

1 International Criminal Court

2 Trial Chamber II

3 Situation in the Democratic Republic of Congo - case ICC-01/04-01/07

4 Status Conference - Open Session

5 Thursday, 27 November 2008

6 The hearing starts at 10.02 a.m.

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

9 PRESIDING JUDGE COTTE (interpretation): The hearing is open.
10 Please be seated.

11 Could the security bring Germain Katanga and Mr. Ngudjolo in,
12 please. Thank you.

13 Court Officer, could you please call the case we are hearing
14 today.

15 COURT OFFICER (interpretation): Situation in the Democratic
16 Republic of the Congo, the case of the Prosecutor against Germain Katanga
17 and Mathieu Ngudjolo Chui, case number ICC-01/04-01/07.

18 PRESIDING JUDGE COTTE (interpretation): Thank you.

19 Before we begin our discussion, I would like to make sure that we
20 all have the proper understanding of languages available to the accused,
21 French, English, and also Lingala at the request of Mr. Katanga, and
22 following the decisions of the Appeals Chamber of the 27th of May, 2008,
23 and Single Judge of the 2nd of June, 2008, Mr. Ngudjolo can also have a
24 translation in Lingala if he so wishes.

25 Now I would like to turn to Mr. Katanga and Ngudjolo who are

1 somewhat far away from the Judges but whom we can see quite well. Can
2 the accused tell the Chamber whether or not they have heard the
3 interpretation of what I have just said in a language they understand?
4 Mr. Germain Katanga, have the -- has what I have just been -- what I have
5 just said been translated into Lingala?

6 MR. KATANGA (interpretation): Yes.

7 PRESIDING JUDGE COTTE (interpretation): Thank you. Mr. Mathieu
8 Ngudjolo, did you also understand what I've just said?

9 MR. NGUDJOLO CHUI (interpretation): Yes.

10 PRESIDING JUDGE COTTE (interpretation): Thank you.

11 I would also like to check -- or the Chamber would like to check
12 the identity of both accused.

13 Mr. Germain Katanga and Mathieu Ngudjolo, I would like you to
14 stand up in turn.

15 Mr. Katanga, please could you give us your identity, that is to
16 say give the Chamber your name, first name, surname, age, date and place
17 of birth, and profession.

18 MR. KATANGA (interpretation): Germain Katanga, I was born in
19 Mambasa on the 28th of April, 1978.

20 PRESIDING JUDGE COTTE (interpretation): What is your profession?

21 MR. KATANGA (interpretation): I am a military man.

22 PRESIDING JUDGE COTTE (interpretation): Thank you.

23 Mr. Mathieu Ngudjolo, could you please in turn stand up and give
24 the Chamber your surname, first name, date and place of birth, and
25 profession.

1 MR. NGUDJOLO CHUI (interpretation): Thank you. My name is
2 Ngudjolo Chui Mathieu. I was born in Bunia on the 8th of October, 1970.
3 I am a military man.

4 PRESIDING JUDGE COTTE (interpretation): Thank you.

5 We have just been talking about languages. We wanted to check
6 both accused understand what is being said. I would like to take this
7 opportunity to remind all intervening at this hearing that you must speak
8 slowly to help the court reporters and interpreters in their work, and we
9 would like to welcome them and thank them in advance. And I think the
10 Court Officer will actually remind us of this during the hearing.

11 Mr. Germain Katanga and Mathieu Ngudjolo, now, and this is the
12 tradition in this Court, you have to be introduced to the -- to the Trial
13 Chamber II, which the Presidency of the court gave this case to on the
14 28th of October, 2008. So this Chamber consists of Judge Fatoumata
15 Dembele Diarra to my right, and Judge Fumiko Saiga to my left and myself.
16 My name is Bruno Cotte. Just for the Chamber's information and for the
17 information of the accused and just for all the parties' information and
18 for the information of all those participating in the hearing, even if a
19 lot of people were already here during the confirmation hearing we need
20 everybody to introduce themselves.

21 Could the Office of the Prosecutor introduce themselves and
22 introduce the members of their team.

23 MR. MacDONALD (interpretation): Yes, certainly, President, your
24 Honours. Eric MacDonald. To my left, Nick Kaufman, who will assist me
25 during this hearing. And behind me, Ms. Florence Darques-Lane; and to

1 her right, Dianne Luping. And behind Mrs. Luping, Mr. Garcia; and to his
2 left, Madam Krisztina Varga.

3 PRESIDING JUDGE COTTE (interpretation): Thank you. The Chamber
4 thanks you. Now, can the counsel of Mr. Katanga and Mr. Ngudjolo
5 introduce themselves, introduce their teams. Mr. Hooper, Mr. Kilenda,
6 who will start? Mr. Kilenda, did you want to start?

7 MR. KILENDA (interpretation): (Microphone not activated)

8 PRESIDING JUDGE COTTE (interpretation): Very well. The Chamber
9 takes note of that. So Mr. Hooper, can you please introduce your team.
10 Perhaps you didn't understand. I would like both teams of Defence teams
11 to introduce themselves and I didn't know which one wanted to start.
12 Mr. Kilenda has just said that he would like you to introduce your team
13 first, so I'll give you the floor to introduce your team.

14 MR. HOOPER: My name's David Hooper, and I'm assisted this
15 morning by Caroline Buisman, who is my legal assistant, who is from
16 Holland, and by Sophie Menegon who sits here on my left, who is the case
17 manager in the case of Germain Katanga and who comes from France.

18 May I just say that in terms of the order of counsel, throughout
19 the confirmation hearing it was Mr. Ngudjolo's privilege to go first, and
20 I certainly don't want to -- to step in and displace him from that
21 position.

22 PRESIDING JUDGE COTTE (interpretation): Mr. Hooper and
23 Mr. Kilenda, concerning this question of precedence or not of precedence
24 but of knowing who will speak first, I think you should come to an
25 agreement among yourselves. The Chamber wants to hear both of you

1 whenever necessary. For us it is irrelevant whether one in particular
2 starts and the other finishes. I think you will probably meet -- come to
3 some agreement on that. Thank you anyway for introducing your team.

4 MR. HOOPER: Thank you.

5 PRESIDING JUDGE COTTE (interpretation): Thank you. Your team.

6 MR. KILENDA (interpretation): Thank you, President, your Honours
7 in Trial Chamber II.

8 Mr. Mathieu Ngudjolo's team includes to my right, Professor Fofe
9 as associate counsel; and to my left, Maryse Alie, counsel at the
10 Brussels Bar. And next to her, Ms. Aurelie Roche, our case manager; and
11 myself, Jean-Pierre Kilenda, counsel at the Brussels Bar and permanent
12 counsel.

13 You said earlier on that Mr. Hooper and myself have to come to an
14 agreement on who will speak first. I understand that you don't mind who
15 speaks first, but I think we should settle this matter immediately.

16 In my opinion, my client was the last. Mr. Germain Katanga came
17 first. My client came after Mr. Katanga, and the proceeding had
18 already -- the proceedings had already started. I'm sure you have
19 already read this case's record, but if you read it you will see that my
20 client was then added to the case of Mr. Katanga, and we think,
21 therefore, that it would be most appropriate that the team who was --
22 that was first at the court takes the floor first. I don't think we need
23 to discuss this either before you or among ourselves. I am sure we will
24 come to an agreement among ourselves, but I would prefer Mr. Hooper to
25 take the floor first. It's also a question of precedence for me.

1 PRESIDING JUDGE COTTE (interpretation): Thank you very much for
2 your presentation, for the observations you have just made. However, I
3 would like to now move back to Mr. Hooper.

4 Mr. Hooper, do you have any objections to taking the floor first
5 when the Chamber addresses the accused?

6 MR. HOOPER: I have, particularly with the Court as it's
7 composed, which one recognises inclining to a Francophone court, it would
8 be an advantage to me to be second rather than first, but I hear what
9 Mr. Kilenda says and we can fight it out now, but perhaps during one of
10 the breaks we can revert to a coin or some other means of settling this
11 between ourselves.

12 PRESIDING JUDGE COTTE (interpretation): I'm sure you'll manage
13 to come to an arrangement on this important issue.

14 Can the Legal Representatives of the victims introduce
15 themselves.

16 MR. KETA (interpretation): Thank you, Mr. President, your
17 Honours. I represent Joseph Keta from the Brussels Bar and I represent
18 victims a/073 and a/070/08, together with Maitre Jean Louis Gilissen, who
19 today is unable to come because he is dealing with a case in Liege, as he
20 is in the bar in Liege.

21 To my left you have Maitre Julie Goffin, who is also from the
22 Brussels Bar, who is the case manager for our team. Thank you.

23 JUDGE DIARRA: Please, I would like to ask Mr. Hooper who is
24 telling this Chamber in this Chamber Judge are French-speaker. I object.
25 I can understand you very well without any interpretation. You did not

1 meet me before today. How can you know whether I speak English or not?

2 MR. HOOPER: No, I -- I appreciate it you spoke English, but my
3 understanding was your first language was French. Now, I may be mistaken
4 about that.

5 JUDGE DIARRA: Your first language is not English, you, too,
6 exactly like me.

7 PRESIDING JUDGE COTTE (interpretation): Very well. I think now
8 we can ask the other Legal Representatives of Victims to introduce
9 themselves. Ms. Bapita.

10 MS. BAPITA (interpretation): Thank you, President, your Honours.
11 I am Ms. Carine Bapita Buyangandu from the Brussels Bar. I represent the
12 interest of victims a/037/07 (as interpreted), a/0329/07, a/0330/07,
13 a/0331/07, a/0038/08, a/0039/08, a/0043/08, a/0046/08, a/0050/08,
14 a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08,
15 a/0066/08, a/0067/08, a/0070/08, a/0073/08, a/0076/08, a/0077/08,
16 a/0078/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08,
17 a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08,
18 a/0103/08, a/0104/08 and a/0108/08 and a/0109/08.

19 PRESIDING JUDGE COTTE (interpretation): Thank you.

20 Now, two Legal Representatives of Victims told us at the
21 beginning of the day that they would arrive a little bit late today. I
22 think it was Mr. Jean Chrysostome Mulamba. Court Officer, when these
23 Legal Representatives arrive, could you remind me at some stage during
24 the hearing that it would be desirable for them to introduce themselves
25 even if they arrive somewhat late.

1 Now, the representative of the Office of Public Counsel for
2 Victims, you received a notification of the order convening this status
3 conference, and you received a notification of the order instructing the
4 participants and Registry to answer questions. You will not be requested
5 to take the floor today. You don't represent any victims in this case,
6 and you therefore do not need to respond to any of the questions in the
7 order.

8 In accordance with Regulation 91(4) of the Regulations of the
9 Court, your intervention is important but limited to the help and
10 assistance you can give Legal Representatives of Victims present today.

11 Now, we have said this. It would be good for you to introduce
12 yourselves too.

13 MS. MASSIDA (interpretation): Thank you, President, your
14 Honours. The Office of the Public Counsel for Victims today is
15 represented by Orchlon Narantsetseg and myself, Paolina Massida.

16 PRESIDING JUDGE COTTE (interpretation): Thank you. The Chamber
17 would like to thank you for that. Now, the representatives of Registry
18 who are quite far away from the Bench. Could you introduce yourselves.

19 MR. DUBUISSON (interpretation): Thank you very much, President,
20 your Honours. In the Registry, to my left, we have Bibiana
21 Becerra-Suarez who is a coordinator within my cabinet; and to my right,
22 Laetitia Bonnet who is a legal officer within the section for the
23 participation of victims and reparations; and me myself, Marc Dubuisson,
24 the director of Court Services on behalf of the Registrar for Ms. Silvana
25 Arbia.

1 PRESIDING JUDGE COTTE (interpretation): The Chamber would like
2 to thank you. Now introductions were done, we'll all get to know each
3 other, and thank you for the introductions.

4 As you know, the preliminary stage of this case ended with the
5 decision on the confirmation of the charges that was issued on 28
6 September 2008 by Pre-Trial Chamber I, and the proceedings are now
7 continuing with the trial. The Statute and Rules of Procedure and
8 Evidence, our legal basis, state which are the functions of the Trial
9 Chamber which must conduct this new phase of the proceedings
10 expeditiously. And this hearing was called today in accordance with Rule
11 131(1) of the Rules of Procedure and Evidence and I would like to recall
12 the content of this Rule. As soon as it is constituted, the Trial
13 Chamber will hold a status conference to set the date of trial. So the
14 Chamber issued an agenda for this first status conference, which was sent
15 to all the parties and participants. You may have noted, and this is
16 important, that this agenda also states that the Chamber will read the
17 charges confirmed by the Pre-Trial Chamber, and according to the will of
18 the accused, and I underline according to the wish of the accused, will
19 take the pleas.

20 Article 64(8)(a) of the Statute provides that at the opening of
21 the trial, and I would like to quote that article: "At the commencement
22 of trial, the Pre-Trial Chamber reads the charges that were confirmed by
23 the Pre-Trial Chamber. The Trial Chamber ensures itself that the accused
24 understands the nature of the charges and it gives the accused the
25 possibility of entering a guilty plea according to Article 65 or plead

1 not guilty."

2 According to the Chamber, the provision I have just read must be
3 read and interpreted in light of Article 67(1) which states and I quote:
4 "The accused must be informed as soon as possible in detail of the
5 nature, cause, and content of the charges in a language they understand
6 and speak fluently."

7 Both Articles read together imply in the Chamber's mind that the
8 reading of the charges as confirmed by the Pre-Trial Chamber and the
9 possibility given to the accused to plead guilty or not guilty should
10 take place now at the beginning of our discussion as it would be
11 radically different if one of the accused or both decided to enter in a
12 guilty plea.

13 I would like to recall and insist on the fact that this is just
14 an option open to the accused and that if both accused or one of them
15 does not wish to enter such a plea or not -- does not wish to do so now,
16 they do not have to. And I would like to recall, and this is mentioned
17 in the Chamber's order of the 13 of November, that a new reading of the
18 charges will be done when the substantive debate takes place, that is to
19 say before the parties present evidence. The option of entering a guilty
20 plea or pleading not guilty will be given again to the accused.

21 In view of the announcement that was made by the Chamber in its
22 agenda, Mr. Katanga and Ngudjolo's counsel have been given an opportunity
23 to inform their client of the importance and precise scope of this
24 procedure for entering a guilty plea. Defence counsel will most
25 certainly have explained to their client the immediate consequences for

1 an accused of a decision to plead guilty.

2 I would like to recall that if an accused pleads guilty, they
3 lose their right to be tried and to be presumed innocent until their
4 guilt has been established. They also lose their right to verify the
5 proper basis of the case of the Prosecution by examining the Prosecution
6 witnesses and lose the right to defend their case.

7 Concerning the order of the 13 of November and the answers given
8 to this order, Mr. Ngudjolo seems to plead not guilty. However, the
9 Chamber is not yet aware of Mr. Katanga's position. If he would like to
10 enter a guilty plea, the Chamber would like his counsel to check that
11 Mr. Katanga was fully informed of the consequences of such a decision,
12 because it is essential for such a guilty plea to be valid for it have
13 been made -- for it to be an informed decision by the accused, and it
14 must be done so willingly and unequivocally.

15 After reading the charges, I would like to give the floor to
16 Mr. Hooper and ask him to speak on this issue. But before doing so, I
17 would like to recall that according to Article 64(8)(a) of the Statute,
18 the Chamber requests the charges to be read and make sure that the
19 accused understand the nature of the charges. Therefore, I would like to
20 ask the Court Officer to read the charges once in one go, and then I will
21 ask the Defence counsel a number of questions to make sure to check that
22 the accused understand the nature of the charges held against them.

23 Please, Court Officer, could you start by reading the charges in
24 full. Please read very slowly.

25 MR. HOOPER: President, I'm sorry to interrupt the -- for that

1 matter at this point. Can I just note this, that at present, of course,
2 we have the conclusions from the confirmation hearing and the judgement
3 in respect of that that enumerate the findings of the Pre-Trial Chamber
4 for confirmation and their determination of those matters that are
5 appropriate for trial. What we don't have, as far as I know, is we do
6 not have an amended document containing the charges. So what we're left
7 with at the moment is the -- the end of the judgement. We haven't
8 received a fresh document from the Prosecution that would reflect the
9 finding of the confirming Judges. So what is being read now is not a
10 document that we have, as far as I know. It's presumably a composition
11 that has been gleaned from the -- from the confirmation hearing. So
12 we'll be hearing that order and hearing those matters for the first time
13 ourselves without the benefit of a document that we could have previously
14 checked against the findings of the confirmation hearing.

15 I hope that's not too -- too obtuse.

16 PRESIDING JUDGE COTTE (interpretation): Before giving the floor
17 to the Office of the Prosecutor to hear from it on those points,
18 Mr. Hooper, I would like to understand well what you are saying. You
19 consider that the operative paragraphs of the decision confirming the
20 charges which was issued at the end of the month of September in 2008
21 does not constitute a document which is sufficient to understand fully or
22 for the accused to understand fully the charges confirmed against them.

23 Is this what you mean to say?

24 MR. HOOPER: Yes. It could be clearer, because one can see the
25 way in which at the conclusion of the confirmation the confirmation

1 Judges came and took the various matters out of turn dealing with, for
2 example, war crimes, crimes against humanity, dealing with them within a
3 discussion, indeed, of the findings, and what we don't have is a clear
4 enumerated and listed ordering of charges.

5 Now, as far as Mr. Katanga, for example, is concerned today,
6 we've discussed the matters with him, and I for my part am satisfied that
7 he understands the nature of the position and the charges, and if need be
8 he -- he's willing to tender his pleas, which I can tell the Court, as
9 was indicated at the confirmation hearing onwards, are firmly those of
10 not guilty in respect of each and every charge. I can indicate that that
11 is his position in court and he does it in an informed manner. And I
12 leave it entirely to you, Mr. President, if you feel that is a sufficient
13 indication for your purposes this morning of his position in respect of
14 the ten charges and whether, perhaps, it might be, because of the matter
15 I raise, perhaps appropriate for, and it would seem to me appropriate for
16 the Prosecution to do it, to in fact list the charges in a clear charging
17 document in conformity with what we know the confirmation Judges have
18 decided. But I'm entirely in your hands, your Honour, and I fully
19 understand the reasons that you're entering into this particular matter
20 at the moment. I just hope to assist that that is our view.

21 I don't know if Mr. Kilenda has any of his own views. Thank you.

22 PRESIDING JUDGE COTTE (interpretation): Well, for the time being
23 I would thank you, Mr. Hooper, for your help in elucidating your
24 position.

25 I will call upon Mr. MacDonald to help us if you would.

1 MR. MacDONALD (interpretation): I would like to refer the
2 Chamber to Article 64(8)(a). To our knowledge, there is no formal
3 obligation on us to present a document confirming the charges at the
4 opening of the hearing. The only provision of which we are aware is the
5 provision which I have just referred the Chamber to, unless I am
6 mistaken.

7 What does this provision say? It says: "At the commencement of
8 the trial, the Trial Chamber shall have read to the accused the charges
9 previously confirmed by the Pre-Trial Chamber."

10 The decision is clear. The decision identifies those charges for
11 which Mr. Katanga and Mr. Ngudjolo are committed to trial. In the
12 circumstances, I think that reading out the charges confirmed meets the
13 requirements of the Statute.

14 PRESIDING JUDGE COTTE (interpretation): Thank you, Prosecutor.

15 I shall now turn briefly to Mr. Hooper. The solemnity of a
16 confirmation of charges decision and the clarity of the operative
17 paragraphs of a decision confirming the charges seems to me to constitute
18 the basis for the work which a counsel must do, the conversation a
19 counsel must have with his client if a -- the entering of a plea is being
20 considered.

21 Apparently you are expressing some reservations vis-a-vis this
22 analysis. Having now heard the Prosecutor and having read Article
23 64(8)(a) of the Statute, I do not think that it is possible to have any
24 source which is more solemn than the text itself of the decision
25 confirming the charges, but I do understand that entering a plea of

1 guilty or not guilty is a serious matter. I do not mean to criticise but
2 simply to observe you do not seem to be in a position today to make a
3 decision on this today with your client, Mr. Katanga, so I would suggest
4 that you discuss this matter with your client and that the choice of
5 entering a guilty or not guilty plea be taken up at a later stage.
6 Making such a plea is open to your client at any point in time in the
7 proceedings.

8 In any case, as I have already said, the charges shall be read
9 anew and a new opportunity to enter a plea of guilty or not guilty will
10 be offered at the opening of the trial proper. So today the Chamber
11 considers that as regards Mr. Germain Katanga, this is not the
12 appropriate point in time to record a plea.

13 I would like to turn now to Mr. Kilenda.

14 MR. HOOPER: Thank you, Madam President. Just before Mr. Kilenda
15 arises can I just clarify my position. I'm entirely in your hands,
16 Mr. President. All I'm saying is that we don't have --

17 PRESIDING JUDGE COTTE (interpretation): Yes, you are between my
18 hands -- or in my hands.

19 MR. HOOPER: Indeed, and I acknowledge that fully. We are
20 prepared to enter pleas. As I have indicated there will be pleas of not
21 guilty, and that's on an informed basis.

22 I can refer the Tribunal to the decision. It's number 648 of
23 this trial, decision on the three Defence requests regarding the
24 Prosecution's amended charging document, and it's dated the 25th of June,
25 2008, and paragraph 12 reads in this way: "Moreover, in the event that

1 the charges are confirmed, nothing in the Statute and Rules prevents the
2 filing in the pre-trial proceedings before the Trial Chamber of an
3 amended charging document in which the underlying facts and their legal
4 characterisation are adjusted in light of the Pre-Trial Chamber's
5 decision confirming the charges."

6 And our only submission -- my only submission this morning is
7 this: If, Mr. President, you wish Mr. Katanga to plead, he will. I've
8 indicated what that course will be. On the other hand, it may be that
9 clarity is a useful asset, particularly at the outset of a trial, and it
10 would be helpful, in my submission, if the Prosecution did in fact
11 produce an amended charging document that was couched in the light of the
12 decisions taken at the confirmation hearing and which would assist
13 everybody to see with the utmost clarity what the specific charges are in
14 a clear manner and the supporting allegations that come into it. And
15 that's reflect, I think, in those observations made by the Pre-Trial
16 Chamber looking ahead and foreseeing the difficulties that can arise.

17 And I'm sorry to have taken up time on this matter this morning,
18 and those are my submissions. Thank you.

19 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Hooper.
20 We have plenty of time ahead of us, and it is important that everything
21 is handled in an ordered and clear fashion.

22 I do not want to revisit this issue at length, but I do believe a
23 Prosecution document summarizing the charges or presenting them anew
24 would in no way have a superior value, a value superior than the
25 operative paragraphs of a decision issued by a full Bench of Judges at

1 the conclusion of the hearing on confirmation of the charges. That
2 document is the anchor, the anchor, irrespective of which side the
3 courtroom we are seated for these proceedings. Any additional document
4 provided by the Prosecution might be practical, but I believe that
5 Mr. Katanga's counsel are sufficiently qualified lawyers to understand
6 fully the content of the document confirming the charges.

7 Allow me to put the question anew to you: Would you like
8 Mr. Katanga today to enter or not enter a plea of guilt or of not guilty
9 at this hearing? If you are hesitant in any way, the Chamber would
10 prefer that this decision be postponed to a later phase.

11 Have you understood me well?

12 MR. HOOPER: Yes, I have. Could I just --

13 THE INTERPRETER: Microphone, please.

14 MR. HOOPER: Mr. Katanga is quite prepared to plead, and -- and I
15 don't stand in the way of that.

16 PRESIDING JUDGE COTTE (interpretation): Thank you. I would then
17 like to ask the Court Officer to read the charges in their entirety, and
18 I would remind her, as I did a moment ago, to read at a slow pace.

19 COURT OFFICER (interpretation): In its decision of the 26th of
20 September, 2008, based on the evidence allowed for the purposes of the
21 confirmation of charges hearing Pre-Trial Chamber I confirms that there
22 is sufficient evidence to establish substantial grounds to believe that
23 Germain Katanga and Mathieu Ngudjolo Chui are responsible, 1, under
24 Article 25(3)(a) of the Statute for the charge of murder constituting a
25 crime against humanity within the meaning of Article 7(1)(a) of the

1 Statute.

2 Secondly, under Article 25(3)(a) of the Statute for the charge of
3 sexual slavery as a crime against humanity within the meaning of Article
4 7(1)(g) of the Statute.

5 Thirdly, under Article 25(3)(a) of the Statute for the charge of
6 rape as a crime against humanity within the meaning of Article 7(1)(g) of
7 the Statute.

8 Fourthly, under Article 25(3)(a) of the Statute for the crime of
9 wilful killing as a crime -- a war crime within the meaning of
10 Article 8(2)(a)(i) of the Statute.

11 Fifth, under Article 25(3)(a) of the Statute for the charge of
12 using children to participate actively in hostilities as a war crime
13 within the meaning of the Article 8(2)(b)(xxvi) of the Statute.

14 Sixthly, under Article 25(3)(a) of the Statute for the charges of
15 intentionally directing attacks against the civilian population of Bogoro
16 village as a war crime within the meaning of Article 8(2)(b)(i) of the
17 Statute.

18 Seventhly, under Article 25(3)(a) of the Statute for the charge
19 of pillaging as a war crime within the meaning of Article 8(2)(b)(xvi) of
20 the Statute.

21 Eighthly, under Article 25(3)(a) of the Statute for the charge of
22 destruction of property as a war crime within the meaning of
23 Article 8(2)(b)(xiii) of the Statute.

24 Ninthly, under Article 25(3)(a) of the Statute for the charge of
25 sexual slavery as a war crime within the meaning of Article 8(2)(b)(xxii)

1 of the Statute.

2 Tenthly, under Article 25(3)(a) of the Statute for the charge of
3 rape as a war crime within the meaning of Article 8(2)(b)(xxii) of the
4 Statute.

5 PRESIDING JUDGE COTTE (interpretation): Thank you, Court
6 Officer.

7 The Chamber is fully aware of the fact that this phase of the
8 proceedings is long and complex, but the entering of a plea of guilty or
9 of not guilty is a very serious matter. We must, therefore, take our
10 time to ensure that all is clear and that there is no ambiguity.

11 I would then now turn to the Defence counsel, and I would like
12 each of them in turn to respond to the following questions. I would ask
13 you to be particularly attentive and to use the transcript which is
14 appearing on your screen to assist you.

15 I am now going to read very slowly.

16 The Chamber wishes to know, Mr. Hooper and Mr. Kilenda, whether
17 the accused received a copy of the decision rendered by Pre-Trial
18 Chamber I on the confirmation of charges, a decision dated the 26th of
19 September, 2008, that is to say document 716 in the record. The Chamber
20 wishes to know whether a copy of that decision was provided to
21 Mr. Germain Katanga and Mathieu Ngudjolo in a working language of the
22 court which they understand.

23 I would point out that the decision confirming the charges is
24 available in English, that it has been translated into French, and that a
25 corrigendum to the French translation has been filed in the record of the

1 case.

2 In English it is number 716 CONF. In French it is 716 CONF T FRA
3 and the corrigendum to the translation is document 745.

4 I would also specify that in the case of Mr. Katanga his counsel
5 has stated that a translation of written documents into Lingala is not
6 necessary. This is stated in document 130, paragraph 16.

7 The Chamber would like to know whether the accused have read this
8 decision and whether they have discussed the content of the documents
9 with their counsel and have been informed of their rights under the
10 Statute and the Rules of Procedure and Evidence of this court.

11 Have you fully explained to the accused the true nature of each
12 of the charges confirmed by the Pre-Trial Chamber? The Chamber wishes to
13 know whether Mr. Katanga and Mr. Ngudjolo's counsel have informed them of
14 the elements of crimes as they appear in the official documents of the
15 court. And finally, the Chamber wishes to know whether in your view your
16 clients have understood the nature of the charges confirmed by the
17 Pre-Trial Chamber.

18 I have put five questions to you, five essential questions. I
19 would now also ask you whether your clients intend to enter a plea today.
20 Mr. Hooper has already indicated that that is the case.

21 As previously said, if we are not mistaken, Mr. Ngudjolo wishes
22 to enter a plea of not guilty. This is what you have stated,
23 Mr. Kilenda, in your written submissions on the 24th of November last.

24 Mr. Kilenda, could you confirm that Mathieu Ngudjolo is ready to
25 enter a plea of not guilty today?

1 MR. KILENDA (interpretation): Yes, your Honour, I confirm it.

2 PRESIDING JUDGE COTTE (interpretation): Are you also in a
3 position to answer the five questions which I have just put? If you wish
4 that I repeat them, I may repeat them.

5 MR. KILENDA (interpretation): I have taken note of them, your
6 Honour.

7 Your Honour, your first question was to know whether our client
8 had received the decision confirming the charges, decision of the 26th of
9 November -- sorry, September 2008. I can respond in the affirmative to
10 this question.

11 PRESIDING JUDGE COTTE (interpretation): One moment, please.

12 (Trial Chamber and Court Officer confer)

13 PRESIDING JUDGE COTTE (interpretation): Please excuse me that I
14 needed to take a moment there to discuss a purely practical information
15 technology issue.

16 You have answered in the affirmative.

17 MR. KILENDA (interpretation): Yes. Your second question was to
18 know whether a copy of that decision had been provided in a working
19 language of the court which our client understands well. The decision
20 was provided to us in French, a language which my client and we
21 understand very well.

22 PRESIDING JUDGE COTTE (interpretation): Yes.

23 MR. KILENDA (interpretation): Your third question was to know
24 whether our decision has -- whether our client has had an opportunity to
25 discuss the decision with us on this. I would like to inform you that

1 our team has spent a good four hours at the detention centre to discuss
2 the nature of the charges which have been confirmed against him. At that
3 time we explained to him the scope of the decision confirming the
4 charges, that it was not a final decision, that we would have sufficient
5 time to appear before the Trial Chamber, and indeed in paragraph 73 of
6 that decision it is stated that the Trial Chamber, of course, will review
7 these charges.

8 These matters have been explained to our client. We have also
9 explained to him what his rights are, and we also explained to him why we
10 did not intend to lodge an appeal at this point in time or to request
11 leave to lodge an appeal.

12 In response to the fourth question, and here --

13 PRESIDING JUDGE COTTE (interpretation): Yes. My question was to
14 know whether the accused had -- whether you had fully explained to the
15 accused the true nature of the charges.

16 MR. KILENDA (interpretation): Our answer is yes. And your final
17 question was to whether -- as to whether our client had fully understood
18 the nature of the charges confirmed. A moment ago you were explaining
19 the nature of the proceedings before the court, and you mentioned that we
20 had stated that our client wished to plead not guilty. This decision is
21 a well-informed decision, and it is based on his understanding of the
22 charges which have been confirmed against him.

23 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Kilenda,
24 for your answers. You have been extremely clear.

25 Turning now to Mr. Hooper and your client Mr. Germain Katanga.

1 Could you confirm that your client is ready today to enter a plea of not
2 guilty?

3 MR. HOOPER: I can, yes.

4 PRESIDING JUDGE COTTE (interpretation): Thank you. And in
5 relation to the five questions, could you please answer those questions.

6 MR. HOOPER: I can do it with a compendious yes on each point.

7 It's -- he's received it. It's been provided in a language.

8 Mr. President, you've already touched on the limitations of -- of his
9 French, and this of course is a highly technical document. He's had the
10 opportunity to read it and read it. It's been discussed with him on a
11 number of occasions, and he's been also assisted by being provided by us
12 with a document containing our summary of the overview of the nature of
13 the charges and his position in respect of each one.

14 PRESIDING JUDGE COTTE (interpretation): So the Chamber can
15 consider, Mr. Hooper, that you respond in the affirmative to the five
16 questions. Thank you. Thank you.

17 Before recording these pleas of not guilty, the Chamber would
18 like to put questions directly to the accused. Our objective is, of
19 course, not to substitute you in your work as representatives, but we
20 feel that the matter is sufficiently important that the Chamber address
21 the accused directly.

22 Here are the questions which we wish to put to them: Mr. Katanga
23 and Mr. Ngudjolo, please listen to me carefully, and I will speak slowly.

24 Do you understand that you are not obliged to enter a plea today?
25 That is my first question.

1 Do you understand that if you plead not guilty today you may at
2 any point in time change your plea and state that you are guilty of this
3 or that charge?

4 Have you read the decision on the confirmation of charges and, if
5 so, in which language? But I think in fact your counsel have already
6 responded on that point. More importantly, have you understood it, and
7 have you understood the clarifications which have been given by your
8 counsel? Has your counsel explained to you the nature of each of the
9 charges?

10 Do you know that there is a difference between a war crime and a
11 crime against humanity, and do you understand that difference? Have you
12 understood that a war crime takes place against the background of an
13 armed conflict, and have you understood that a crime against humanity is
14 committed as part of a widespread or systematic attack directed against a
15 civilian population? Do you feel that you have understood the nature of
16 the charges which have been confirmed by the Pre-Trial Chamber?

17 Mr. Katanga, could you respond to these questions which I have
18 put slowly?

19 MR. KATANGA (interpretation): In summary, I can say that my
20 lawyers have assisted me in understanding the content; but in brief, I
21 want to say to you that I refute, I rebut these accusations.

22 PRESIDING JUDGE COTTE (interpretation): Yes. I'll be asking you
23 to specify that later.

24 Mr. Ngudjolo, have you heard the questions I have just put, and
25 are you in a position to answer those questions?

1 MR. NGUDJOLO CHUI (interpretation): Yes, sir, I have understood
2 what you have said. All of the clarifications and explanations which
3 have been given by my lawyers have been understandable to me, and that is
4 why I choose to plead not guilty.

5 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Ngudjolo.

6 I would now like to ask the Court Officer to read the charges
7 confirmed against Mr. Katanga and Mr. Ngudjolo, but one by one. After
8 each charge I shall ask each of the accused to state very officially that
9 they plead not guilty, because that is the position that they intend to
10 adopt. In this way we shall have a record of the matter in the
11 transcript of these proceedings.

12 Court Officer, please begin.

13 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
14 Statute for the charge of murder constituting a crime against humanity
15 within the meaning of the Article 7(1)(a) of the Statute.

16 PRESIDING JUDGE COTTE (interpretation): Germain Katanga, after
17 each of the charges I am going to ask you the questions. The Court
18 Officer has just read the first charge, the first charge concerning
19 murder constituting a crime against humanity. Now I would like to ask
20 you the question. Do you understand the charge confirmed by the
21 Pre-Trial Chamber? Please can you answer by yes or no.

22 MR. KATANGA (interpretation): Please could you re-read the
23 charge.

24 PRESIDING JUDGE COTTE (interpretation): Could you please re-read
25 the first charge.

1 COURT OFFICER: Murder constituting crime against humanity within
2 the meaning of Article 7(1)(a) of the Statute.

3 PRESIDING JUDGE COTTE (interpretation): Mr. Germain Katanga, do
4 you understand the charge confirmed by the Pre-Trial Chamber? Do you
5 proceed guilty or not guilty? Please can you answer those two questions?

6 MR. KATANGA (interpretation): Now, I listened to what was read
7 and I would like to plead not guilty.

8 PRESIDING JUDGE COTTE (interpretation): Mr. Ngudjolo, you
9 understood the reading of this first charge? Can you confirm the charge
10 confirmed by the Pre-Trial Chamber? Do you plead guilty or not guilty?

11 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

12 PRESIDING JUDGE COTTE (interpretation): Thank you. Court
13 Officer, could you please read the second charge.

14 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
15 Statute charge of sexual slavery as a crime against humanity within the
16 meaning of 7(1)(g) of the Statute.

17 PRESIDING JUDGE COTTE (interpretation): Thank you. Mr. Germain
18 Katanga, do you understand the charge confirmed by the Pre-Trial Chamber?
19 Do you plead guilty or not guilty?

20 MR. KATANGA (interpretation): I am sorry, again you asked me the
21 question before I finished listening to the interpretation.

22 PRESIDING JUDGE COTTE (interpretation): Please forgive me. Have
23 you now heard the full interpretation?

24 MR. KATANGA (interpretation): Well, I'm currently listening, but
25 when you ask the question you ask it before the interpreter has finished

1 interpreting.

2 PRESIDING JUDGE COTTE (interpretation): Do you plead guilty or
3 not guilty for the second charge?

4 MR. KATANGA (interpretation): Not guilty.

5 PRESIDING JUDGE COTTE (interpretation): Mr. Ngudjolo, on this
6 second charge.

7 MR. NGUDJOLO CHUI (interpretation): I plead not guilty on the
8 second charge.

9 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
10 Third charge. Could you read the third charge, Court Officer, please.

11 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
12 Statute rape as a crime against humanity within the meaning of
13 Article 7(1)(g) of the Statute.

14 PRESIDING JUDGE COTTE (interpretation): Thank you.

15 Mr. Germain Katanga, concerning this third charge did you
16 understand the charge confirmed by the Pre-Trial Chamber? Do you plead
17 guilty or not guilty?

18 MR. KATANGA (interpretation): Well, I heard what was read. I
19 plead not guilty.

20 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Katanga.

21 Mr. Ngudjolo, on this charge, did you understand the charge? Do
22 you plead guilty or not guilty.

23 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

24 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
25 Court Officer, can you please continue.

1 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
2 Statute for the charge of wilful killing as a war crime within the
3 meaning of Article 8(2)(a)(i) of the Statute.

4 PRESIDING JUDGE COTTE (interpretation): Thank you. Mr. Germain
5 Katanga, have you understood the charge? Do you plead guilty or not
6 guilty?

7 MR. KATANGA (interpretation): I plead not guilty.

8 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
9 Mr. Katanga.

10 Mr. Ngudjolo, concerning this charge, did you understand the
11 charge? Do you plead guilty or not guilty?

12 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

13 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Ngudjolo.
14 Court Officer, can you please continue.

15 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
16 Statute for the charge of using children to participate actively in
17 hostilities as a war crime within the meaning of Article 8(2)(b)(xxvi) of
18 the Statute.

19 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
20 Mr. Germain Katanga, did you understand the charge? Do you plead guilty
21 or not guilty?

22 MR. KATANGA (interpretation): Not guilty.

23 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
24 Mr. Katanga.

25 Mr. Ngudjolo, concerning this charge, did you understand it and

1 do you plead guilty or not guilty?

2 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

3 PRESIDING JUDGE COTTE (interpretation): Thank you very much,

4 Mr. Ngudjolo. Court Officer, can you please continue.

5 COURT OFFICER (interpretation): Under Article 25(3)(a) of the

6 Statute for the charge of intentionally directing attacks against a

7 civilian population of Bogoro village as a war crime within the meaning

8 of the Article 8(2)(b)(i) of the Statute.

9 PRESIDING JUDGE COTTE (interpretation): Thank you very much.

10 Now I turn to you again Mr. Katanga. Have you understood the charge? Do

11 you plead guilty or not guilty?

12 MR. KATANGA (interpretation): I plead not guilty.

13 PRESIDING JUDGE COTTE (interpretation): Thank you.

14 Mr. Ngudjolo, concerning this charge, did you understand it and do you

15 plead guilty or not guilty?

16 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

17 PRESIDING JUDGE COTTE (interpretation): Thank you very much,

18 Mr. Ngudjolo. Court Officer.

19 COURT OFFICER (interpretation): Under Article 25(3)(a) of the

20 Statute for the charge of pillaging as a war crime within the meaning of

21 8(2)(b)(xvi) of the Statute.

22 PRESIDING JUDGE COTTE (interpretation): Thank you. Mr. Germain

23 Katanga, did you understand this charge? Do you plead guilty or not

24 guilty?

25 MR. KATANGA (interpretation): I plead not guilty.

1 PRESIDING JUDGE COTTE (interpretation): Mr. Katanga, thank you.
2 Mr. Ngudjolo, did you understand the charge? Do you plead guilty or not
3 guilty?

4 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

5 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
6 Mr. Ngudjolo. Madam Court Officer, can you please continue.

7 COURT OFFICER (interpretation): Under 25(3)(a) of the Statute
8 for the charge of destruction property as a war crime within the meaning
9 of Article 8(2)(b)(xiii) of the Statute.

10 PRESIDING JUDGE COTTE (interpretation): Thank you. Mr. Germain
11 Katanga, did you understand the charge and do you plead guilty or not
12 guilty?

13 MR. KATANGA (interpretation): I plead not guilty.

14 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
15 Mr. Katanga. And Mr. Ngudjolo, did you understand the charge? Did you
16 plead guilty or not guilty?

17 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

18 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
19 Mr. Ngudjolo. Court Officer.

20 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
21 Statute for the charge of sexual slavery as a war crime within the
22 meaning of Article 8(2)(b)(xxii) of the Statute.

23 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
24 Mr. Germain Katanga, did you understand this charge? Do you plead guilty
25 or not guilty?

1 MR. KATANGA (interpretation): I plead not guilty.

2 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
3 Mr. Katanga. Mr. Ngudjolo, did you understand this charge and do you
4 plead guilty or not guilty?

5 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

6 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
7 Mr. Ngudjolo. Court Officer.

8 COURT OFFICER (interpretation): Under Article 25(3)(a) of the
9 Statute for the charge of rape as a war crime within the meaning of
10 Article 8(2)(b)(xxii) of the Statute.

11 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
12 Mr. Germain Katanga, have you understood the charge and do you plead
13 guilty or not guilty?

14 MR. KATANGA (interpretation): I plead not guilty.

15 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
16 Mr. Katanga.

17 Mr. Ngudjolo, concerning this charge, did you understand it and
18 do you plead guilty or not guilty?

19 MR. NGUDJOLO CHUI (interpretation): I plead not guilty.

20 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
21 Mr. Ngudjolo.

22 Court Officer, thank you.

23 The Chamber notes what at this phase of the proceedings both
24 Mr. Germain Katanga and Mathieu Ngudjolo have pleaded not guilty. The
25 Chamber is aware of the fact that this part of the hearing was very

1 formal, but the provisions of the Statute concerning the entering of a
2 plea, whether guilty or not guilty, require everything to be clear in
3 everyone's minds. Thank you very much.

4 Now the Chamber would like to underline that this procedure,
5 thanks to all the participants in the proceedings, was carried out very
6 expeditiously. The arrest warrants on the 2nd of 6 -- and 6th of July,
7 2007, and the beginning of the confirmation hearing at the beginning of
8 2008 took all in all less than a year. During this period, both the
9 Appeals Chamber and Pre-Trial Chamber decided on very many important
10 questions or issues concerning the procedure and answered your respective
11 questions.

12 Now, concerning Rule 64(2), Trial Chamber II now, and I quote
13 Rule 64(2): "Will have to ensure that the trial is conducted
14 expeditiously, respects the rights of the accused or accused plural and
15 ensures the protection of victims and witnesses."

16 Expeditiously, therefore, but it will also have to ensure that it
17 is a fair trial. In this regard and from the outset, the Chamber would
18 like to recall that if Mr. Germain Katanga and Mr. Ngudjolo are no longer
19 suspects but accused, they are still presumed innocent and will be so
20 during our discussions.

21 The Chamber would like to recall that pursuant to Article 66 of
22 the Statute, the Prosecution has to prove their guilt. A Chamber, to
23 condemn an accused, will have to be convinced that they are guilty beyond
24 reasonable doubt, and the Chamber will have to ensure that the Defence
25 has sufficient time to prepare the substantive debate.

1 Now that I have recalled this, it was important to recall it in
2 my mind, I would like to remind you of the exact scope of this hearing.

3 After it is constituted, the Trial Chamber, pursuant to
4 Rule 132(1) of the Rules of Procedure and Evidence, has to set the date
5 of trial. However, to do so the Trial Chamber must have sufficient
6 information on the current stage of the proceedings and state of the
7 proceedings. This information must be as precise as possible and
8 updated. This information can only be given to it by the participants
9 and -- in the proceedings and Registry representatives.

10 In its order dated 13 November 2008, the Chamber asked you a
11 number of questions in order to obtain the information it requires to set
12 the date at which it will be able to begin the substantive discussion.
13 During this hearing the parties will present their answers orally,
14 without going into the full details thereof, but will insist on those
15 issues they believe are of particular importance.

16 Parties and participants will also and especially need to give
17 the further clarifications the Chamber requires to your written answers,
18 because some of your written answers, and you probably anticipated this,
19 have led to -- us to have further questions for you, so we will proceed
20 in this order: First we will give the floor to the OTP, Legal
21 Representatives of Victims, and the representative of the Office of
22 Public Counsel for Victims, then to the Registry representatives, and
23 then to the Defence.

24 The Chamber would like to mention that it decided on this
25 particular order because it believes it is important for the Defence to

1 speak last, after having heard all the observations made by all the other
2 participants.

3 Further to the information provided to the Chamber and requests
4 or applications made to the Chamber which some of you have already made,
5 the Chamber will then issue a decision setting the date of trial, the
6 time-frame and the rules of procedure it decides to -- it has decided to
7 apply during the trial. So the Chamber would like to ask the
8 participants to answer and thanks the participants for answering so
9 quickly to all the questions asked.

10 I think that through this work some of you have already fixed the
11 beginning of a hearing at the beginning of June 1999. The Chamber takes
12 note of the fact that this is just a suggestion, and I need not recall
13 that it is the Chamber and the Chamber only which pursuant to Rule 131(2)
14 will set the date of trial.

15 Now, I have a technical matter I would like to raise. Due to
16 interpretation into Lingala, we have reduced our court time. We only
17 have four hours a day. I would like to interrupt, suspend the first part
18 of this hearing around 11.20 and to resume 30 minutes later at around 10
19 to 12.00 and then resume for an hour and a half. Then we will suspend
20 the proceedings for another hour and a half and resume again, and this
21 will be all fixed at the end of the morning. We'll resume between 1500
22 and 1600 hours, 3.00 and 4.00 p.m. In proceeding this way we'll stick to
23 the four hours allotted to us, and if necessary, we'll continue tomorrow
24 the 28th of November at 10.00 a.m. with the same break times.

25 I haven't noticed, did the Legal Representatives of Victims

1 missing appear in court without us noticing? Well, if they haven't
2 appeared they won't be able to introduce themselves today. So Court
3 Officer, please could you remind them to introduce themselves during a
4 subsequent hearing.

5 Before I hand the floor to the Prosecution, I won't start
6 examining the answers to the questions you have given to our questions.
7 We don't have enough time. We'll resume at 11.50. Thank you. The
8 hearing is adjourned.

9 Recess taken at 11.20 a.m.

10 On resuming at 11.56 a.m.

11 COURT USHER: All rise.

12 PRESIDING JUDGE COTTE (interpretation): Please be seated. We
13 are in session.

14 Could security please bring Mr. Germain Katanga and Mr. Mathieu
15 Ngudjolo in. Thank you.

16 We're now going to start with the beginning of the preliminary
17 phase as such. The Prosecution will have the floor first and then the
18 Legal Representatives, the Prosecution to give more details about the
19 answers they gave. As regards the method, you don't have to go into the
20 very wording of the written answers, we've already read them. We just
21 want you to add details, to provide further information on the answers
22 given, and the Chamber may ask you additional questions.

23 We will proceed in the same manner with each of the intervening
24 parties even if some may feel at the beginning that they have a rather
25 passive role. But this phase, this new phase we're starting, will enable

1 us to have an exchange of information and will be enriching depending on
2 what each of us can contribute and to have a more efficient and perhaps
3 simply better trial.

4 Mr. MacDonald, to simplify our work, could you, every time you
5 can and whenever possible, mention the question number you are talking
6 about, perhaps even the page number of the answer you're giving, and so
7 the same rule will apply to all us so we can all follow easily. And if
8 we find we get muddled up, we will come back and try to proceed with more
9 clarity afterwards. So every time you have given your answer, please
10 give us a moment, because for some questions we need further details. We
11 hope that you will be able to give us the further details orally, but if
12 you feel that the information you need to give, the further information
13 we are asking of you require preparation time, of course you will be able
14 to give us this information in writing as long as it's done as soon as
15 possible, but we'll see as we go along.

16 I wanted to add, Prosecutor, that you gave us your answer in
17 French, and you also gave it in English, and the Chamber was very
18 grateful for this.

19 The floor is yours, Mr. MacDonald, you or any of your assistants,
20 to present the answer to question number 1, which was specifically
21 addressed to the Prosecutor concerning the completion of your
22 investigation in the current case, and if it is not completed when you
23 intend to complete it, and if the investigation is still ongoing what
24 that means in terms of presentation of new evidence.

25 The floor is yours.

1 MR. MacDONALD (interpretation): Thank you, President, your
2 Honours.

3 If you allow, before I formally begin with the presentation I
4 would like to give on the written document, which is reference, according
5 to the Court's filings, 764, I would like to talk about the issue of
6 languages.

7 As you said, just to go back to the background, we started in
8 English, then the document was translated, and we filed the French
9 version which you received with the Registry; and thereafter, we sent the
10 English version by e-mail, the original English version. So I would like
11 from the outset to draw the Chamber's attention to a translation mistake
12 that we have noticed and which drew our attention, which drew also the
13 attention of Madam Godart from your Chamber, and I would like to
14 therefore ask you all to look at page 13, the first paragraph which
15 follows on from page 12. At the beginning of page 13 it is stated that
16 "the Prosecution will request."

17 If you look at the second sentence which starts in French (French
18 spoken). And so in any case, if the witness provides potentially
19 exonerating information, the Prosecution will try to disclose the facts
20 incriminated between parties.

21 In the English version, our working copy as we call it, the
22 phrasing was more correct. The wording was more correct.

23 That being said, concerning working versions and translations,
24 the Prosecution will, in as far as possible, provide the Chamber with
25 French documents through the Registry and working documents,

1 translations, whether in full or partial, which translate the main line
2 of argument of the Prosecutor afterwards.

3 To give you an example, yesterday we gave our observations on
4 Mr. Katanga's detention. The writings were in English. However, a
5 working version of the important part, the argumentation, will be given
6 to all including victims Legal Representatives during -- in the course of
7 today. We're currently finalising the translation to check it does not
8 contain any errors of meaning.

9 PRESIDING JUDGE COTTE (interpretation): Have you finished on
10 this issue of languages? Well, please allow me to thank you. I think
11 that all of us, whether English-speaking or French-speaking are very
12 sensitive to the fact that you are facilitating our work inasmuch as this
13 Bench consists of both English-speaking and French-speaking Judges, even
14 if some of us can understand and to some extent also speak the beautiful
15 English language. And we also look at the Legal Representatives of
16 Victims and one Defence counsel who is French-speaking, but we have one
17 other Defence counsel that is English-speaking. So anything you're able
18 to do to simplify all of our work, not only the Chamber's work, is
19 welcome.

20 Thank you very much. I would like to hand the floor back to you.

21 MR. MacDONALD (interpretation): Thank you, Your Honour. I can
22 give you an example. When we have disclosure reports and when material
23 is provided to the Registry, with your agreement these more technical
24 documents we might file in English only because they would not be
25 submissions on the substance.

1 PRESIDING JUDGE COTTE (interpretation): Very good. I'd like to
2 give you the floor to respond to questions 1 and 2.

3 MR. MacDONALD (interpretation): Your Honours, our investigation
4 is not yet complete. We are endeavouring to bring it to an end as
5 rapidly as possible, but I would like to specify that quite independently
6 of the date at which the investigation is concluded there will be
7 evidence that needs to be reviewed here at our offices or in the field,
8 in particular evidence which is of an exculpatory nature. This is an
9 ongoing obligation of the Prosecution in advance of the beginning of the
10 trial to identify witnesses and evidence of that nature.

11 The Court would like assurance regarding the disclosure of
12 incriminating and exculpatory evidence. I think that what is most
13 important is not so much the date on which the Prosecution will complete
14 their investigation but, rather, that there be no hold-up in the
15 disclosure of evidence be they of an incriminating or exculpatory nature,
16 for instance, under Rule 77.

17 Your Honour, what is important to note is that our investigation
18 is ongoing. Our objective is to complete it, to bring it to a
19 conclusion. We have reviewed the answers provided by the Defence of
20 Mr. Katanga. The written submissions of Mr. Katanga -- made by
21 Mr. Katanga have implications for the completion of the investigation in
22 the DRC, be it -- or in Kinshasa or in Ituri. In Ituri we just have one
23 field office which serves the organs of the court, including the Defence
24 teams. It is difficult and also not desirable for the Prosecution and
25 the Defence to operate in Ituri at the same time. Therefore, the

1 Prosecution intends to take note of the dates at which the Katanga team
2 intends to be in Kinshasa and in Bunia, although Kinshasa's a longer --
3 is a larger city.

4 We would like you to take note of this, because we believe one of
5 the objectives of this conference is to elucidate the Court on the
6 difficulties that may be encountered by the parties, notably regarding
7 work in the field. We all must comply with rules regarding security and
8 protection and not placing people who assist in court at risk.

9 For instance, when we were in Kinshasa there is only a very small
10 number of hotels which are authorised by use -- for use by this court.
11 Knowing that the Defence is in town can give rise to difficulties, for
12 instance, with the prosecution.

13 We endeavour to complete our investigations, but we are unable to
14 state an end date given the security imperatives and also in light of the
15 dates suggested by Mr. Katanga and perhaps dates that will be suggested
16 or put forward by Mr. Ngudjolo's team. They have not yet announced
17 dates, but they have announced their intention to travel to the field to
18 initiate investigations.

19 Another point which is important for the Court to know is that
20 under its -- under Article 68 there are obligations regarding ensuring
21 the security of persons who are met, who are interviewed for the taking
22 of testimony, be they Prosecution or possibly Defence witnesses, is an
23 obligation borne by the Prosecution. The Prosecution must bring before
24 this Chamber a dossier which is as complete as possible. Its objective
25 is also to ensure that that dossier is focused and hones in on the most

1 important, most salient evidence and is built around a minimum number of
2 witnesses with a view to ensuring maximum security for those who work
3 with this court.

4 That said, when we meet with a witness, it is not necessarily the
5 situation at the outset that that witness will later appear on our list
6 of incriminating evidence. A witness who is interviewed today might then
7 have his statement set aside until a second future witness is
8 interviewed. That future witness might provide information which is
9 considered more important, so to speak, for the Office of the Prosecutor
10 than the information provide by the first witness. So as our
11 investigation proceeds, we re-evaluate the relevance or the utility of
12 presenting various witnesses with whom we have met, the objective always
13 being to keep the number of witnesses to a minimum and also the security
14 risk of these individuals to a minimum.

15 Including a witness in the court's witness protection programme
16 is a life-changing experience. It's a very important decision, and not
17 all witnesses are willing to cooperate with the court given what this
18 might entail. That said, we have endeavoured in our filing of Monday to
19 provide as much detail as possible regarding the information which is in
20 our possession at this time. However, it should be noted that these
21 figures may and will change. They will fluctuate over time.

22 As we continue gathering evidence, we must re-evaluate evidence
23 that was collected in the past given our obligations under Article 67(2).
24 We must constantly reassess what we have. A witness which we have today
25 may seem to fall under Rule 77 or may be providing information, evidence

1 which might be considered to be exculpatory. The status even of the
2 evidence can move over time as the investigation proceeds.

3 But what is above all important is that irrespective of the
4 category in which we classify evidence as being incriminating,
5 exculpatory, or Rule 77, what is important is that the Defence be in a
6 position to prepare adequately to defend their clients.

7 As you know, your Honours, the testimony of a witness may contain
8 both incriminating and exonerating information. When we disclose
9 evidence to the Defence, we highlight that given the mode of liability
10 under Article 25(3)(a) and the nature of the case we will flag up that
11 the Defence may well find within that evidence items which tends to prove
12 the innocence of the person.

13 As I said, it is possible for evidence to be reclassified amongst
14 these categories as the investigation proceeds.

15 Before addressing each of the question, I would just like to
16 refer to the two annexes which are confidential. We have disclosed them
17 as confidential because they refer to evidence. Today's hearing is
18 public, and needless to say, the information which I will be providing
19 will not endanger the security of any witnesses, but I would at this
20 point in time like to refer to Annex B1 and B2.

21 PRESIDING JUDGE COTTE (interpretation): Just one moment, please.
22 In terms of the structure of your presentation, what you are about to say
23 about these annexes, is it in connection with your answers to questions 1
24 and 2, or are you anticipating on other questions? I simply would like
25 to know this to ensure that our discussion remains ordered.

1 MR. MacDONALD (interpretation): It is possible for me to deal
2 with this now and then return to questions 1 and 2.

3 PRESIDING JUDGE COTTE (interpretation): Regarding questions 1
4 and 2 and the ongoing investigation and the evolving nature of the
5 investigation and even the evolving nature of the evidence which is being
6 gathered, we would like to have some additional information on that.
7 You've already provided us with quite a lot of information by way of an
8 answer, but the Chamber would like you to go a little further.

9 New evidence on which you intend to rely for the trial, are they
10 being gathered with a view to corroborating evidence which was already
11 presented at the confirmation of charges hearing, or to your mind, does
12 this evidence -- is this evidence gathered to replace existing evidence?
13 For instance, to replace witnesses who cannot cooperate, who default.

14 So we would like to know what the approach is in gathering this
15 new evidence, because when we read the Statute and the Rules of Procedure
16 and Evidence, we note that everybody is obliged to take the necessary
17 steps and conduct their proceedings, their investigations, but at some
18 point in time, an end must come and we must move to trial and an
19 examination of the merits of the case.

20 So that is my first supplementary question. It seems to us, but
21 perhaps we are mistaken, that Pre-Trial Chamber I asked you to present
22 key witnesses at the confirmation of charges hearing. If we are not
23 mistaken, there were 19 witnesses. Is that correct? And if so, could
24 you tell us whether these 19 Prosecution witnesses will not also be key
25 witnesses at the trial? So these are two additional questions which we

1 would put to you.

2 MR. MacDONALD (interpretation): Your Honours, to respond to your
3 first question, the evidence which we are gathering at this point in time
4 is largely to corroborate evidence which was already presented at the
5 confirmation of charges hearing, and I say largely because it is possible
6 that some of our reserve witnesses, if I might use that term, which is
7 not a very exact term, could substitute other witnesses. It seems to us
8 that some witnesses provide information which is more complete than
9 information provided by earlier witnesses.

10 JUDGE DIARRA (interpretation): Prosecutor, when you say
11 corroborate, and I know you speak French well and you have chosen that
12 word, you mean that these witnesses will not make new revelations. They
13 will not supplement but rather simply corroborate and uphold what has
14 previously been said. Is that how I should understand the word
15 "corroborate"?

16 MR. MacDONALD (interpretation): Yes, exactly, but once again it
17 is important that I am clear on this. There will also be new witnesses
18 who will supplement. I can't say that 80 per cent of the evidence will
19 be corroborative, for instance, but certain witnesses will corroborate,
20 certain witnesses will add, supplement the original material.

21 PRESIDING JUDGE COTTE (interpretation): Please continue.

22 MR. MacDONALD (interpretation): To respond now to your second
23 question as to the number of witnesses, you have referred to 19
24 witnesses. Yes, the Prosecution intends to call all 19 of those
25 witnesses at the trial when the facts are brought before the Chamber.

1 PRESIDING JUDGE COTTE (interpretation): Would I be right in
2 saying that questions 1 and 2 have now been answered in full? That seems
3 to be the case. Very good. I would like to move on to questions 3 and 4
4 which relate to incriminating evidence. Is there any clarification which
5 you would like to give the Chamber or additional points which you would
6 like to put to the Chamber, or would you like me to move on to
7 supplementary questions?

8 I'd just like to turn to the Defence to make sure that everybody
9 is following how we are proceeding. It's very important that we all know
10 exactly which issues we are dealing with.

11 Okay. Question 3 was: How many pieces of incriminating evidence
12 must still be disclosed to the Defence for the purpose of the trial?
13 What types are they; statements, reports, photographs, videos? To which
14 charges and which modes of liability are they specifically directed? On
15 what date will they be disclosed, and is a translation available in the
16 other working language of the court?

17 We have a supplementary question and that is: At what point in
18 time will you have provided to the Defence all incriminating evidence?
19 In your filing you refer to the end of January 2009. Could you confirm
20 that that disclosure will be complete on the 30th of January, 2009? I
21 refer to the 30th because I believe the 31st is a Saturday.

22 MR. MacDONALD (interpretation): With your leave, your Honour --
23 your Honour, the Prosecution intends to disclose all incriminating
24 evidence in its possession and which it can disclose given the current
25 state of protective measures put in place. Now, needless to say, the

1 judgement issued by the Appeals Chamber yesterday is one which we were --
2 have been awaiting for some time.

3 In the case of some incriminating evidence, we need to meet with
4 our colleagues in the Victims and Witnesses Unit to identify the best
5 possible protective measures for certain witnesses, witnesses for whom
6 protective measures must be in place before those statements can be made
7 available to the Defence teams.

8 Your Honours, some of those documents will also require us to
9 apply for redactions. We hope to complete that whole phase by the end of
10 January. We refer to the end of January, but there are always security
11 imperatives, possible needs to move witnesses which are entirely beyond
12 our control, imperatives relating to work in the field. And in the phase
13 running up to the confirmation of charges hearing, we saw that
14 imperatives in the field do tend to dictate the dates at which disclosure
15 can take place.

16 I would like to provide some further clarification regarding our
17 written filing in connection with audio and audio-visual items. We will
18 commence disclosure of those items tomorrow and will provide certain
19 incriminating evidence based on Rule 67.

20 PRESIDING JUDGE COTTE (interpretation): Thus the Chamber can
21 take note that your target date is the end of January 2009, subject to
22 major obstacles.

23 MR. MacDONALD (interpretation): Yes, and also bearing in mind
24 that we must now divide up time in the field. Despite that factor, we
25 intend or our objective is to complete disclosure by the end of January.

1 PRESIDING JUDGE COTTE (interpretation): Staying with question 3,
2 is there anything else which you would like to expand upon, any further
3 details which you would like to give us, or are we to take it that what
4 you have set out on page 4 of your French filing is all that you have to
5 say at this point in time to the Chamber?

6 MR. MacDONALD (interpretation): With your leave, your Honour,
7 would like to consult with my colleagues for a moment.

8 (Prosecution counsel confer)

9 MR. MacDONALD (interpretation): No, your Honour.

10 PRESIDING JUDGE COTTE (interpretation): The question -- we'd
11 like to put a supplementary question to you. In your response to
12 question 3, thus on page 4 of the French version of your response, you
13 state that you have identified 71 items, a minimum of 71 items which you
14 are likely to rely upon at trial. We would like to know whether these
15 items come in addition to those which were presented at the confirmation
16 of charges hearing. Could you give us an indication on this point?

17 MR. MacDONALD (interpretation): Yes, your Honour. To answer
18 your question, these are additional items, as are other items which we
19 have disclosed to the Defence since the end of the confirmation of
20 charges hearing. These are additional items. I can provide you details
21 on all of the items which have been disclosed and in what category they
22 have been disclosed to the Defence to date.

23 PRESIDING JUDGE COTTE (interpretation): Very well. Now we would
24 like additional information on the answer you gave to question 4. Just a
25 minute ago you already talked about the disclosure of exonerating

1 evidence. Now, in your answer to question 4 as on page 5 and 6 of your
2 written answer, do you have anything you would like to add? Do you want
3 to go into further detail on any of the points? The Chamber has one
4 question it would like to ask you on the answer number 4.

5 MR. MacDONALD (interpretation): I would like to add the
6 following: The Prosecution is -- had the honour of informing this
7 Chamber that the United Nations sent us an e-mail yesterday informing
8 us -- because the number 134 refers to the total number of exonerating
9 evidence according to Article 67(2). So we also include, take into
10 account documents that can't be disclosed to the Defence. But I would
11 like to add that yesterday the United Nations informed us that 56
12 exonerating items which we call pexo evidence or potentially exonerating
13 evidence, that 56 items -- for 56 items the United Nations accepted that
14 they be disclosed to the Defence. And now there I would like to indicate
15 how many numbers we -- afterwards we still have which are excluded.

16 PRESIDING JUDGE COTTE (interpretation): You can go on even if
17 it's not the best approach. Please go on and overlap with question 8 in
18 this case.

19 MR. MacDONALD (interpretation): Well, concerning the numbers, we
20 still have 134 elements which are potentially exonerating. Sixty-seven
21 of the items until yesterday were still subject to confidentiality
22 restrictions. As I have just said, the United Nations have just given us
23 the right to disclose 56 of these items, and hence, 21 still remain
24 subject to confidentiality restrictions.

25 The new 56 items will be disclosed as soon as we have been given

1 the version as provided by the United Nations. We make our request in
2 New York. They sent us back the documents sometimes with or without
3 redactions, but usually without redactions, and then we re-file the items
4 in our databank Ringtail -- database Ringtail with the number
5 ERN-OTP-DRC, and then the eight corresponding numbers.

6 I would like to say 77 and not 67, line 4. Modification, an
7 amendment to the translation. I'm just reading our writing.

8 So 21 documents will still be subject to restrictions. The
9 United Nations ensured us that mid-December, end December at the latest
10 we should have an answer to all of the documents whether under Rule 67 or
11 67(2).

12 It's important for you to know that as regards the remaining
13 documents, 57 were not documents under restrictions. I'm going into the
14 second paragraph of the response under Article 67(2). Fifty of the
15 documents, instead of disclosing originals or transcripts of these
16 interviews, we disclosed summaries. The summaries were all disclosed
17 before the beginning of the confirmation hearing. The summaries are
18 related to your question number 14, and I can say that we had some
19 difficulty understanding the questions -- concerning the answer to
20 question 6 and to distinguish between the two. But there were 24
21 summaries for 22 witnesses disclosed before the beginning of the
22 confirmation hearing, and actually I produced a list of the 24 summaries.
23 I can give it to you, or I can wait until we reach question 14 if you so
24 wish, but why -- I wanted to mention this immediately, because 50 are
25 transcript statements, a statement of transcripts. An interview that is

1 recorded audio-visually, can take several days, one, two, three days, and
2 can lead to the disclosure of 10 to 12 transcripts, because each
3 transcript covers a period of approximately one hour. So one witness can
4 have 10 or 12 transcripts, and each witness can have one written
5 statement. So 50 are statements or transcripts of statements from the 18
6 exonerating witnesses.

7 Your Honour, by the end of January we will have to disclose these
8 statements or transcripts. We noted the Chamber's decision in Pre-Trial
9 Chamber I in the Lubanga case, and we noted the measures taken. If
10 necessary, we will request a hearing, if possible, with all the parties
11 in the case, but if we require more confidential discussions, it could be
12 that we request a closed hearing to cover the protection issues and
13 examine how to disclose the statements in order to enable the Defence to
14 prepare properly.

15 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
16 Prosecutor. So I have got to the answer of 8 or 9. However, I'd like to
17 come back to question 4, and the Chamber would like to ask you further
18 information concerning the exonerating items.

19 Concerning these exonerating items, we have noted that a number
20 of items are still currently being analysed. Page 6 of the French
21 version. Even if this will lead to repetitions, we need to know when the
22 analysis of the elements, the items you currently have will be finished,
23 and additionally, I would like to say that the Chamber shares the point
24 of view you voiced earlier on on the continual obligation of disclosure
25 of exonerating evidence.

1 I would like to mention that the Chamber would like to avoid
2 there being any stopping up within your office and any delays, would like
3 to avoid any delays. Do you have anything to add to this?

4 MR. MacDONALD (interpretation): Yes, certainly. If I look at
5 our answer on page 6 of the French version, in my answer I only discussed
6 the items under Article 67(2), but there are also documents under
7 Rule 77.

8 As we mentioned, we received a request from Mr. Ngudjolo's
9 Defence team to provide information on the record that we might have on
10 his client in the Congo. I would like to mention that these items had
11 already been disclosed, or the most relevant items of the record were
12 disclosed, but the Defence made another request so we will disclose 163
13 documents, mainly victim statements for the attacks in Katomi, Chumi
14 (phoen) and Kasengi, and the murder of somebody called Emma (as
15 interpreted) who died in October or September 2003.

16 Mr. Ngudjolo was acquitted in this case. We have to be clear on
17 this.

18 But these documents required redactions. We believe that they
19 require redactions. Pre-Trial Chamber I's approach was to let the
20 Prosecution disclose these documents with redactions to the Defence and
21 to discuss the matter before them if there are any problems or later on
22 before this Chamber. So we would like to make these requests for
23 redactions or proprio motu redactions.

24 However, this means 102 elements concerning the disclosure under
25 163, 102 items will still have to be analysed, and we hope to be able to

1 disclose them in December. However, some of these items are -- require
2 different protection measures before they are actually disclosed, and
3 that relates also to -- is similar to those under Article 167(2) --
4 Article 67(2).

5 We will try to see with the unit of victims and witnesses which
6 measures can be put in place, and we will try and see whether these
7 documents actually have some value and which are relevant and which
8 should be disclosed to the Defence under Article 67. However, as is
9 mentioned in our written document, we intend now to communicate with
10 these witnesses who gave us statements and try to see whether they agree
11 to their identities and statements being disclosed or not. This will
12 make it much easier, because if they accept, we can disclose the content.
13 But if the witnesses fear for their safety, we will have to discuss the
14 matter with the Chamber and see what the relevance of the content is and
15 how they can be disclosed.

16 PRESIDING JUDGE COTTE (interpretation): Thank you very much. So
17 the 102 documents you've just talked about are those in your answer on
18 page 6. So you have understood correctly. The Chamber would like to
19 have information as regards the quantity, but it is even more interested
20 in the time-frame, and you have given us some answer to this too.

21 You also, and we would like more information on this, refer to
22 the proprio motu redactions. You mention them on page 5 of the French
23 version of your answer. You mention that you intend to disclose the
24 identity of seven witnesses after redacting it of certain information as
25 necessary.

1 So the Chamber looked at the legal basis you base yourself on for
2 these redactions, and Chamber wonders whether or not you took note of the
3 fact that the system of proprio motu redactions set up by the Pre-Trial
4 Chamber we feel was only established for the confirmation stage, and to
5 use the wording of a decision of April last year, it was limited to that
6 procedural phase, and therefore it is not possible for this method of
7 redactions to be pursued without judicial control.

8 Have you understood? It's essential.

9 MR. MacDONALD (interpretation): Thank you, President. Yes, I
10 understand that this is essential. However, I think we should look at
11 the practice followed by the Pre-Trial Chamber I. Pre-Trial Chamber I,
12 in the Lubanga case, approved some of the Office of the Prosecutor's
13 requests for redactions when they related to names of NGOs or persons at
14 risk in view of the court's activities and when there are investigations
15 ongoing. So for certain categories of redactions the Prosecution was
16 given discretion to carry out the redactions. However, they were given
17 the authorisation of the Chamber.

18 That doesn't mean to say that the Prosecution then met with the
19 Chamber to go through all the redactions. I think that for some
20 categories of people or organisations or other it was always -- the
21 redactions were always allowed as carte blanche in a way. Free hand was
22 given to the Prosecution.

23 Now, the objective, as was also mentioned by Judge Steiner, if
24 I'm not mistaken, was because it is a very tedious procedure for the
25 court to go through these redactions, because first you have to look at

1 whether judiciously the redaction proposed is justified. And also it has
2 to be verified whether or not there is some level of consistency between
3 the requests made by the Office of the Prosecutor. It's, in English, a
4 proofing-reading exercise of the Office of the Prosecutor.

5 We would like to avoid this with this Chamber. And I repeat, as
6 concerns documents, reports, or other, which have very few redactions, we
7 need to be able to disclose these documents to the Defence teams and for
8 them to look at the documents, to analyse them and to look at whether or
9 not the information redacted is essential to them. And if it's not the
10 case, there's no problem. Both parties agree. So to avoid the Chamber
11 having to go through all this whole -- be subjected to this procedure of
12 redactions. So we wonder whether with certain categories of evidence
13 it's possible to avoid the applications, not to avoid judicial control.
14 And I'm not talking here about incriminatory documents. I'm talking
15 about exonerating documents. Wouldn't it be possible to try and simplify
16 the current system?

17 So that's what Judge Steiner, following, of course, the
18 requirements of the confirmation hearing, that's what Judge Steiner
19 decided.

20 I consider all my words carefully here. I'm talking about
21 documents, witness statements or reports or other which contain limited
22 redactions which are not essential to the document but which allow us to
23 protect protected persons in the field.

24 Let me quote Rule 81(4) and 80(2) and refer -- on some occasions
25 these requests are made under Rule 81(4) -- (1). So sometimes it's just

1 to protect information in an investigator's notes or in witnesses'
2 summaries and preliminary meetings with some witnesses, what we call
3 screening, which contain information which needs to be protected.

4 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
5 Prosecution. Your intervention is very interesting. I don't think we're
6 trying to -- to be overly controlling, but we believe that redactions
7 should be exceptional, and when they are exceptional judicial control is
8 required, and the Chamber feels that at the pre-trial stage the position
9 taken up in April 2008 suited the very specific context relating to the
10 preparation of the confirmation hearing.

11 On the point which you've just raised, I think we'll have to wait
12 for the end of our discussions, because the Defence will have to express
13 itself, and then the Chamber will have to give you its position. We
14 might actually ask you to provide us with a written contribution on this
15 point. Thank you.

16 Moving on to question number 5, page 6 and 7 of your answer. We
17 attach particular importance to this question, and we would like a very
18 comprehensive answer.

19 Could you give us a somewhat more elaborate answer to complete
20 the very brief answer you gave us already? So the question was: Has the
21 Prosecutor -- Prosecution told the Defence which charges and which mode
22 of liability the exonerating evidence under Article 67(2) of the Statute
23 or 77 of the Rules relate to and which were disclosed at the confirmation
24 hearing, and if yes, how?

25 I could actually give you further details before I give you the

1 floor. I was saying that the Chamber finds this question under number 5
2 very important. On several occasions in its list of questions
3 specifically addressed to the Prosecutor it asked the incriminating and
4 exonerating evidence to be linked to the crimes and modes of liability as
5 confirmed by the Pre-Trial Chamber.

6 I think you have answered us that the Pre-Trial Chamber I's
7 electronic protocol did not place an obligation on you to relate both
8 evidence and to the charges and modes of liability, but the Chamber would
9 like you to make proposals on an ordered and systematic presentation of
10 your evidence.

11 Could you, if not orally now, subsequently make concrete
12 proposals very soon, and could you present the Chamber with a table which
13 relates the evidence to the charges and modes of liability they relate
14 to? Is my question clear? Unfortunately, yes. The floor is yours.

15 MR. MacDONALD (interpretation): Well, I'll deal with the
16 incriminating evidence. The incriminating evidence the Prosecutor based
17 itself on in its presentation at the confirmation of charges hearing were
18 all related -- and this is what is tricky, because there was first the
19 arrest warrant and then a document containing the charges. The
20 Prosecutor always, as this was the protocol, related the incriminating
21 evidence to the paragraph in the arrest warrant for the Defence to know
22 which charges or which items and which -- which mode of liability, too,
23 they relate to, because that's Article 25(3)(a). This was related to the
24 facts in the arrest warrant.

25 We didn't make such a link with the exonerating evidence. We

1 referred to Article 67(2) and the documents under Rule 77, because there
2 is no obligation, so we didn't do so. We did, however, give the
3 documents to the Defence and say in our mind these documents can, in our
4 opinion, be used, but it's an inter partes disclosure. The disclosure of
5 exonerating evidence doesn't go to the Chamber. What the Chamber has are
6 the items on the Prosecution's list of evidence for trial. The
7 Prosecution's duty is to disclose exonerating evidence to the Defence,
8 and it can do what it wants with it, but to identify what you are
9 requesting would require additional work and quite considerable
10 additional work on the part of the Office of the Prosecutor, but also in
11 cases when a document can refer to the -- one charge or to all of the
12 charges the mode of liability is always the same. As regards the crimes,
13 some items refer to the -- the international -- non-international
14 character of the conflict. Some can concern the generalised or
15 systematic nature of the incriminating or exonerating evidence.

16 So I don't think the Office of the Prosecutor should carry out
17 this work, because I believe that is the responsibility of the Defence.
18 The Defence should carry out this analysis. The Defence should identify
19 the exonerating points which it has already obtained and which it finds
20 in these documents, but I don't think that we should carry out an
21 analysis for the Defence. Respectfully, I submit that that is not the
22 Prosecutor's task, and I believe that the Chamber, and I repeat we're not
23 at the confirmation, we're at an ultimate stage in determining the
24 innocence or the guilt, and the Chamber should not have access to the
25 exonerating evidence when it is disclosed to the parties because that's

1 why we're having a trial. That's why we're having witnesses. But this
2 question will have to be decided by the Chamber, what is the
3 admissibility or so of this exonerating or incriminating evidence.

4 PRESIDING JUDGE COTTE (interpretation): Prosecutor, you're very
5 convincing. However, despite this the Chamber would ask you to put your
6 position in writing, arguments for, arguments against. The Chamber will
7 then deliberate on them. This is a matter which is very important, and
8 it is something which we will rule on in the decision which will be
9 issued in the wake of this confirmation hearing regarding the deadlines
10 to be set, the working methods to be followed, and the date for the
11 commencement of the trial.

12 I believe that it is important that you make proposals and that
13 you set out any constraints or reservations, as you have done now,
14 orally. Thank you.

15 Turning now to question 6 which you deal in on page 7 of your
16 response. Is there anything which you wish to add? Yes, you did want to
17 speak about Annexes A and B. Perhaps you would like to do so now.

18 MR. MacDONALD (interpretation): Your Honour, with your leave I
19 would like to return to the issue we were just discussing. I believe
20 that the Office of the Prosecutor would like to ascertain the information
21 which the Chamber seeks to obtain through its question. We would like to
22 understand well what it is that you desire in order to respond adequately
23 in writing.

24 PRESIDING JUDGE COTTE (interpretation): Would you like us to set
25 out in writing a question which is more explicit than that which is set

1 out here at number 5? Would that suit you?

2 MR. MacDONALD (interpretation): It would, your Honour.

3 PRESIDING JUDGE COTTE (interpretation): Very good.

4 Let us now move to question 6. Would you like to expand upon the
5 answer which you have set out in writing in relation to question 6, or do
6 you feel that the discussion which we have had since the beginning of
7 this second section of our hearing suffice?

8 MR. MacDONALD (interpretation): Your Honour, please do excuse
9 me. I was having a short discussion with my colleague.

10 We would simply like to reaffirm that 38 documents have been
11 disclosed with redactions, proprio motu redactions, and that last Monday
12 nine additional documents were disclosed with -- with proprio motu
13 redactions. So that's 38 plus 9. And I have this list which I would be
14 happy to provide to the Chamber and, indeed, to my colleagues of the
15 Defence, but I would like to produce this list, although it does not
16 reveal any information that would jeopardise witnesses, I wish to produce
17 it as a confidential document and so share it with the Chamber at this
18 time with your leave.

19 PRESIDING JUDGE COTTE (interpretation): You have our leave.

20 As regards question 7 now. I'd like to read it out. "Does the
21 Prosecutor intend to apply to the Chamber for operational or procedural
22 protective measures, including redactions, relating to the incriminating
23 or exonerating evidence it plans to disclose soon? In relation to how
24 many pieces of evidence will these measures be requested and by when?"

25 Now, you replied at page 7 of your document. You have provided

1 us with further information. Is there anything which you would like to
2 add at this point in time? If not, I will put a question to you.

3 Very good. I shall put my question.

4 As I said moments ago, redactions should be exceptional. Quite
5 clearly the position of the Appeals Chamber of this court is that they
6 should only be used in the -- as an absolute last resort.

7 Now, you know, perhaps better than we do, that these proceedings
8 have been -- or this procedure is lengthy and it takes a great deal of
9 time. Now, in your response to question 7 you say that you will request
10 redactions. We would like to know how many applications for redactions
11 you plan to submit, exactly which items of evidence are concerned, and
12 would it be possible for you to provide us with a detailed document on
13 this matter?

14 MR. MacDONALD (interpretation): A detailed document on this
15 matter is something which it is difficult for us to submit to you at this
16 point in time, because this issue of redactions to testimony of
17 potentially exonerating witnesses or incriminating witnesses, we are
18 still in contact with some of these witnesses to establish whether we can
19 reveal their identity, and we will review their statements and the
20 content of them in light of the need for redactions and to protect them
21 and their families under 81(4) in the framework of ongoing
22 investigations. These are incriminating items of evidence.

23 If the Chamber does not permit us to make proprio motu
24 redactions, there will be more than 100 documents concerned and which
25 will be submitted to you in the coming weeks, and these will be followed

1 by others.

2 I'm afraid I'm not in a position to provide you with an exact
3 figure. All that I can state and which I would like to underline is that
4 the Office of the Prosecutor will apply for redactions as expeditiously
5 as possible.

6 Now, I do understand, your Honour, that first one had to await
7 the decision confirming the charges, then one had to await the
8 constitution of this Chamber. Then we have provided information in
9 response to the questions put by this Chamber. There are six of us here
10 present, but there are others back in the offices who are listening to
11 these proceedings or at least reading the transcripts, and we are all
12 doing our best to ensure that the Office of the Prosecutor is able to
13 provide this information or make these applications as soon as possible,
14 and I'm referring there not to January but to the coming weeks.

15 PRESIDING JUDGE COTTE (interpretation): Thank you very much for
16 that answer. I allowed you earlier to -- to anticipate and provide some
17 responses regarding two questions, 8 and 9, which relate to proceedings
18 covered by Article 54(3)(e) of the Statute. Would you like to take the
19 floor anew in this connection?

20 MR. MacDONALD (interpretation): I would like to take the floor
21 again just to provide you with some extra information. I referred to
22 documents covered by Article 67(2), but also there are those covered by
23 Rule 77. The letter which we received yesterday referred to documents
24 which are covered by Article 67(2), and we will be able to provide two of
25 those to you. So there will no longer be 32 in question but only 30.

1 PRESIDING JUDGE COTTE (interpretation): Once again, and I would
2 ask the counsel and the other participants at these -- at this hearing to
3 bide with us. The information which has been provided to the Chamber is
4 such that the Chamber wishes to be sure that it has understood
5 everything, even if this does involve some repetition.

6 Regarding questions 8 and 9, of course we take note and note it
7 as a solicitous fact that this headway has been made in relation to
8 documents covered by Article 54(3)(e). It is clear also that the effort
9 which is made must continue and must be bolstered because we are all
10 mindful of the fact that it would be incomprehensible that this Chamber
11 finds itself one day faced with the same situation which Trial Chamber I
12 faced last June. So clearly it is your objective that that not happen
13 and that we have understood.

14 Also, for the Defence this disclosure is an absolute
15 precondition. It is indispensable. However, and although I may be
16 repeating myself, I would like to put some questions to you.

17 At page 8 of your response you state that for two items of
18 evidence out of four for which confidentiality could not be lifted, you
19 have furnished the Defence with similar information. So even if you have
20 already addressed this, could you please specify what you mean by similar
21 information? That is my first question.

22 My second question is the following: You speak of two items out
23 of four. What is the situation regarding the two other items? If you
24 refer to these items in your written submissions, it is because they are
25 of a certain importance.

1 Thirdly, you have specified, quite rightly, that on the basis of
2 the experience gained in the Lubanga case, you intend to adopt an
3 analogous approach as regards evidence which is provided by
4 confidential -- or providers of confidential information. The Chamber is
5 delighted to hear this but would remind you that judicial review remains
6 at all times possible.

7 This third point is a reminder rather than a question. In
8 relation to my first two points, these were questions. Are you in a
9 position to provide us with answers on them now or not?

10 MR. MacDONALD (interpretation): Analogous information is
11 understood as follows -- allow me to take an example, an example which is
12 drawn largely from reality, although I have no specific instance in mind.
13 The Ugandan armed forces were present in Ituri in 2003 and withdrew from
14 Ituri in May, June, September. I believe it was the 5th of June that the
15 Ugandan forces, the UPDF, pulled out of Ituri. That information can be
16 found in a document which is a restricted-access document currently.
17 That information falls under Rule 67. It could go to the existence of a
18 national or an international conflict.

19 That information, your Honour, has been disclosed in many
20 documents aside from the one to which I refer, but that document is one
21 of the 136 or 112 documents.

22 This is what we mean by analogous information which has been
23 disclosed to the Defence.

24 In the case of two documents relating to Article 67(2), we do not
25 have analogous information because the information is very specific, and

1 three in relation to Rule 77. But I would like to assure you of
2 something. The United Nations, to name names, are reviewing these
3 documents and have not closed the door, and indeed experience shows that,
4 on the contrary, they appreciate the importance of this evidence for the
5 preparation of Defence lawyers. They have seen that in the context of
6 the Lubanga case, and personally I am convinced that they will see fit
7 that the five or seven documents, be they Article 67(2) or Rule 77 --

8 THE INTERPRETER: The interpreter has not understood the final
9 point.

10 PRESIDING JUDGE COTTE (interpretation): Thank you, Prosecutor.
11 I see that it is quarter past 1.00, and I also see that very discreetly
12 two Legal Representatives of Victims have entered the Chamber. I would
13 like to invite them to introduce themselves as all other participants in
14 these proceedings have done so today. Please take the floor.

15 MR. DIAKIESE (interpretation): Thank you, President. Good
16 morning, your Honours. I am Herve Diakiese, and I represent un-anonymous
17 victims a/09, a/010, a/011, a/012, a/013, a/015, and a/016/08. I wish to
18 offer my apologies to the Chamber for our late arrival which is due to
19 external circumstances. Our flight left Kinshasa with a delay of two
20 hours. Please accept our apologies.

21 PRESIDING JUDGE COTTE (interpretation): Yes, but you did already
22 send word that you would be delayed, so we entirely understand your
23 delayed arrival.

24 I note that there is another representative, a Legal
25 Representatives of Victims here present.

1 MR. MULAMBA (interpretation): Your Honours, I am
2 Mr. Jean Chrysostome Mulamba Nsokoloni and I represent victims 15/08 (as
3 interpreted), a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08,
4 a/0029/08, a/0032/08, a/0033/08, a/0034/08, and a/0035/08. Thank you,
5 your Honour.

6 PRESIDING JUDGE COTTE (interpretation): Thank you. It is almost
7 1.20. We were to continue on until half past. I suggest that we break
8 now and meet again at 3.00 p.m. with question 10. I note that we have
9 made reasonable headway, and I would like to thank the Office of the
10 Prosecutor for its contribution this morning which was quite
11 considerable. I would also like to thank counsel, all counsel who have
12 been patient enough to bear with us. They may have felt that they have
13 been put in a passive position, but I do hope that they can -- they also
14 will benefit from what they have heard to even better understand how
15 this -- the dossier in this case is being built and it has been provided.

16 I would like to thank the interpreters, court reporters.

17 Court is in recess.

18 Recess taken at 1.19 p.m.

19 On resuming at 3.03 p.m.

20 COURT USHER: All rise.

21 PRESIDING JUDGE COTTE (interpretation): Please be seated. We
22 are in session.

23 Could the security please bring Mr. Katanga and Ngudjolo in the
24 courtroom. Thank you.

25 I'd first like to ask the Court Officer to record HNE, the

1 document that the OTP filed earlier on. Court Officer -- behind you.
2 Here it is.

3 COURT OFFICER (interpretation): The document filed this morning
4 is recorded under -- in the file with the number ICC-01/04-01/07-HNE 9
5 CONF.

6 PRESIDING JUDGE COTTE (interpretation): Thank you, Court
7 Officer.

8 We will now resume our work. Prosecutor, we were dealing with
9 question number 10 which led to the answer you gave on page 10 of the
10 French version of the document. It is entitled, "How many witnesses will
11 appear at the trial, which charge and modes of liability, and in which
12 language do you want witnesses to testify in?"

13 Do you have any additional information you wish to add to the
14 answer you've given in writing?

15 MR. MacDONALD (interpretation): Yes, Judge -- President. This
16 morning we talked about the 19 witnesses. The Prosecution believes that
17 approximately 25 witnesses will testify on the facts. Twenty-five will
18 be called. The final decision hasn't yet been made for the reasons
19 mentioned this morning. However, I just wanted to mention that
20 concerning the 19 witnesses which were presented or on which the
21 confirmation of hearings was based, seven, because I'm not referring to
22 Witness 258 and 277 (as interpreted) because both of them died, but I
23 shall refer to the other 17. So one -- Witness 167, I beg your pardon,
24 not 177. So 12 will -- 4 will testify in French, 12 in Swahili, and the
25 others in Lingala. One of the persons we interviewed spoke Swahili, by

1 now probably has a good understanding of French and might testify in
2 French. However, the language of the statement originally was Swahili.
3 So I just wanted to do add that.

4 PRESIDING JUDGE COTTE (interpretation): Judge Diarra.

5 JUDGE DIARRA (interpretation): Please, could you tell me, if all
6 of the 25 witnesses are incriminating, Prosecution witnesses, or are
7 there also Defence witnesses among them?

8 MR. MacDONALD (interpretation): Well, let's be clear on this.
9 The Prosecution only intends to bring Prosecution witnesses with
10 incriminating evidence and no exonerating evidence, and I understand that
11 the proceedings at this court are hybrid. However -- or mixed.

12 PRESIDING JUDGE COTTE (interpretation): Mixed.

13 MR. MacDONALD (interpretation): Mixed. But we try to apply both
14 main legal systems we know, bearing in mind the civil procedure for some
15 aspects, and this probably relates to some of the issues we dealt with
16 this morning which I tried to discuss. I think that our approach will
17 probably be more common law based, but we are aware of the fact that this
18 is mixed proceedings in many areas.

19 JUDGE DIARRA (interpretation): Thank you for that information.

20 PRESIDING JUDGE COTTE (interpretation): To confirm, you have 25
21 witnesses in total.

22 MR. MacDONALD (interpretation): Twenty-five for the facts. I'm
23 not talking about the potential experts or other witnesses which won't
24 testify on the facts but which could be technical witnesses, if I may
25 call them so. But I won't yet venture in that area. Among the 25

1 witnesses there will be 25 witnesses on the facts.

2 PRESIDING JUDGE COTTE (interpretation): Do you intend, by any
3 chance, to ask the Chamber for test -- for witnesses to testify outside
4 the court?

5 MR. MacDONALD (interpretation): We haven't yet decided on this
6 issue, Judge.

7 PRESIDING JUDGE COTTE (interpretation): Very well. We
8 understand that not everything can be decided immediately. We
9 understand. Thank you.

10 Now, moving on to question number 11. We didn't need additional
11 information. Do you have any additional information you wish to give us?

12 MR. MacDONALD (interpretation): Your Honour, President,
13 Judge Cotte --

14 PRESIDING JUDGE COTTE (interpretation): Well, you can call me
15 your Honour. I'm not going to formalise things. I'm only one of the
16 three Judges in this Chamber, but I'm presiding the debates.

17 MR. MacDONALD (interpretation): Of course. In the past three
18 years and in my national work -- domestic work I've always pleaded in
19 English, but now I'll switch to French if I may.

20 PRESIDING JUDGE COTTE (interpretation): That's one of the
21 interesting parts of this court, to be able to mix the different
22 approaches. So go ahead he.

23 MR. MacDONALD (interpretation): Well, our assessment is that we
24 could have hearings that last longer than four hours a day, but if we
25 can't, we probably will need closer to six months than four months.

1 However, this assessment is based on the statistics and the court
2 management model quoted in the documents, but it's always difficult
3 anyhow to predict the length of the proceedings, especially if one has to
4 take into account the length of the cross interrogations, examinations,
5 which can be longer in practice than in theory. That's why we need a
6 margin of four to six months.

7 PRESIDING JUDGE COTTE (interpretation): Thank you. Question
8 number 12 concerning the possible presence of traumatised or those
9 falling under Rule 88. Well, you've already provided us an answer on
10 this, so I don't think it's necessary for you to give us any further
11 comments.

12 Now, moving on to question number 13. We wanted to know among
13 the witnesses the Prosecution witnesses wishes to introduce at trial, how
14 many already are in the court protection programme and how -- how many,
15 if necessary, need different protection measures, and are these
16 envisaged? These are important questions you've already mention earlier
17 on. Do you have any additional information you wish to give us?

18 So question 13, page 11 and 12 of your French version.

19 MR. MacDONALD (interpretation): There are no pending requests.
20 These are measures will come, probably in the light of the decision
21 issued yesterday by the Appeals Chamber, the judgement by the Appeals
22 Chamber, and we will probably request the help of the Victims and
23 Witnesses Unit.

24 PRESIDING JUDGE COTTE (interpretation): Concerning this answer,
25 please don't think that we're trying to complicate your work. We just

1 want to understand all the answers given correctly.

2 Page 12. You mention that concerning three witnesses you will
3 make -- present requests by mid-December, and for the others by the
4 beginning of January 2009. For the 13 witnesses which are already
5 protected, we -- that amounts to 19 witnesses who have protection
6 measures or for which you have requested protection measures. To reach
7 the number of 25 there are six missing, so we would like to know, if
8 possible, what the situation of the six other witnesses is. And I would
9 like to add that we understood properly and everybody knows that such
10 measures should be taken as soon as possible in view of the deadlines
11 necessary to decide on the requests and the implementation thereof. Can
12 you add any information?

13 MR. MacDONALD (interpretation): Yes. Concerning the potentially
14 six other persons, your Honour, three are not in the programme as
15 presented in the confirmation of charges. These three witnesses
16 consented to disclose their identity without having any protection
17 measures taken for them such as the ICCPP. The others are witnesses in
18 the same category. That's all I can say just now because we are in a
19 public hearing, your Honour, only. Otherwise, I would willingly discuss
20 these matters in closed session if necessary.

21 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
22 Question 14, page 12 of your answer. Do you wish to provide us with
23 additional information? As far as we're concerned, I'd like to say from
24 the outset that it appears to us that in the CD-ROM you included
25 documents which you redacted yourself and this on top of the summaries

1 requested by the Chamber. Is that the case?

2 MR. MacDONALD (interpretation): Yes, your Honour. Yes. And I
3 have a list of witnesses we based ourselves on at the investigation -- I
4 beg your pardon, confirmation hearing, and concerning which we disclosed
5 summaries. Sorry, I'll start again.

6 I'm now going to file a list of 25 summaries. This list contains
7 the 25 summaries that were disclosed to the Defence according to Article
8 67(2) or Rule 77, and if I'm not mistaken, I believe that was what you
9 meant by your question.

10 In this document you will see that the ERN Ringtail numbers are
11 included. I will not repeat, because they're in the list of the 51, but
12 if you deduct 24 from 51 you get a balance which you might have to ignore
13 because some are covered in the Annex 1 -- Annex A. But when we carried
14 out our research we included information we'd already disclosed, but at
15 the request of the Chamber, for instance, you have the summary of Witness
16 258's statement which isn't part of that list. So to avoid any confusion
17 I will resubmit this list of 24 summaries for 22 witnesses, Defence
18 witnesses, testifying on exculpatory evidence.

19 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
20 Now this brings us to question 15, which is an important question as all
21 questions has given us -- or has led to the answer given us in the French
22 version on pages 12 and 13. I'd like to repeat the question. Does the
23 Prosecutor -- does the Prosecutor want to request protection measures for
24 the witnesses he does not want to testify for the Prosecutor at the trial
25 and the statements of which are under Article 67(2) of the Statute and

1 Rule 77? What -- in the alternative, what are these measures?

2 Now, you've given us an answer but you might want to give us
3 additional information now orally, but anyway, we have two additional
4 pieces of information we want to ask of you.

5 MR. MacDONALD (interpretation): We want the information from the
6 Chamber first.

7 PRESIDING JUDGE COTTE (interpretation): Okay. Well, unless we
8 misunderstood you, we understood that in the evidence, that includes
9 exculpatory evidence, there are statements, and do you wish to use some
10 of these statements as incriminating evidence at the trial; and, if yes,
11 how do you intend to protect the witnesses concerned? Do you intend to
12 request additional information and relocation of some of these witnesses?
13 And then again as regards your answers on page 12 and 13, if you do not
14 intend to use these incriminating witnesses, do the relevant witnesses
15 know that their statements could be used as exonerating material by the
16 Defence? Did you obtain their consent to cooperate and, if necessary,
17 come and testify? And if they consented, did they really consent to the
18 potential use of their statement by the Defence?

19 And now I'll ask you the last question for clarification. This
20 morning at the beginning of the second part of the hearing, and perhaps
21 even at the beginning, you gave us additional information on the -- on a
22 translation matter on the word "consent," to consent. For these
23 witnesses, on page 13 you mention the possibility of -- I think it was
24 consent or admit. So you said that -- you talked about the possibility
25 of consenting or conceding specific acts.

1 Now, we wanted to make sure that's the case, because if it is the
2 case we take note of this, but we would like to also flag the fact that
3 judicial control could take place in this area. Are the answers clear?
4 Can you give us further information?

5 MR. MacDONALD (interpretation): Yes, certainly.

6 PRESIDING JUDGE COTTE (interpretation): That's fantastic. Thank
7 you.

8 MR. MacDONALD (interpretation): As regards the first question,
9 the Prosecution does not intend to call these witnesses with
10 incriminating evidence and as regards -- so there won't be any
11 resettlements. We won't require resettlement of these Prosecution
12 witnesses.

13 Now, concerning the disclosure of exonerating material, as I
14 mentioned this morning for witnesses under Article 67(2) and question 3
15 or 4, if I'm correct, the Prosecution is currently trying to contact
16 these witnesses to see whether or not they consent to their identity
17 being disclosed and to their statements being disclosed. We managed to
18 contact some of them. It was more difficult to contact others for
19 reasons quite clear to everyone as they were in a war-torn region, a
20 remote area. So for those who consent to protection measures, bearing in
21 mind this Chamber's statement this morning, we will try to redact as
22 little information as possible. That's my first observation.

23 Now, on the same question, their consent to the Defence to using
24 their statement. Well, whenever we take a statement we explain to the
25 witness that it could be use as evidence, and at the beginning of an

1 investigation, even before an accused is transferred, it's always
2 hypothetical, and that's why we then recall or remind the witness this
3 afterwards. Subsequently we tell them about the request, the consequence
4 of the request on their personal security, the impacts it can have, and
5 then we re-examined the situation and the security measures. Sometimes
6 people move and are subsequently in areas in which they no longer run any
7 risk, and then the witness decides.

8 For instance, just now I believe three persons refuse their
9 identity being disclosed or information being given to the Defence. When
10 that happens, we have to look at the possible alternatives to at least
11 disclose the exonerating information or the information under Rule 77.
12 In -- to do so we have to approach a Chamber, have a discussion with
13 them. We have nothing against the Chamber looking at the statements,
14 because they're OTP documents. There are no restrictions. Everything
15 happens in closed session, and then the Chamber looks at whether or not
16 the analysis of the OTP concerning the exonerating material is correct,
17 and if it is correct, how the information can be disclosed to the
18 Defence. And if necessary, and that's in the last resort, only if it's
19 very necessary, we have to request an exonerating -- or Defence witnesses
20 to be resettled. But it is not in our interest at all for witnesses to
21 be intimidated, eliminated, or other, and even less so when they're
22 Defence witnesses. They could be less, but we always make sure with the
23 Victims and Witnesses Unit that we have sufficient measures in place to
24 ensure minimum security.

25 PRESIDING JUDGE COTTE (interpretation): Thank you very much,

1 Prosecutor. This brings me to a last final question which I'd like to
2 ask both you and the Defence, questions 2 and 3, which are on page 13 and
3 14 of your written answer, in the French version of your written answer.

4 Unless I'm mistaken, it concerns agreements on evidence. So you
5 don't need to repeat what you have already answered in writing, but the
6 Chamber notes that you both wish to hold negotiations, or you don't
7 exclude negotiations to reach agreement on evidence and possible -- on
8 the possibility of taking judicial notice of certain facts. We would
9 like to know, because this would enable us to move forward on some
10 matters.

11 Now, we have finished with the questions we wanted to ask the
12 Prosecution. The Chamber is aware of the fact that we have made you
13 repeat yourselves, and I'm aware of the fact that sometimes I made you
14 mention things that are quite clear in your minds already, but I would
15 like you to know that that is not always the case of the Chamber, and the
16 reason why we are so precise and asking for so much detail is that we
17 would like as clear a discussion as possible in order to enable each and
18 every one of us to have the most information possible for this status
19 conference to be useful. And we have not forgotten that you have some
20 answers in writing to provide us still and that we also, on our side,
21 have to give you a written document of what we expect of you in terms of
22 concrete proposals, not reports, but on how to relate the crimes and the
23 modes of liability and counts.

24 MR. MacDONALD (interpretation): I would like to make it clear
25 that we have no doubts as regards the charges. That has to be clear.

1 The whole issue of the e-court was already discussed in the Pre-Trial
2 Chamber I. There were even expert reports on it, and they were attached
3 to the documents. You might want to deal with this issue. It might be
4 one of your questions. You might want the parties' answers to this, but
5 that's all we have to say just now.

6 PRESIDING JUDGE COTTE (interpretation): Thank you very much.

7 David Hooper, could we now deal with the questions which we asked
8 the Defence, the Defence counsel, the questions on page 8 of the order of
9 13 November 2008, which you responded to in a document dated 24 November
10 2008.

11 The first question concerns the observations that you would have
12 liked to make on -- possibly make on Mr. Germain Katanga's detention.
13 You've already given us an answer. Do you want to add any information or
14 give us further details concerning Mr. Katanga's detention conditions?

15 MR. HOOPER: Thank you, Mr. President. May I put it this way:
16 This afternoon I have nothing further to say, but there's one matter that
17 perhaps I -- may I reserve until tomorrow. It may come to nothing, and
18 I'll know better by tomorrow.

19 PRESIDING JUDGE COTTE (interpretation): On this specific matter
20 or on all of the answers which you have provided to the questions we have
21 put?

22 MR. HOOPER: No, no, merely in relation to your question under
23 10(1), and I stand at the moment by my answer there, that the Defence
24 have no other observations to make regarding the conditions of
25 Mr. Katanga's detention. There's just one matter that was raised with me

1 earlier that I would like to discuss further, if I can put it like that,
2 with Mr. Katanga and perhaps come back to the Court tomorrow on it or
3 maybe not at all.

4 PRESIDING JUDGE COTTE (interpretation): Very good. So we shall
5 reserve until tomorrow a possible -- some possible additional information
6 from your side regarding the conditions of detention.

7 Now, simply in your written response you stated, if my French
8 translation is right, that you express your gratitude for the arrangement
9 of the visit of Mr. Katanga's family, the fact that his family was able
10 to come and visit him.

11 I would simply like to take this opportunity, the opportunity of
12 this response on this specific point, to indicate that the Chamber is
13 entirely conscious of the fact that a balance must be struck between the
14 legitimate requirements of the Prosecution, which wants to ensure that
15 family links are maintained, family links which are difficult to maintain
16 given the considerable distance separating the accused from their
17 families. The Chamber, therefore, believes that the accused have the
18 right to maintain their family links.

19 The Chamber also is mindful of the very considerable work which
20 is done in this connection by the Registry. It is possible that a little
21 misunderstanding arose between the Registry and your team on this
22 particular point. That misunderstanding or disagreement has been
23 resolved. The Chamber is entirely satisfied, and the Chamber wishes to
24 see contacts between the Defence and the Registry which are as direct and
25 as constructive and fruitful as possible, and this in the interests of

1 the accused but also in the interests of the proper administration of
2 this court.

3 We all know that the Registry is mindful of its duties and its
4 obligations, and I believe that it does all that it can to discharge them
5 well, and that's why we three on this Bench are delighted to see that
6 things once again are proceeding on a sound basis. Thank you.

7 So perhaps tomorrow we will return to -- or revisit question 1.

8 Turning now to question 2, you have indicated that you intend to
9 conduct investigations on the territory of the Democratic Republic of the
10 Congo, and you have specified your provisional schedule. Is there
11 anything which you would like to add in addition to this response to
12 10(2) as set out on page 3 of your response?

13 MR. HOOPER: Merely that having had the benefit of hearing
14 Mr. MacDonald this morning say that there's a particular problem that he
15 identifies inasmuch as difficulties that can arise if both the
16 Prosecution and the Defence teams are visiting the same area in Ituri. I
17 just want to emphasise that while the December dates are firm, booked,
18 and so we know exactly which dates we will be going, I'm afraid we can't
19 say that in respect of subsequent dates. These subsequent dates are, at
20 the moment, merely indications of when we hope to be able to go there on
21 mission, but that will be subject not only to our own wishes but to the
22 availability of people out there, and also of course the security
23 situation which the Chamber may appreciate has been, well, a little
24 erratic in recent weeks.

25 We shall shortly know the precise dates that we need to go in

1 January because we have to give a 30-day notice to the Registry here, or
2 those who assist us in the Registry here.

3 Those subsequent dates, I'm afraid Mr. MacDonald cannot rely on
4 as clear and firm dates, but I hope if we do bump into one another out in
5 Ituri that that won't cause, I hope, too many upsets and
6 misunderstandings between us. But it's obviously a matter to bear in
7 mind and I'm grateful for him to raise it this morning, bring it to my
8 attention.

9 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
10 That's a very clear answer, but I would like to ask you for some further
11 clarification. You have indeed put forward dates for travel to the field
12 for the purposes of your investigation. Should it transpire that these
13 missions are indeed necessary, the Chamber, as you would appreciate,
14 cannot suspend its activities during these periods. Our question is the
15 following: How do you propose to organise your work as a team to ensure
16 that your client is represented should status conferences be convened
17 during the period when you are on mission in the Congo? Are you in a
18 position to make proposals in this connection? That is to say, to ensure
19 that missions which may be necessary are not at the cost of the continued
20 work of the Chamber. Would it be possible for one or the other member of
21 the team to remain here to represent Mr. Katanga in court? We would
22 appreciate it. We would be obliged if you could make proposals in this
23 connection either now or at a later point in time.

24 THE INTERPRETER: Microphone, please. Microphone, please.

25 MR. HOOPER: (Microphone not activated) ... indicate now that

1 we're mindful of difficulties that absence, of course, would cause to the
2 scheduling of status conferences and the like; and to that end, we will
3 endeavour to ensure that our team arrangements in terms of missions are
4 so made as to not inconvenience the Court. In that regard at the moment,
5 if I can put it like this, a thin team, but we hope with negotiations
6 with the Registry over the next few days or weeks that we will fill out a
7 little bit more, and therefore there will be more personnel within the
8 team to cover those eventualities.

9 Can I indicate that in the past, from time to time, when, for
10 example, I've not been able to be here, Ms. Buisman, who has in fact
11 quite considerable experience in terms of tribunals, international
12 tribunals and knows very well the facts of this case and our position,
13 has been able and been permitted to cover for me if I am absent; but in
14 addition to her, we expect, in fact, the appointment of co-counsel and
15 possibly another party to the team. So looking ahead at least past --
16 the next two weeks in December are going to pose a particular difficulty,
17 if I can put it like that, but after that, by January, I hope that
18 those -- that position will be resolved. And if there should be a matter
19 that arises over the next two weeks, then we may, I'm not able to say
20 this with certainty, but we may be able to call on the services of a
21 Professor Sluiter who has acted as a legal consultant to the team over
22 the last months and who may be able to cover and to fill in, but I'm not
23 entirely clear because he's presently sitting as a Judge, for a start,
24 and has other commitments, but that's the kind of position.

25 So over the next two weeks I can't provide a guarantee other

1 than, of course, for Ms. Menegon, who knows certainly as much about the
2 paperwork of this case, or may I concede even more than myself. So in
3 terms of the matters that are likely to arise perhaps over the next few
4 weeks, certainly she could provide a sufficient link and cover between
5 us. And after that, as I say, I anticipate there won't be a problem.

6 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
7 Mr. David Hooper. This answer satisfies the Chamber entirely. Your
8 team -- your team is able to divide labour in such a way as to be present
9 in court if need be.

10 Mr. Kilenda.

11 MR. KILENDA (interpretation): I'm sorry to intervene at this
12 point in time in the status conference, but we would just like to request
13 a clarification.

14 In the wake of the contributions from the Prosecution, we see
15 that you have turned to our sister Defence team. Are we to understand
16 that you have changed the order of the agenda?

17 PRESIDING JUDGE COTTE (interpretation): Ah, you're quite right.
18 I thought that we had agreed this morning that Mr. Hooper would take the
19 floor before Mr. Ngudjolo's Defence team, but I seem to have been
20 mistaken.

21 MR. KILENDA (interpretation): I'm referring to the agenda. Here
22 it says after having dealt with the Prosecutor's answers you would deal
23 with the Registry -- the Legal Representatives of the Victims and then
24 the Registry.

25 PRESIDING JUDGE COTTE (interpretation): Indeed. I'm totally --

1 I have head off on the wrong track. Please accept my apologies. Yes.
2 Yes, indeed. It is the turn of the Legal Representatives of the Victims.
3 I had given the floor to Mr. Hooper before it was his turn. It's not a
4 disaster. I'm sure he will accept our apologies. Thank you,
5 Mr. Kilenda, for having reminded me that I'm off course. We need to
6 comply with the agenda. If the Presiding Judge doesn't comply with the
7 agenda, who will?

8 I will now turn to the Legal Representatives of Victims, but I
9 would point out we don't have a huge amount of time left. That said, I
10 think that we can certainly proceed with the agenda as it stands.

11 Which amongst -- or who amongst the Legal Representatives of
12 Victims wishes to take the floor first? Now, this is something we
13 certainly didn't decide upon this morning. Perhaps Mr. Joseph Keta, who
14 I believe introduced himself first this morning, would like to take the
15 floor first.

16 Mr. Keta, would you like to take the floor on the matter of the
17 questions which you have answered?

18 MR. KETA (interpretation): Thank you very much, your Honour --
19 your Honours. Indeed, I will take the floor on behalf of the -- of
20 certain anonymous witnesses, and I would be delighted to give you further
21 detail in response to the questions which you can put.

22 In response to the first question, that is to say, whether the
23 Legal Representatives of Victims intend to lead evidence pertaining to
24 the guilt or innocence of the accused. I would respond in the
25 affirmative and specify that the victims who I represent will be in a

1 position to present that evidence and possibly also to contest other
2 evidence presented here. However, given that these witnesses are
3 anonymous, we could possibly call witnesses in relation to the testimony.
4 These would be child soldiers. Some of these child soldiers have been
5 sexual slaves and have been through the experiences of the victims who
6 are represented.

7 I have -- I represent two victims and two others whose
8 application to be recognised as victims in these proceedings were
9 rejected but who could participate in this fashion.

10 PRESIDING JUDGE COTTE (interpretation): You propose to present
11 evidence regarding the guilt or innocence of the accused. Are you
12 currently in a position to specify the number of pieces of evidence and
13 at what point in time you will be in a position to disclose them to the
14 parties? Can you answer these questions today?

15 MR. KETA (interpretation): Not at this point in time. I would
16 need to make an assessment.

17 PRESIDING JUDGE COTTE (interpretation): Well, when you are ready
18 to do so, we would be delighted to receive a written submission in this
19 connection from you.

20 I would also like to put another question to you. In your
21 written response dated 24th of January, these are the submissions of
22 Mr. Keta and Mr. Gilissen, you refer to pressure and intimidation that
23 the victims representatives and victims themselves have been subjected
24 to. Can you provide us with further clarification on this? You have
25 expanded on it at some length, and that is of interest to the Chamber,

1 but it leads the Chamber to put this question to you.

2 MR. KETA (interpretation): I would suggest that I deal with this
3 in the second part, but if you prefer, I shall do so now.

4 PRESIDING JUDGE COTTE (interpretation): We would prefer that you
5 continue and that later you deal with that particular matter.

6 MR. KETA (interpretation): I suggest that I answer or deal with
7 the questions in order and deal with that matter a little bit later.

8 Turning now, I would take the second question: If so, do they
9 intend to apply for protective measures? We have answered this also.
10 Questions 2 and 3 may be combined, and our answer is in the affirmative.
11 We may apply for protective measures at the point in time that the
12 anonymity of our clients can be lifted, can be abandoned. When they
13 abandon anonymity, these protective measures will be required.

14 Question 3 is: Does this evidence include testimony from
15 traumatised persons, children, et cetera? We have one person who is a
16 victim of sexual violence, so perhaps special measures would be requested
17 when the time comes, when anonymity is abandoned for the witnesses that
18 we represent -- sorry, victims that we represent.

19 May I move on to question 4?

20 PRESIDING JUDGE COTTE (interpretation): Certainly.

21 MR. KETA (interpretation): Do the Legal Representatives of the
22 victims intend to call witnesses and lead evidence pertaining to the
23 issue of reparations at the same time as for the purposes for trial? Now
24 here we did not answer simply yes or no. What is important is the
25 security situation in the field. It would be our intention to do so. At

1 the same time, we recognise at the current point in time we are not in a
2 position to give you a definitive answer to this question.

3 PRESIDING JUDGE COTTE (interpretation): Please proceed.

4 MR. KETA (interpretation): Moving now to the second part, the
5 questions put to the Prosecutor, the counsel for the Defence and the
6 Legal Representatives of the Victims, so paragraph 13 of the order on
7 page 10.

8 Question 1: Do the participants have any observations to make
9 concerning the evidence disclosure system established by the Pre-Trial
10 Chamber I? At this point in time we do not have any specific comments to
11 make on this, because as Legal Representatives of anonymous victims we do
12 not have access to evidence. Thus we've not had an opportunity to judge
13 the disclosure system as it stands.

14 Question number 2: Do the participants intend to propose
15 amendments to the e-court protocol for the provision of evidence,
16 material, and witness information in electronic version that was used at
17 the confirmation hearing? Well, this question follows on from the
18 previous one. As we have very little access to evidence and given the
19 anonymous status of our clients, it is not possible for us to really
20 judge the -- the strengths and weaknesses of the protocol. However,
21 should the victims -- or when the victims abandon anonymity for the
22 purposes of trial, we would certainly like to see that the protocol
23 ensures that there is full dissemination of evidence presented by the
24 parties in the trial to us. In this connection, we believe that training
25 in the use of the disclosure system would be absolutely necessary for us

1 to understand it as well as possible and to discharge our duties as best
2 possible.

3 Turning now to question 3: Do the participants have any
4 observations to make concerning the place of the trial? In principle, we
5 believe in the benefits, that there would be real benefits in holding the
6 trial in situ should the security situation make that possible. However,
7 at this point in time and in light of the security situation in the
8 field, we have the greatest reservations regarding the holding of the
9 trial in situ.

10 As regards a visit by the Chamber to Bogoro, for instance, this
11 would only be possible should specific measures be taken to ensure the
12 proper security of the victims and their representatives. In this
13 connection, we would refer to what is said above, that is to say, we
14 refer to what is expanded upon in the second part, that is the whole
15 security situation.

16 This brings me to the end of our comments on our responses to the
17 questions put.

18 PRESIDING JUDGE COTTE (interpretation): Thank you very much. In
19 response to this -- this last aspect, please do continue on it.

20 MR. KETA (interpretation): Regarding the questions and
21 observations regarding security, we would like to see particular
22 attention being paid to the situation in which some of us find ourselves.
23 We are quite clearly being threatened, and others are being threatened
24 but in a less obvious fashion, in a covert fashion, owing to their status
25 as Legal Representatives. This situation renders the work of

1 representatives in the field particularly difficult and dangerous and may
2 lead them to -- may oblige them to withdraw either from their work in
3 their home country or to withdraw as representatives of victims before
4 this Court.

5 This situation would require the Chamber to -- would require
6 measures which go beyond the powers of the Chamber and to require changes
7 to the -- to the Statute, Article 38 thereof, for instance.

8 I'm speaking here on behalf of the Legal Representatives. We
9 would like to draw the attention of the Chamber to measures which could
10 already be taken on the basis of existing texts, and I have cited a
11 number of texts, notably Article 43(6) and Rule 17 regarding the Victims
12 and Witnesses Unit and their responsibilities in providing assistance to
13 victims. There's also Article 68 regarding protection and participation
14 of victims and witnesses in these proceedings and which could -- whereby
15 the Victims and Witnesses Unit could advise the Court.

16 There's also Rule 16 which refers to the responsibilities of the
17 Registry regarding victims and witnesses, and more specifically paragraph
18 (1)(b) of this which refers to assistance and support to Legal
19 Representatives.

20 What is in fact happening? Well, the security of victims is
21 intrinsically linked with that of Legal Representatives and vice versa,
22 particularly in an environment where people are outraged.

23 If you are a legal representative or a lawyer, often you find
24 yourself considered to be party to the proceedings. We believe that
25 pressures upon Legal Representatives or victims or threats regarding

1 their property or their physical integrity is something which must be
2 address by this Court.

3 The absence of adequate measures to remedy the security
4 encountered by Legal Representatives of Victims could lead to the
5 withdrawal of representatives from their remit or could lead to lawyers
6 refusing to represent victims, lawyers are who nationals of the same
7 country as their victims.

8 There is a risk, therefore, of desertion of victims
9 representatives who are nationals of countries in which the events in
10 question have taken place.

11 We would refer you to the Court's document "An ICC Strategy for
12 Counsel." This situation runs counter to the content of that document.
13 We would like to consider with the Chamber what measures can be adopted,
14 in particular to ensure the security of victims and witnesses and indeed
15 of Legal Representatives throughout the proceedings before this Court.

16 Thank you.

17 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Keta. In
18 response to this particular point, the issue of possible pressure and
19 threats, are you speaking on your own behalf and on behalf of
20 Mr. Jean Louis Gilissen, or are you speaking on behalf of all of the
21 Legal Representatives of Victims? They will have the opportunity in turn
22 to take the floor, Mr. Diakiese, Ms. Bapita, and Mr. Mulamba, but are you
23 speaking on behalf of all Legal Representatives of Victims?

24 MR. KETA (interpretation): Well, I am speaking on my own behalf,
25 first and foremost, but I am expressing an idea or thoughts which are

1 shared by all Legal Representatives who are nationals of the country in
2 which the hostilities took place. We have already given thought to the
3 matter, and we have decided to bring this before you.

4 PRESIDING JUDGE COTTE (interpretation): Yes indeed. And your
5 colleagues will have an opportunity to take the floor probably tomorrow.

6 I think it would be useful if the representatives of the
7 Registry, that is to say, once the other three Legal Representatives of
8 Victims have taken the floor tomorrow, it would be useful if the
9 representatives of the Registry could also address the Chamber. Thus,
10 Mr. Dubuisson, we will probably need to have input from your side
11 tomorrow on the issues which have been addressed.

12 I don't think it would be wise to give the floor now to
13 Ms. Bapita, because she would have to speak tremendously fast. So I
14 think it would be better that she be given the floor tomorrow with the
15 other Legal Representatives of Victims to address their responses to the
16 issues raised.

17 I would like to thank Mr. Kilenda for having reminded me of the
18 order of items on our agenda, and I would like to say to Mr. Hooper that
19 I'm very sorry that I abandoned the agenda in this fashion and gave you
20 the floor far too early, although it was a pleasure to hear from you
21 ahead of time. It was a beginning.

22 I would like to thank all of you who have attended this, our
23 first hearing, and I would like to thank our interpreters who are making
24 it possible for all of us, whichever working language we prefer, to
25 understand each other. I would like to also thank the court reporters.

1 And I would invite you to all appear here tomorrow at 10.00 a.m. We will
2 start off by hearing from the other three Legal Representatives of
3 Victims, and then we shall hear from Mr. Hooper, Mr. Kilenda -- the
4 Registry, the Registry indeed before Mr. Hooper and Mr. Kilenda, and then
5 we'll have time for replies should that be necessary.

6 Court is adjourned.

7 The hearing ends at 3.57 p.m.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25