status Conferences involve some
11 representatives having to travel a considerable distance, and so what
12 I'm going to propose is that once we've risen in a moment or two, the
13 representatives discuss dates with the legal advisor to the Trial
14 Division to see whether a consensus can be reached as regards how best
15 to allocate time, whether it to be easiest for there to be one hearing
16 that spans somewhere between two and four days or whether it would be
17 more convenient for there to be separate hearings as we've done thus
18 far to address separate issues.

19 Now, I know this may in part depend on knowing what the issues
20 are, but a general indication at this stage so that we can attempt, at
21 least provisionally, to fix dates would be extremely helpful, and so
22 we're going to ask, please, that there is a discussion now so that if
23 possible dates can be identified for the next Status Conferences.

24 That isn't -- it's not going to be realistic to list those now
25 before the Christmas and New Year break, but they should be listed for

1 January. This process, and if at all possible, should be confined to
2 the first month of next year.

3 Unless there are any other issues, that concludes this Status
4 Conference. We thank you all for your attendance and your assistance.

5 The Status Conference ends at 12.18 p.m.

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