

1 International Criminal Court

2 Trial Chamber II

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

4 Status Conference - Open Session

5 Friday, 28 November 2008.

6 The hearing starts at 10.03 a.m.

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

9 PRESIDING JUDGE COTTE (interpretation): We are in session.
10 Please be seated.

11 Please could security bring Mr. Germain Katanga and Mr. Mathieu
12 Ngudjolo in the courtroom, please. Thank you.

13 Court Officer, can you please call today's case.

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

17 PRESIDING JUDGE COTTE (interpretation): Thank you, Court
18 Officer.

19 Yesterday we finished with Mr. Keta's intervention, and we had
20 agreed this morning to give the floor in turn to Ms. Carine Bapita and
21 then Mr. Diakiese, and then Jean Chrysostome Mulamba. Afterwards, we
22 will give the floor to the Registry and continue with the agenda, and
23 after hearing the Registry we will hear David Hooper and then the Defence
24 of Mr. Mathieu Ngudjolo, and after each and everyone's intervention you
25 can respond or make further comments as you wish.

1 So according to the agenda, the Prosecution will start. Ideally
2 we would like to finish our hearing today at the end of the four hours.
3 I hope we will manage to do so. If we miss time, perhaps, Court Officer,
4 we would like to see with interpretation services and those providing
5 Lingala interpretation to see whether or not we can go on for half an
6 hour to finish the hearing. We'll see that later on according and
7 depending on how our discussion unfolds.

8 Ms. Carine Bapita, can you please now go into what you wanted to
9 mention concerning the questions you had been asked.

10 MS. BAPITA (interpretation): Thank you very much, President,
11 your Honours. Thank you for giving me the opportunity to going -- to go
12 further into my answers and give me an opportunity to further develop
13 certain points which I believe should be so at this stage in the
14 proceedings to see how we can direct things for the future.

15 I won't repeat the answers I've given in my written answers, but
16 I would like to go into three points I believe are important to mention.
17 I would like to inform the Chamber that concerning question 12.2 -- so
18 the first question is did the Legal Representatives of Victims present
19 evidence concerning the guilt or innocence of the accused? Yes. And
20 then have we requested protective measures.

21 We answered that yes, but we wanted to underline that among some
22 of the victims some are Prosecution witnesses, victims, and we would like
23 to know whether or not the Prosecution is going to take protection
24 measures which they deem appropriate for their intervention.

25 On top of that we will also have some witnesses who come and shed

1 some light on these particular points but who aren't victims. And the
2 third category will be victim witnesses whom we represent.

3 That's the only point concerning the written submission, but I
4 didn't argue yesterday, but listening to others, I come to the conclusion
5 there's something that should be underlined. We believe we will be
6 carrying out investigations in Bunia and Kinshasa as long as the court
7 budget allows us to do so, and if we can use Article 56, we would like to
8 associate some of the evidence we collect in the field during these
9 investigations with what we are presenting.

10 The third point concerns the security as was raised by Mr. Keta.
11 I would like to mention that this is my personal opinion only.
12 President, the issue of security is something I believe to be very
13 important, and I thank you for having thought about this and enabled us
14 to talk about it, because we are confronted with a situation concerning
15 security just now.

16 Despite all the applications we have made at the court and within
17 the country, the situation has not evolved, and this because the
18 Rome Statute and the agreements on the immunity and privileges of the
19 court did not expressly provide for the protection of counsel as was
20 underlined by my learned colleague yesterday, Mr. Keta. It is difficult
21 for us to work correctly and to be at ease in our work if we don't solve
22 the security problem.

23 Now, to be more concrete and I'll try to avoid going into detail,
24 perhaps we could in the future have an ex parte hearing on this, but in
25 July I had to make an official request to the court for protection

1 following threats I received in both cases related to our work and
2 following our appearance before the court, and we had been promised that
3 we would meet the Victims and Witnesses Unit and Registry to find a
4 solution.

5 There are also international human rights organisation that wrote
6 and cites the government of our country on this subject. When we went
7 back to the country, the court through its security section received us.
8 They asked us questions. We gave them information, and then they got in
9 touch with our country's authorities, but there was no follow-up.

10 Just to give you an idea of the reality on these agreements on
11 privileges and immunities, the reaction of the justice minister was to
12 say we were being too loud and that he had received writings from all
13 over the world addressed to him and to his government and that we should
14 stop stirring things. And secondly, we had to file an official complaint
15 for threats we had received with the police of our country and the public
16 prosecution service, but the answer was, Well, we didn't know that your
17 family was concerned. We talked about this at the Security Council, and
18 we will see what measures can be taken, because my husband also is a
19 lawyer. And then they said, "Well, for emergencies there's a police
20 station nearby," but the people in that police station were all deployed
21 to go late afterwards and you know what happened.

22 So despite our efficient complaint we never received invitations.
23 Nobody came to visit us or to inform us on what had happened. Basically,
24 even when we -- texts are issued they are not always applied, and we
25 know -- or we don't know what could happen in future, but security is so

1 important that if for security reasons, as Mr. Keta was saying, we have
2 to withdraw, we won't be helping the court in carrying out its work. The
3 texts have not provided for anything, but as you are the President of
4 this Chamber, we believe as you are responsible that in view of the
5 information you've received and we will give you the correspondence, that
6 you should, as you can -- as far as you can initiate protection measures,
7 and we would like to make proposals to your Chamber on this matter,
8 because the security issue does not only relate to Legal Representatives.
9 It also concerns our colleagues in the Defence because the population in
10 the field doesn't really understand the role we play, and from what I've
11 understood yesterday, everybody's going to go to Bunia and everybody in
12 Bunia and Kinshasa can be subjected to such threats.

13 I think it is high time the court is conscious of what is going
14 on and flags this at the assembly, because if one of our colleagues is
15 killed one day, then people will react, but the court should already be
16 aware of the situation.

17 For now it's all I have to say, but if you want further
18 clarifications I'm available to provide them.

19 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
20 Mrs. Carine Bapita. I think I heard you correctly. Sorry if I'm asking
21 you to repeat something, but right at the beginning did you tell us,
22 perhaps you can't yet tell us this, but did you tell us how much evidence
23 you want to put forward and when you will be able to disclose this
24 evidence to the parties? I'm not sure you gave us that information.

25 MS. BAPITA (interpretation): No, you're right, President. I

1 didn't give that information, simply because we haven't yet finished
2 going through all the documents and all the items filed in the record by
3 the Prosecution. I think we will need two or three months to finalise
4 that. But we believe that three months before the beginning of the
5 trial, the date proposed by the different parties, that by then we will
6 be able to tell you which items will be tendered in the file and
7 disclosed.

8 PRESIDING JUDGE COTTE (interpretation): Thank you very much for
9 that information, and all the elements you've given us here, the
10 information you have given us concerning the context.

11 Now, Mr. Herve Diakiese, can you now in turn give us some
12 clarifications, some additional information concerning the written answer
13 you already gave to the Chamber?

14 MR. DIAKIESE (interpretation): Thank you very much for the
15 floor, President, your Honours. I think that with everybody that's been
16 said and with my laconic written statements I don't want to be more
17 verbose in this case but that I would like, however, to come back on
18 three points I believe to be very important in view of the fact you've
19 asked us to shed some light on certain situations to help us move forward
20 in the procedure.

21 The three points concern again the safety and security issue,
22 then the situation of victim witnesses, and the issue of and the
23 possibility of going in the field during the trial to Bogoro.

24 PRESIDING JUDGE COTTE (interpretation): Concerning the situation
25 and the field trip and security, I would just ask you not to repeat what

1 Mr. Keta and Ms. Bapita have said. I won't prevent you from mentioning
2 this question, it is important, but please give us additional information
3 only, but don't repeat what has already been said because we are short of
4 time.

5 MR. DIAKIESE (interpretation): Thank you very much. I will do
6 as instructed and try to avoid repeating what was said.

7 What I wanted to draw your attention to was an experience I had
8 in October last in Bunia. During a mission, I felt that people's
9 perception of the court nowadays in my country is rather negative. Up
10 until now I hadn't felt this because I believed that some people thought
11 that it would be good to discredit the court, but as you know, up until
12 now the court has focused mainly on the situation in Ituri in the
13 Democratic Republic of the Congo, and the evidence in Ituri is concerning
14 the conflicts and the attacks which we have tried to explain to you, the
15 conflicts between the Hema and Lendu.

16 Concerning both cases in the DRC, our case and the Lubanga case,
17 there is a Hema leader and a Lendu leader. However, we note that in both
18 cases all the victims only belong to one ethnic group, the Hema. This is
19 not due to deliberate intention by the court but due to the perception of
20 the population.

21 Now, to come back to what Mr. Keta said yesterday, when a legal
22 representative or counsel defends a certain group, when the ethnic origin
23 of the group has instrumentalised and when the victims have been
24 assimilated with a specific group and considered as an adversary of the
25 other group, well, as Legal Representatives of Victims we cannot

1 understand why the Prosecutor has adopted such an approach that all the
2 victims belong to category -- to one category. But we Legal
3 Representatives of Victims now find ourselves in a situation where we're
4 representing only one ethnic group and an opposite party in this way. So
5 we can't reproach a court that it is sticking to the texts, and we can't
6 deny the fact that security mainly lies in the Congolese government's
7 hand, but what I'm referring to is the spirit of the whole situation,
8 because the Democratic Republic of the Congo doesn't enable us to enjoy
9 our full right to protection because it itself is in such a situation it
10 is unable to protect in certain situations.

11 However, those who request protection from it are in some way
12 associated or potentially involved in situations referred to the court,
13 and therefore we are not considered to be a great priority in terms of
14 protection, and that's the incongruous situation we're in for the
15 requirements and why we require protection mechanisms very quickly.

16 As Ms. Bapita said as regards the security issue, I think it
17 would be appropriate to have an ex parte hearing. Actually, I would even
18 suggest that we have such a hearing without the presence of the accused,
19 because it would enable us to make suggestions for more concrete and
20 reasonable protection measures.

21 If you allow, President, I would now like to come back to the
22 second point I raised concerning the status of victim witnesses.

23 As my learned colleague Ms. Bapita said, we have some clients,
24 some victims, who are also given the status of witnesses. The
25 specificity of the ICC has led to the creation of this dual status. The

1 procedure is currently being developed, but mistakes are only human.
2 Anyway, I'm coming to a point for which I need clarification. So
3 Prosecution has the possibility of contacting any person who will enable
4 them to find out what the truth is, but when these people are also
5 represented by counsel, to what extent can we be associated in this work
6 in assessing the relevance of these people as witnesses.

7 I'm asking this because we all have objective interests that lead
8 to the same objective, but we would like to know at what stage we can
9 intervene to request preliminary protection measures or resettlement
10 measures or other to enable victims who are also going to testify,
11 because we're -- it's in all of our interest to have and to discover the
12 truth but to have these people protected also.

13 Basically to finish very quickly, when the legal
14 representative -- or if we want the Legal Representatives to be
15 disassociated from the victims, a legal representative is somebody who
16 replaces a person, and therefore when we are Legal Representatives, we
17 are the victims as we speak for them, and so if you want to disassociate
18 the status of victim from that of legal representative, you might
19 encounter some problems. I think we need to clarify this, especially
20 protection for Legal Representatives of Victims, because they represent
21 victims that are protected themselves.

22 Now, a final point. I will be much more brief. We were in
23 favour of the Court going -- or carrying out site visits. Here, however,
24 we might disagree with some of our colleagues. We need to consider when
25 this would be appropriate, but as regards protection measures we need to

1 plan this. As you know, Bogoro is under governmental control and the
2 MONUC is present. We should perhaps contact the MONUC to organise this
3 visit, because this would be a strong sign that there's an ICC involved
4 in the situation that happened on part of the territory and that that is
5 within its -- within its mandate.

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

8 Mr. Jean Chrysostome Mulamba, you have the floor.

9 MR. MULAMBA (interpretation): Thank you. Thank you very much
10 for the floor.

11 As I am the last one to speak, I will also try to be brief,
12 because most of the questions raised were already dealt with by my
13 colleagues.

14 On the issue of security, I entirely agree with what my
15 colleagues have said. I also refer to my written answers. I would like
16 to insist, however, on one point which was raised by one of my learned
17 colleagues earlier on, the issue of a trial in Bogoro, Bunia, or in the
18 Democratic Republic of the Congo.

19 President, your Honours, I think it is important, desirable in
20 principle for the trial to take place in the Congo, and this for several
21 reasons. Historically speaking, you know that the Nuremberg trials, the
22 punishment of the crimes for the Nuremberg trial took place there. That
23 had a stronger effect in helping the world understand that couldn't be
24 repeated.

25 The Tokyo tribunal did the same thing. They went to Japan to

1 bring the criminals closer to the population, so that the population
2 could take stock of what was happening. And I believe the same would be
3 desirable for the Congo.

4 Having regard to security because we have mentioned this, I
5 understand there are some difficulties, but I think it's not impossible
6 for the court to be able to hold a trial some kilometres away, for the
7 court to at least contribute to understanding that one of the problems
8 was the justice rendered in that part of the country for one population
9 against another during conflicts. So it could help the national domestic
10 justice system understand how the ICC deals with this problem. I think
11 that this would be an important contribution to our country.

12 Another problem I wanted to talk about concerns the witnesses. I
13 suggested presenting elements, items and witnesses to enable the Court to
14 analyse some statements, but I would like to talk about this in an
15 ex parte hearing to be able to go into further detail.

16 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
17 Mr. Jean Chrysostome Mulamba.

18 Now I'd like to come back to a very basic point. On page 5 of
19 your answers, under point 11, you refer to the difficulties you had to
20 train you in the electronic evidence procedure. You said that it was
21 difficult for you to manage the Citrix software. You asked for
22 CD-ROMs -- of transcripts of all the LiveNote information on CD-ROMs. We
23 took note of everything you have written here, but what we think is that
24 these very technical issues must, and you probably thought about this
25 already, must be dealt with directly between you and the Registry. I

1 think that it's at that level that this type of discussion should be
2 held. I think you should only make such technical proposals to the
3 Chamber if you're really faced with difficulties, but we believe you
4 should solve all these issues directly with the Registry, which I believe
5 will give you the appropriate response.

6 The Chamber thanks the four Legal Representatives of the Victims
7 for their contributions and the messages that they wish to transmit with
8 regard to the contextual and situational elements.

9 In giving the floor now to the representative of the Registry
10 that -- I consider that it would be appropriate since we are discussing
11 this matter now, Mr. Dubuisson, if you do not find it inconvenient,
12 perhaps you might give us your observations in regard to the four
13 contributions with regard to the security problems if you're in a
14 position to do so now orally. Is it possible?

15 MR. DUBUISSON (interpretation): Yes, it is possible.

16 PRESIDING JUDGE COTTE (interpretation): We're listening to you.

17 MR. DUBUISSON (interpretation): Thank you, Mr. President,
18 your Honours. I think it is necessary for me to make a distinction here.
19 We mustn't confuse protection which is under the mandate of the
20 protection unit, that is the Victims and Witnesses Unit, and security
21 questions. I make a distinction between the two.

22 With regard to the protection of witnesses and the protection of
23 victims, we have the legal basis to work, and we operate jointly normally
24 with the parties or participants who will call witnesses or victims to
25 this court. Then there is the issue of intermediaries.

1 In the case of intermediaries, there is no legal basis that is
2 very clear on the point. We shall have to work on a -- on a case-by-case
3 basis depending on agreements or contracts that we may sign with these
4 various intermediaries.

5 Lastly, there is the case of staff and lawyers. I place them on
6 an equal footing. I do so because we're referring in this case to
7 security. This security is also one of the strategic objectives of the
8 court, so you can find it on the web site as part of the strategic
9 objectives.

10 Now we should be very clear with regard to the means. If the
11 lawyer is made part of the staff, in a manner of speaking, then there are
12 rules to be followed. The rules we follow are the rules of the
13 United Nations. If we were to work under phase 4 of the United Nations
14 classification, that means a restriction of movement, because phase 5 is
15 evacuation. So if we are to provide security to the staff and the
16 lawyers on an equal footing, then we would be walking under the
17 United Nations system in this regard, which implies the same duties and
18 obligations. So if we are told that somebody in Bunia must be protected
19 in a situation, in a particular crisis situation, then if we follow the
20 rules it is practically impossible because there has to be equal
21 treatment, equality of arms for all parties and participants in this
22 trial, which means that the Prosecutor himself may not be authorised to
23 go to Bunia and may not be able to work there. So these are the same
24 working circumstances for everyone.

25 Obviously I understand Ms. Bapita and her colleagues. I

1 understand them perfectly, because they live there. They are citizens of
2 this country, and so they want to be able to work. They work since they
3 live beyond the pale, in a manner of speaking, with regard to the rules.

4 So the situation is extremely difficult and complex both for us
5 and for the State with which we're working. However, I must express my
6 reservation with regard to Ms. Bapita saying that we should wait for
7 somebody to die before we take measures. I reject such an argument.
8 What I am saying is that we're working with the Congolese authorities
9 because they are the only people in the position to offer protection for
10 people on Congolese territory. We cannot replace the State. However, we
11 can ask the State for judicial cooperation. For example, on the basis of
12 Article 93, we can in fact -- the court can ask, the Bench of this
13 Chamber, and the Registry can on behalf of the court, ask the State of
14 Congo to offer specific protection to some people or lawyers when they're
15 in specific places on the ground.

16 Some will surely tell me that this is abstract, because we know
17 very well that in the place to which we refer there is not as such the
18 presence of authorities, or where such authorities are present they have
19 difficulties moving about, and these authorities are busy elsewhere.
20 However, we can make this approach officially. The Registry has done so
21 already.

22 The State of Congo itself could be invited to request MONUC
23 support. We are not within MONUC's mandate, so we cannot request MONUC
24 to assist us directly, but the State of Congo can do this. While asking
25 the State of Congo to help us, we can ask the State also to see to what

1 extent the United Nations mission in Congo can help us to protect those
2 who have something at stake and who are working on the ground.

3 What we can do for our part when a system is set up is to, if
4 possible, ensure that this system is sustainable. For example, by
5 allocating a per diem to a team that will be available to the court to
6 protect the lawyers. But what am I referring to exactly? When we refer
7 to a protection programme, we are referring to a presence. Very
8 concretely we mean police officers who are on the ground who can be
9 present in a village, in a precise location, and if possible, can remove
10 people from a place, and then the court may take over and we relocate
11 these people either within the country or outside. That is protection.

12 With regard to security, working with the Congolese national
13 police would involve providing a lawyer with what is referred to as close
14 protection. That is bodyguards who will be near the lawyers. So you see
15 that what we are referring here -- to here is something that is not
16 common, and it requires state intervention and resources.

17 This is where we stand at this time. Besides, I do not know
18 whether the lawyers who have to travel with two or three bodyguards, I do
19 not know whether this would provide an answer for the lawyers. We need
20 to sit down with the lawyers, this has already been said. It has been
21 proposed. We would sit down to determine what is the best solution we
22 can offer, not only as the court but the court working with its partners
23 and the State of Congo and to take the necessary adequate measures which
24 would be accepted both -- which would also be accepted by the lawyers.

25 It is a problem that we consider important. We think it is

1 crucial, and I can say at this point that what we are discussing now,
2 after the contributions of the Legal Representatives of the Victims, is
3 what we would offer to Defence counsel as well. We are not making a
4 distinction between the two. We consider all the people at stake, both
5 in the Defence and in the victims to be on an equal footing with regard
6 to the security and the lives of people.

7 This is all I had to say on the subject. Thank you.

8 PRESIDING JUDGE COTTE (interpretation): The Chamber thanks you,
9 Mr. Registrar. I do -- I've just called you that. I don't know whether
10 this is the appropriate appellation, but since you represent the
11 Registry, I shall refer to you as such.

12 The Chamber thanks you, as I said, and the Chamber notes that
13 without any doubt, in your view these security issues, to use your own
14 terms, are very crucial. You have just confirmed this, and I think that
15 the lawyers who are present here to my left have no doubt about this
16 either.

17 We have also understood that there has been contact between the
18 Registry and the Legal Representatives of the victims on this subject,
19 but you have made a further proposal that you should meet to determine
20 the best possible protection available, and this would not be exclusive
21 because security questions are, in a manner of speaking, ecumenical
22 regardless of where in the courtroom people sit. The Chamber therefore
23 notes that the Registry will organise a working meeting with those who
24 are involved in order to determine whether we can go a little further.

25 Is that what I was supposed to understand?

1 MR. DUBUISSON (interpretation): You understood very clearly.

2 PRESIDING JUDGE COTTE (interpretation): All right. Duly noted.

3 The tone that the Legal Representatives used in speaking shows
4 the importance they attach to this issue. The Registrar's response
5 proves that the Registry is fully aware of your concerns and the prospect
6 of a new meeting after which the Registry will report to us regarding its
7 intentions and the possibilities seems to us to be the best solution.

8 A second observation, Mr. Registrar, with regard to the exchange
9 of views. Ms. Bapita, a moment ago, mentioned her wish to conduct
10 investigations on the ground, as she said, if the Court's budget allows
11 for this. Are you in a position to provide us any answer on this point,
12 or do you prefer to do so later after you have collected the necessary
13 documentation?

14 MR. DUBUISSON (interpretation): I do not think that there's any
15 secret with regard to the means made available to the parties and
16 participants at the trial. I do not know about Ms. Bapita's particular
17 case as matters stand, and I am prepared to discuss it with her. Perhaps
18 I would talk about it later after talking with Ms. Bapita.

19 PRESIDING JUDGE COTTE (interpretation): We couldn't expect any
20 more of you. Thank you.

21 Now as Registry -- as the Registry's representative and with the
22 support perhaps of your assistants and colleagues, perhaps you might
23 provide us with the further information that you wish to make available
24 to the Court with regard to the two questions put to the Registry. The
25 Chamber may ask for clarifications. Also in the documents that the

1 Registry sent to us on the 24th of November, you raised a number of
2 issues, suggestions and requests, and we shall ask you to clarify them
3 also.

4 In regard to the points you raised, we think that you -- we shall
5 ask for further clarifications. You have the floor and we are eager to
6 hear what you have to say.

7 MR. DUBUISSON (interpretation): Thank you, Mr. President. With
8 regard to your first question, at the pre-trial phase there was -- there
9 were a hundred or so applications for participation. Some of them were
10 accepted, and the proof of that is the presence here of the Legal
11 Representatives of the victims. In the meantime, we have now about 650
12 applications for participation for the DRC, Congo, and this raises the
13 question, the following question: If we follow the practice that was
14 authorised by other Chambers to filter these applications and keep only
15 those applications that are directly linked to the charges. If that were
16 to be the case, we will receive 110 new applications for participation.
17 Some are complete and others are not. We are prepared to make a report
18 for the 19th of December, 2008.

19 Of course, in order to protect the interests of the applicants as
20 well, when applications are not complete perhaps we might set up a
21 mechanism so that there is initial representation at that level, and we
22 have the Office of Public Counsel for Victims which might play a role at
23 that level.

24 These are matters that are pending for the Chamber. I think our
25 written report was fairly clear on that point.

1 That is my first question. If you have other points to raise
2 with regard to my first question -- to my first question, I am prepared
3 to respond to them by giving the floor to the legal officer of the
4 section.

5 PRESIDING JUDGE COTTE (interpretation): Thank you. I think the
6 question-by-question approach is appropriate so that we manage to follow
7 the reasoning in line with previously examined questions. So with regard
8 to this question one, has the -- has the Registry received new
9 applications for participation, and when will it present a report to the
10 Chamber? You have provided a written and oral response, however, the
11 Chamber would like you to tell us whether the 110 extra applications
12 mentioned in paragraph 4, page 15 (as interpreted) of your answers,
13 concern the charges confirmed by the Pre-Trial Chamber.

14 You have confirmed that you will submit a report on the 19th of
15 December with regard to applications for participation. Can you also
16 tell us when you will be in a position to provide them to the parties in
17 redacted form, if necessary? Can you answer the question just now?

18 MR. DUBUISSON (interpretation): With your leave, I shall give
19 the floor to my colleague, to Laetitia Bonnet.

20 PRESIDING JUDGE COTTE (interpretation): Ms. Bonnet.

21 MS. BONNET (interpretation): Good morning, Mr. President. With
22 regard to your first request for clarification, these 110 applications
23 are linked directly to the charges confirmed by the Pre-Trial Chamber,
24 and they are the same applications as those that we have recorded for
25 already-participating victims here.

1 With regard to the second question as to when we will be in a
2 position to transmit them to the parties, we will need instructions from
3 the Chamber on that point, because in this case the Pre-Trial Chamber
4 asked us to redact the applications before transmitting them to the
5 parties. So we will require instructions regarding the scope and nature
6 of these redactions, and after that, in general, for 100 or 110
7 applications we will require three weeks to redact, to make all the
8 redactions normally. And then afterwards, we might consider whether
9 there are emergencies or urgent situations to work more quickly, but the
10 most important thing is first to define exactly the nature and scope of
11 the redactions so that we can begin to work.

12 PRESIDING JUDGE COTTE (interpretation): Thank you. Another
13 question. First a correction. It was not on page 15, it's on page 5.

14 Still on page 5, there is a footnote, footnote 9, and you
15 indicate that you have received 580 or so applications for participation
16 other than those registered in the record of the case. We were wondering
17 whether these applications fall within the ambit of Rule 85 of the Rules
18 of Procedure and Evidence as interpreted by the Appeals Chamber in its
19 judgement of the 11th of July, 2008, in the Lubanga case. This is
20 decision number 1432.

21 Are you in a position to answer this question now, because the
22 Chamber is well aware that some of these answers that are required may
23 require prior preparation.

24 MS. BONNET (interpretation): Mr. President, we shall answer this
25 question in the report, and I was going to mention later that we intend

1 next week to file more detailed answers and information with regard to
2 the applications, and we shall provide information about this then.

3 PRESIDING JUDGE COTTE (interpretation): A third question which
4 is related to the first question. So you are asking for the Chamber with
5 regard -- for instructions with regard to the submission of incomplete
6 applications for participation. That is paragraph 5 of your answer.

7 The purpose of this hearing is to collect information. We have
8 collected a great deal of that, so we note your requests, your requests
9 for clarifications, your requests for directions from the Chamber. And
10 it is also certain that with regard to this important issue, this very
11 broad issue of participation of victims, we should respond to you in
12 writing in a decision.

13 So with regard to the incomplete applications for participation,
14 we must provide clarifications, but at this point what we're interested
15 in, and perhaps you might want to add this in the report, what you think
16 is the best system. We want to know whether you encountered particular
17 difficulties with the system that was established by Pre-Trial Chamber I.
18 I would like to know whether you are able to stand back and take stock of
19 the system that was set up by Pre-Trial -- or Trial Chamber I.

20 The position of this Chamber is that it is not unique. There is
21 an International Criminal Court which is in operation now. The Pre-Trial
22 Chamber's separate. Pre-Trial Chambers have issued decision. The
23 Trial Chamber I has issued decisions. It is not obligatory for this
24 Chamber to adopt or follow all the decisions taken by the Chambers.
25 However, it is important to avoid systematically departing from decisions

1 taken by other Chambers if the procedures that have been established are
2 useful and efficient. It is a matter of judicial security for all the
3 parties and participants, which is why I put the question, especially
4 with regard to incomplete applications for participation.

5 So did you encounter particular problems? Do you think that the
6 Pre-Trial Chamber I and Trial Chamber I's system should be reviewed?
7 This is the thrust of our question. Perhaps you may not be in a position
8 to answer today, but if you were to be in a position to answer I would be
9 delighted.

10 MS. BONNET (interpretation): It is possible to answer this
11 question today, Mr. President, because we have some experience in the DRC
12 situation and the Lubanga trial and also with other Chambers and other
13 situations.

14 The practice in Pre-Trial Chamber I was to ask us to register
15 only complete applications first, and after a reasonable time-frame to
16 also register incomplete applications after we have requested further
17 information to complete the incomplete applications.

18 In this case, as on the 26th of May, the Chamber had given a last
19 date for the filing of applications for the confirmation hearing. We
20 decided to register all applications including incomplete ones, contrary
21 to our previous practice. We considered that this was the expiry of the
22 reasonable time-frame that was provided.

23 With regard to the practice in Pre-Trial Chamber I and other
24 Chambers with regard to the efficiency of the processing applications for
25 participation which requires that everybody work hard, we consider that

1 it is more efficient to register only complete applications for more
2 rapid processing by the Chamber as the parties and the Registry.

3 Then in specific cases we might draw the attention of the Chamber
4 to the cases of particular applications, especially if we know that they
5 will not be completed. And perhaps, as on the 26th of May, after a
6 certain time the Chamber will no longer consider these applications. But
7 the principle was to register complete applications.

8 There is a second aspect to this issue which is very important
9 for us, and we also explained this in our written submission. The
10 question is: What does the Chamber consider to be a complete
11 application? It is very important for us and for the lawyers so that
12 they can know what we mean concretely on the ground. Should we require
13 requests, further information or not, we would also like to know because
14 if we decide only to register complete applications then we have to
15 define them.

16 Pre-Trial Chamber I has issued jurisprudence in which it gave the
17 various elements that must be included in an application for
18 participation, and through this jurisprudence it applied and clarified in
19 some way this list of requirements for a complete application.

20 You raised the question of the difficulties encountered by the
21 Registry in applying the practice of Pre-Trial Chamber I. I could give
22 examples, but it might take time and it might be complex, and we are
23 willing to develop these issues in the reports that we will submit to
24 you.

25 PRESIDING JUDGE COTTE (interpretation): Very well. Thank you

1 very much, madam.

2 Mr. Registrar, further information to your answer -- to add to
3 your answer to question 2?

4 MR. DUBUISSON (interpretation): With regard to question 2, I
5 support what the Prosecutor said yesterday, that is to go into detail
6 with regard to the number of people who are protected. I think that we
7 should meet in closed session for this, and perhaps ex parte. However, I
8 shall make a general remark with regard to protection.

9 It appears to be very clear today that protection and disclosure
10 are closely interlinked. It is a specific problem. This sort of problem
11 is specific to such international institutions as ours.

12 The Appeals Chamber took a decision saying that the Registrar is
13 solely responsible for allowing people to enter a witness protection
14 programme, but it should be recalled, of course, that this is a
15 consultative process which is indispensable, and it should involve the
16 Registry and the Prosecutor for the time being, and possibly in future
17 the Defence and Legal Representatives if it is possible for them to call
18 witnesses.

19 With regard to the procedure, we have non-procedural and
20 procedural measures. We have been working since the outset with the
21 Prosecutor, and we shall work with the Defence when the Defence will
22 begin to collect its witnesses.

23 Since day one we have been working, and we have established
24 contacts with the parties and the Registry in order to offer the best
25 possible protection to people who are potential witnesses in the

1 situation even before they are particular witnesses in a case. So
2 measures are in place.

3 These measures are taken, of course, depending on the threat
4 level, and that is when matters become somewhat more difficult. There is
5 a general threat pertaining to a situation. If we refer to Ituri, for
6 instance, what is the threat that a person living in Ituri is exposed to?
7 It is a lot higher than that for a person living in The Hague. Then we
8 carry -- so it means that we carry out a general study of the threat,
9 after which we carry out a study of the threats to the individual. And
10 problems arise here because it is common knowledge that for a person
11 wishing to call a witness, the party has an interest to protect his or
12 her witness.

13 We understand. We think it is laudable to seek protection, but
14 we must ensure that our process is neutral and we examine the threat and
15 we decide on that basis what the best protection would be. After that
16 there could be disagreements, and such disagreements could be referred to
17 you and you will have to decide on them.

18 Obviously when we discuss this we make reference also to the
19 threat. The threat changes with time, and it varies depending on the
20 materials that are disclosed, when they are disclosed, whether they are
21 redacted or unredacted.

22 There is a time of disclosure which is also very important. We
23 have jurisprudence from the ad hoc tribunals which can edify us on the
24 point, that is considering whether disclosure could happen later in the
25 proceedings, perhaps 30 days before the actual testimony of the witness

1 in court, sometimes even 8 days. And if anonymity is authorised, it has
2 not really happened, there has only been one case, in the Tadic trial,
3 and in that case it was just two days.

4 I think that with regard to protection and disclosure as
5 Article 86(1) says, it involves everyone in this court. I think that the
6 Chamber also has a role to play with regard to the time of the
7 disclosure. If the Chamber considers that disclosure should be made
8 three months before trial, then the period between the disclosure of the
9 information and the time when the person will come to give testimony,
10 because of course we must bear in mind that all witnesses will not
11 testify on the first day of trial. Some will testify six or eight months
12 later. So as I was saying, if a person has luck -- or bad luck to be
13 threatened, if the time is long we might perhaps, in my opinion, consider
14 involving the Chamber in the decision on the time of disclosure.

15 I think these are judicial matters. It is not at all the
16 Registry's position to suggest such things, but in terms of the
17 Registry's work it is important to know. Why so? The Registrar or
18 Registry has to have about 35 days to take a witness from Ituri to this
19 courtroom, 30 to 35 days. So if a person is call to testify, the person
20 is no longer on the ground. So if there is a disclosure, then if there
21 is a threat or if the threat level is going to increase, there will be no
22 direct impact upon the witness. Of course there will be management of
23 the post-testimony or post-witness testimony time.

24 Also, we must consider other means. We are not required to bring
25 the witnesses here. There are also video-conferences that we can use.

1 These video-conferences can take place where the person is or anywhere
2 else within the country.

3 Now, about protection, about in situ trials. I heard us mention
4 this earlier on. Here again we need to be clear. When we talk about in
5 situ trials, we have talked about hearings in the field but not about a
6 whole trial being held in the field. So we need to know whether we're
7 talking about a trial or hearings.

8 I think that, generally speaking, we have been talking about
9 hearings, two weeks of hearings in the field. And of course as I'm -- in
10 the Registry what I'm interested in is the cost. 600.000 euros for two
11 to two and a half weeks of in situ trial. This must also be known.

12 In terms of security, in situ hearings require a lot of
13 logistical cooperation between the parties, between the State also and
14 the MONUC or any other organisation able to help us. The support we will
15 receive from external agents will depend on the security situation of the
16 country, because they can be redirected to other places in the country
17 which they believe require more security and are more important.

18 So in terms of budget and security, if you look at the
19 implications I think what we need to do is to go and pay a visit to the
20 site, and then we need to ask ourselves whether or not the visit should
21 be in the presence of the accused or not, because that is the real issue.

22 I have said a little bit more, actually, than what I was
23 authorised to, so I will stop there.

24 PRESIDING JUDGE COTTE (interpretation): Well, you haven't said
25 more because you have given both the Chamber and participants and parties

1 important information.

2 As regards the last part of your intervention, it was very
3 interesting, because it is important to make a differentiation between
4 hearings, trials, and visits, and the Court needs to be provided with all
5 information and opinions.

6 And I would now like to give you the floor back to talk about the
7 additional items you provided us in your written answers. Now, I will
8 repeat myself somewhat after Madam Bonnet's intervention by saying that
9 the Chamber would like you to tell us, with as much detail as possible,
10 the reasons why you raised these additional points. Was it because you
11 believe that there were problems occurring with some of the solutions
12 provided in certain cases, or is it because the case we are dealing with
13 today presents specific -- or has its specificities? Is it through your
14 experience in the pre-trial phase? Because we feel that some of these
15 additional points, and we're even sure that some of these additional
16 points were already the subject of decisions by the Trial Chamber in the
17 Lubanga case. Therefore, it would be interesting for us to know why
18 today you are putting these issues back on the agenda.

19 Do or would you like to amend anything, change the solution,
20 change the case law? This is what we would like to understand, have a
21 better grasp of. The floor is yours.

22 MR. DUBUISSON (interpretation): Thank you very much. You have
23 said something very important. You have talked about jurisprudence in
24 the Lubanga case. Can we talk about jurisprudence, because at this -- at
25 this stage we only have one case. Of course we have to be satisfied

1 ourselves with it, but I think we should look further than just this
2 court.

3 Secondly, the jurisprudence was based on the discussions that
4 took place within the courtroom between parties and participants. These
5 parties and participants aren't the same as those that are in this
6 courtroom today. So to avoid misunderstandings, we should make sure that
7 parties who haven't yet had the opportunity to speak out on certain items
8 are given an opportunity to do so.

9 Thirdly, the Registry, following certain decisions, has been
10 given tasks and to fulfil these tasks it at times comes up against
11 difficulty. And therefore, we would look to -- we would like to look
12 into them on a case-by-case basis and explain to you what it means in
13 terms of problems for the Registry and difficulties for the Registry.

14 I hope now I have given you the reasons why we have raised these
15 additional items.

16 PRESIDING JUDGE COTTE (interpretation): Well, please now go into
17 them now you have given us the context.

18 MR. DUBUISSON (interpretation): Thank you very much. Well,
19 first point concerning the proofing of witnesses. I will use the English
20 word for everybody to understand, "proofing," as we don't use the word
21 very often in French.

22 Various Chambers have decided not to grant this procedure of
23 proofing. What does it consist of? Bringing in the witness, before they
24 come and testify here, to the court two or three days before they come
25 and testify and present them to the parties that can remind them of

1 certain points because they might not have seen them for several years,
2 give them information. And I think the Prosecution is more able to talk
3 about this because it's not really my field of expertise.

4 However, one of the Chambers decided that the Registry would be
5 in charge of what we call familiarisation, which consists in two parts.
6 The first part is to bring the person here on the premises, show them how
7 they will have to interact with the various protagonists in the hearing
8 and reassure the person on how the hearing will take place, both on the
9 psychological level and also on the logistical level, how they will be
10 living here in the Netherlands for two weeks. So that's what we do
11 during familiarisation.

12 Secondly, as we are not going to carry out proofing, the Registry
13 is in charge of giving the witness their statement. And we have to be
14 precise on this. We're talking about the statement. Earlier on -- or
15 yesterday, I beg your pardon, the Prosecutor said that it's not always a
16 statement. It could be a transcript, a transcript of three days of
17 interview, and that is very different, because a transcript of three days
18 of interview is more than ten pages -- a ten-page statement. It's a lot
19 longer, so then we need more time.

20 What more do we do during familiarisation? What happens if the
21 witness says, "Well, I don't remember saying that. I would like to make
22 an amendment to what is written." Will the Chamber authorise parties to
23 be present during the proofing, during the proofing which is carried out
24 by a neutral organ, the registry.

25 So you see, many issues here are closely linked to this decision

1 which you might take. I can't decide for you. You have to decide. But
2 if you take that approach, those are the issues we would like to raise
3 with you. That is concerning the first point.

4 Second point, the psychosocial support which the Victims and
5 Witnesses Unit can provide within the courtroom. So which -- what will
6 you authorise in terms of disclosure when there's communication between a
7 witness, a psychologist, an assistant, or during examination or
8 cross-examination if that's the approach you wish to take for your
9 hearings.

10 We believe that a psychologist can sit next to the witness and
11 intervene only when necessary by addressing the Court directly. This
12 seems quite logical. It seems to be based on common sense. However,
13 this common sense isn't always everybody's common sense. That's why I
14 wanted to flag this.

15 The third point we mentioned earlier on concerns testifying here
16 in The Hague. If the testimonies take place here in The Hague, under
17 what conditions? As the Legal Representatives mentioned earlier on,
18 there's an adjacent room here next to the courtroom, but there are other
19 approaches that can be adopted, too, video-conferencing, for instance.
20 So all of these different modes have to be discussed.

21 And we also have to discuss the length of hearings. Earlier on
22 we mentioned that only four hours were possible. Today we only have four
23 hours of hearing possible because we don't have enough interpreters for
24 Lingala.

25 If the trial starts in six months, we'll have a different

1 situation. Then we will be able to stick to the normal hearing time
2 provided for in this court's budget, three sessions of one and a half
3 hours and add an additional session of one and a half hours, if
4 necessary, in the evenings, but that leads to different problems in terms
5 of detention and transport.

6 Another point we have problems with today already is access to
7 closed sessions. Here just now you only have part of the teams. The
8 Prosecution said yesterday that they had very large teams. Not all of
9 the team members are present here at the hearings. During closed
10 sessions some members of the Prosecution team aren't present. However,
11 they want to listen to what is going on, but when the hearing is in
12 closed session they're not able to do so from their offices. So we need
13 to come to an agreement with all the participants to change the system,
14 because the current system does not enable anyone to access closed
15 sessions when they're away from the courtroom.

16 I think that the Chamber must take a decision on this, because
17 this means that when we move from closed session to public hearing we
18 need to interrupt the hearing for 30 minutes. This is going to slow down
19 the system, because normally it should be much quicker within the context
20 of the normal working of a court.

21 We can provide you with further information in writing if you
22 require. I think we are also echoing the thoughts of all the parties in
23 the proceedings to date.

24 Now, another problem concerns the protocol and the possibility of
25 moving away from it, the protocol for the electronic presentation of

1 evidence. We were considering the possibility for a party to manage the
2 animation, if I may, of electronic -- the presentation of electronic
3 evidence. This is something which you will have to look into to see
4 whether or not it's possible, and if it is possible, you will have to see
5 which are the limitations to the system and which powers you give the
6 parties on this matter.

7 We have already talked sufficiently about Lingala, I won't go
8 into more detail, and about the hours available for court hours.

9 PRESIDING JUDGE COTTE (interpretation): What about the Lingala?

10 MR. DUBUISSON (interpretation): Well, as regards Lingala, if
11 there's a decision by the Pre-Trial Chamber, well, we are currently
12 training people to come and complete the team so that the new team will
13 allow you to work normally and work within the normal hours that have
14 been provided for hearings.

15 PRESIDING JUDGE COTTE (interpretation): We are glad to hear you
16 confirm this.

17 Now, no more observations on the additional points? It seemed to
18 me that there were a lot of additional points. Yes, thank you.

19 MR. DUBUISSON (interpretation): Indeed. We also mention the
20 dual status. This issue was discussed at length in another case. Here
21 there's an additional factor that enters into play. We have mentioned
22 that Legal Representatives could possibly call witnesses to the bar.

23 Up until now when we talked about dual status, we talked about
24 the status of victim witness, of persons in the Office of the Prosecutor,
25 people who would be victims and witnesses for the Defence also, but we

1 have to mention another possibility, a victim who would call a witness or
2 a victim who would be a witness without being a witness of one of the
3 parties. This is another case which has not been dealt with in the
4 decisions on dual status issued by other Chambers.

5 So it is important for us to know whether in that case how
6 contact can be made between that type of witness and victim, because
7 there's already a counsel for that person, because the client is a victim
8 and they're a client of a legal representative because they're victims.
9 And through equality of victim they cannot only participate but also
10 request reparations. So there's a whole area that has to be dealt with
11 as soon as possible so that the Registry's protection services aren't
12 caught in the crossfire and don't have to, at the same time, manage the
13 relationship of client with the Legal Representative and witness with the
14 counsel, because there's another relationship between the two in that
15 case, the confidential communication between the two.

16 PRESIDING JUDGE COTTE (interpretation): I think there is another
17 additional point which your colleague from the VPRS might introduce; is
18 that right?

19 MR. DUBUISSON (interpretation): Yes. That's the VPRS, that's
20 the acronym in English. I'll give the floor to my colleague for this.

21 PRESIDING JUDGE COTTE (interpretation): Well, before you sit
22 down, I had a question I wanted to ask you concerning question number 2.
23 I wanted further clarifications.

24 There were annexes to that question 2 which I believed to be of a
25 very general nature, these Annexes B, C, and D, and we wondered whether

1 or not, and perhaps you might already have answered earlier on, but we
2 were wondering why the filing was ex parte under seal. Can you give us
3 further information on this point, on question 2 of our questionnaire --
4 or of our order, rather.

5 MR. DUBUISSON (interpretation): As regards Annexes B, C, D,
6 indeed, they show our working method. So the more parties are aware of
7 this, the more we will face problems. We don't want this method to be
8 available to all. We have put it under seal, but it is true it could be
9 confidential only.

10 PRESIDING JUDGE COTTE (interpretation): I'm wondering whether we
11 should start listening to Ms. Bonnet at 11.25. Perhaps we could break
12 for half an hour now and resume at 5 to 12.00.

13 Mr. Dubuisson, I will probably have another question to ask you
14 on Lingala. I want the Chamber to be very clear on this matter. So when
15 we return, we will hear Madam Bonnet and then stick very closely to the
16 agenda and hear Mr. David Hooper and the Defence of Mr. Ngudjolo,
17 Mr. Jean-Pierre Kilenda.

18 So we will adjourn -- yes, sorry?

19 MS. MASSIDDA (interpretation): Sorry, President. I'm sorry to
20 interrupt the discussion.

21 PRESIDING JUDGE COTTE (interpretation): Go ahead.

22 MS. MASSIDDA (interpretation): Thank you. I took note of the
23 order in which you want to proceed, but I note that under point 11, V,
24 the Registry refers to the public counsel for victims, however, the
25 report was filed without consulting the office. So I just wanted to

1 inform the Chamber of the office's possibilities and what it can do for
2 representation of victims.

3 PRESIDING JUDGE COTTE (interpretation): So Ms. Bonnet will deal
4 with point 11 in the Registry's written answers, and you would like, if
5 possible, to have a very -- to take the floor very briefly also.

6 MS. MASSIDDA (interpretation): Yes, very briefly, five minutes
7 maximum.

8 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
9 I'll be glad to listen to you for five minutes.

10 MS. MASSIDDA (interpretation): Thank you very much.

11 PRESIDING JUDGE COTTE (interpretation): And if I forget to give
12 you the floor, please remind me.

13 MS. MASSIDDA (interpretation): Thank you.

14 PRESIDING JUDGE COTTE (interpretation): We shall now adjourn.

15 Recess taken at 11.26 a.m.

16 On resuming at 12.04 p.m.

17 COURT USHER: All rise.

18 PRESIDING JUDGE COTTE (interpretation): The proceedings are
19 resumed. Please be seated.

20 Before I give the floor to Ms. Bonnet, I would like to return for
21 one moment to the issue of Lingala.

22 MR. KILENDA (interpretation): The detainees.

23 PRESIDING JUDGE COTTE (interpretation): Mr. Kilenda, I don't
24 know how the Chamber would work if you weren't here. Thank you very
25 much.

1 The proceedings are resumed.

2 Before I give the floor to Ms. Bonnet, I'd like to return to the
3 issue of Lingala.

4 Mr. Registrar, this Chamber understood clearly that from a
5 technical standpoint it should be possible in a few months to have three
6 periods for hearing of one and a half hours each, which would afford us
7 four and a half hours rather than four hours of hearings per day.
8 Technically we have understood, but we would like to clarify one thing.
9 Can you confirm that for the Registry the principle of interpretation in
10 Lingala is maintained following the Appeals Chamber's decision and the
11 implementing decision that the Single Judge implemented or rendered,
12 which is decision number 539? This is very important for us to know.

13 MR. DUBUISSON (interpretation): Thank you, Mr. President. You
14 referred to decision 539 of the 2nd of June. For my part, I consider
15 that this decision covers a very precise stage of the proceedings, which
16 is the confirmation of charges, until the decision on the confirmation of
17 the charges.

18 The reason why we have interpreters today is to avoid creating a
19 problem with regard to the rights of the Defence; and without any
20 response or request, we decided to play it safe so that it would not
21 prevent this hearing from going on.

22 We do not consider that this decision is still valid or should be
23 applied at the trial phase. In our view, it seems indispensable for this
24 Chamber to issue a new decision as to whether Mr. Katanga should receive
25 interpretation in Lingala for the hearings. So we make a distinction

1 with regard to the various proceedings.

2 PRESIDING JUDGE COTTE (interpretation): I think the Chamber was,
3 therefore, right in raising the question. In this regard, it would be
4 appropriate for you to submit to us in writing if in your mind or if you
5 consider that it might arise, the question might arise with regard to
6 interpretation in Lingala. It would be indispensable to hear the
7 parties' observations and specifically those of the Defence. So please
8 refer the matter to us in writing if the Registry views the matter like
9 this still, but the clarification was worth it.

10 A little procedural matter, I'd like to ask all who are speaking
11 in the courtroom, as far as possible, when they refer to a decision in
12 their oral submissions to give the date, the number and, if possible, a
13 paragraph, and it will help us in reading the transcripts.

14 Ms. Bonnet, you have the floor. Thank you, Mr. Registrar.

15 MS. BONNET (interpretation): Mr. President, I will move on to
16 the points raised by the Victims Participation and Reparations Section.
17 That is VPRS in English. But before that I'd like to answer your
18 question regarding the reasons why we are raising these matters again,
19 whereas they have been the subject of prior decisions by other Chambers.

20 I'd like to note in this regard that the jurisprudence of other
21 Chambers such as Pre-Trial Chamber I and Trial Chamber I are not always
22 identical. There are differences. And also in some cases there is no
23 jurisprudence. For example, with Pre-Trial Chamber I the decision of
24 18th of January, 2007, does not necessarily answer all the questions that
25 I shall bring up later. So we need the Chamber's direction on some of

1 these issues. And when the question is not jurisprudence but the
2 Chamber's practice, there are diverging practices between those two
3 Chambers and even other Chambers in other situations. And we are very
4 much aware of your intention to harmonise practice, and we are fully
5 willing to make recommendations with regard to the most efficient
6 approach in our view.

7 With regard to the first point, that is the format of the
8 Registry's reports under Article 96 or Regulation 96(5) of the
9 Regulations of the Court. We would like to inform the Court that we have
10 a standard format for these reports which is generated from our database
11 which allows us to be more efficient in processing applications. We
12 developed this report following discussions with other Chambers, and we
13 shall provide you with an example, and we will be willing to have your
14 opinion on the usefulness of this report. And if you have any particular
15 questions, we shall do our best to take that into account.

16 With regard to the second point, that is on page 9 of the
17 Registry's document, point (b), specific questions with regard to
18 processing of applications for participation, the question here is what
19 applications we should register for the Chamber.

20 We approached the subject a while earlier. There are questions
21 that go over beyond the link with the charges.

22 The first question is whether the Registry should or should not
23 reregister applications considered by Pre-Trial Chamber I. For example,
24 accepted or applications accepted by PTC I for which the victims office
25 is a representative, does the Chamber consider that these applications

1 have been accept for the duration of the trial?

2 With regard to applications that were rejected because they were
3 incomplete or for other reasons, does the Chamber wish to rule anew on
4 these new -- on these applications.

5 I'd also like to draw the Chamber's attention to the fact that
6 there are several pending applications in the case.

7 The second question, which we mentioned a while ago, is what is a
8 complete application? I mentioned the jurisprudence of Pre-Trial
9 Chamber I which gives a definition of what a complete application is.
10 The Pre-Trial Chamber did not actually rule on the matter for the time
11 being.

12 The third point, lastly, which documents will be accepted by the
13 Chamber to prove the identity of applicants, for example, but also to
14 establish the relationship between the person acting on behalf of a child
15 and the child, the applicant child?

16 In this regard, Pre-Trial Chamber I and Trial Chamber I both
17 issued jurisprudence on the subject that is largely similar with a minor
18 difference for Pre-Trial -- or Trial Chamber I. We shall develop this
19 point in our future report, and if you wish to make any recommendations
20 those will be welcome, as this seems most appropriate.

21 Point (c) on page 10 of the Registry's document, and this is our
22 third point, is with regard to legal representation. First of all, the
23 issue of common legal representation, and I shall refer to Rule 90 of the
24 Rules of Procedure and Evidence, this is a question for which it would be
25 useful for the Chamber to issue early instructions, because under Rule 90

1 the Chamber, in order to ensure the efficacy of proceedings, asks victims
2 or particular groups of victims to choose one or two common legal
3 representatives, and if necessary this can be done with the Registry's
4 assistance.

5 For the time being there are four legal representative teams for
6 all the participants. There could be a fifth team if the 110 applicants
7 we mentioned are accepted. The question is, therefore, how many teams of
8 Legal Representatives can take part in the trial? And we think that at
9 this stage it might be useful at this early stage to order the victims
10 to -- to order the Registry to help the victims with their common legal
11 representation.

12 In the past months we have had long discussions with the Legal
13 Representatives, and we know that they have discussed the matter amongst
14 themselves, and we think that it would be useful for the Legal
15 Representatives to make proposals to the Chamber with regard to how this
16 common legal representation would be organised and ensure that the
17 proceedings are conducted efficiently before the Chamber rules on the
18 matter.

19 The second aspect with regard to common legal representation
20 concerns the rule -- the role of the Office of Public Counsel for
21 Victims. We do not wish to make representations at this stage with
22 regard to what role the office should play, but we would like to draw the
23 Chamber's attention to the fact that the Chamber might find it useful to
24 rule on the matter in the near future with a decision. There was a
25 decision by Trial Chamber I on this issue, and at this stage the question

1 would be whether the Office of Public Counsel for Victims should be
2 designated to assist or represent applicants who do not have
3 representation so that they can have representation to respond for the
4 observations -- to the observations of the parties on their applications.

5 The fourth point with regard to protective measures, on page 12
6 of the Registry's document, point (d), the protection of people who are
7 applying to participate or victims who are, in fact, participating in the
8 proceedings can require the Chamber's decisions at various stages in the
9 proceedings. This might arise for the first time when the applications
10 for participation are transmitted for observations. We mentioned this a
11 while ago. For example, will it be necessary to redact these
12 applications when they are transmitted to the parties?

13 At that stage the various Chambers have ordered three types of
14 protective measures, redactions, for one, and also the fact that
15 applicants should only have numbers. These numbers are, for example,
16 a/001/06.

17 The third type of measure is to order that applicants should only
18 be contacted by the intermediaries of the Legal Representatives, the
19 Victims and Witnesses Unit and the Victims Participation and Reparations
20 Section.

21 As I mentioned earlier, if redactions are ordered we shall ask
22 for instructions on their nature. The second time when protection
23 measures might arise is different because the idea here is whether the
24 identity of the victims should be revealed at the trial stage. It is at
25 a different stage in the proceedings. This is very different from the

1 first issue because for the first issue, at that stage people are
2 applying to participate and not sure that they will, in fact, participate
3 in the trial. Accordingly, the level of need to conceal the identity is
4 not the same.

5 To conclude this point, it is important to mention that according
6 to Regulation 99 of the Regulations of the Registry, the Registry can
7 assist the Chamber on this issue.

8 The fifth point which was developed deals with reparations. That
9 is page 14 of the Registry's document, point (e). The Chamber may wish
10 to consider the issue of reparations, how it will approach the issue.
11 First, we would like to know whether the Chamber would like us to
12 register applications for reparations that have been -- may have been
13 received. In this regard, I would like to make a distinction between
14 applications for participation and applications for reparations. They
15 are two different forms, and they are two different proceedings. And the
16 person applying for reparations may have applied for participation, but
17 this is not necessarily always the case.

18 Lastly, the sixth and last point which I have mentioned on
19 several occasions, the submission of a detailed report, we suggest that
20 some of the issues that I have mention today should be developed to -- we
21 would also like to answer some of the Chamber's questions and deal with
22 its requests for clarifications in a report that we might submit next
23 week.

24 That concludes my submissions.

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

1 Ms. Bonnet.

2 Before I give the floor to Ms. Massidda, the Chamber would like to
3 ask you, in this report that you intend to submit, as you say, that you
4 have promised to submit, one might say, we would ask you to be as
5 exhaustive as possible, as you have been orally, possibly more so. Even
6 more important, you should give details on the decisions to which you
7 refer and the reasons for which you suggest the development of the
8 solution that is have been used so far which seemed -- and any reason why
9 you think we should part from these decisions.

10 You proposed earlier and the Chamber supports that this report
11 should have suggestions. You have the experience, the practical
12 experience to do so. So what are the practices that would be best, in
13 your view? Of course the Chamber reserves the right to choose freely.

14 The Chamber would also like to give you an additional task, and I
15 think you will have done this even without the Chamber's request. The
16 Chamber would like you to recapitulate at the end of this report all
17 issues for which instructions or directions are required. It would make
18 our job easier, but we would also know exactly what your requests and
19 requirements are.

20 Is that noted? Thank you very much.

21 Ms. Paolina Massidda, you have the floor.

22 MS. MASSIDDA (interpretation): Thank you, Mr. President. As I
23 said, I'll be very brief. I'd like to approach the Chamber or address
24 the Chamber, because as you know the office is independent, which is
25 attached to the Registry only for administrative purposes. So I consider

1 that only the office can give indications to the Chamber as to the
2 available resources within the office and, if possible, assist the Legal
3 Representatives, as is part of our mandate, and the victims, and that is
4 another part of our mandate.

5 I can now inform the Chamber that the office -- I can now inform
6 the Chamber that the office is prepared to provide legal representation
7 for the applicants until such a time as the Chamber -- as the Chamber
8 rules on their applications for participation. This has been established
9 practice in the court.

10 At your request, I can provide you with the decisions of the
11 various Chambers on this matter. I can provide the dates. I cannot
12 provide you with the numbers. I can't remember as far back as that.
13 However, I should also inform the Chamber that during the confirmation
14 hearing I represented in the Katanga and Ngudjolo Chui cases a number of
15 non-anonymous victims. If the Chamber decides that the office should
16 guarantee the representation of the applicants pending a decision on
17 their status, the office will have to determine whether there is no
18 conflict of interest in this regard.

19 I would also like to point out that as things stand, there are
20 two counsel within the office which can -- who can provide representation
21 for the applicants, that is me and another counsel. That should resolve
22 any issues with regard to a conflict of interest should they arise.

23 In order to provide you with complete information, since we have
24 a mandate to provide help and assistance to Legal Representatives in
25 regard to their requests for legal opinions and legal advice, I can

1 inform the Chamber that as things stand, no Legal Representatives has --
2 none of the Legal Representatives has requested the office to help it in
3 the Katanga and Ngudjolo Chui case. However, two legal officers of the
4 office are working on the case. This means that if the legal
5 representatives request it, I will be in a position to assign one legal
6 officer for the anonymous victims and another for the non-anonymous
7 victims. I am, of course, referring to both categories, because for the
8 time being, according to the decision of the -- because this is according
9 to the decision issued by Pre-Trial Chamber I.

10 Second observation: With regard to the time when the Office of
11 Public Counsel for Victims wishes to receive applications for
12 participation, there are differences in the practices of various Chambers
13 in this regard.

14 Pre-Trial Chamber I in its decision of the 17th of August, 2007,
15 ordered the Registrar to provide applications for participation to the
16 office when the applications are sent to the Prosecution and to the
17 Defence so that they can submit their observations under Rule 89(1) of
18 the Rules of Procedure and Evidence.

19 Conversely, the Pre-Trial Chamber II had successive decisions.
20 There is the 1st of July, 2007; 10th of August, 2007; 14th of March,
21 2008; and the 17th of November, 2008; and lastly, the 24th of November,
22 2008, if I remember correctly, in which decisions it instructed that
23 applications for participation should be sent to the office as soon as
24 they are received by the Victims Participation and Reparations Section.
25 In this regard, I'm sorry for my long explanation, but I must say that

1 Pre-Trial Chamber II asked for the office not to represent -- not to the
2 representatives -- or not to represent the applicants but to assist them
3 during the process which will come in it in their processing of their
4 applications.

5 Finally, Pre-Trial Chamber III issued a recent decision through
6 the Single Judge, who is in this Chamber today, and the decision was
7 issued on the 12th of September, 2008. In this decision, the
8 Single Judge ordered the Registrar to transmit the applications for
9 participation to the office upon receipt of the application by the
10 Victims Participation and Reparations Section.

11 I will take this opportunity to say that according to the
12 office -- or in the view of the office this is the best approach, so that
13 victims can effectively have representation, effective representation,
14 during the period between their applications and a decision on the
15 applications. If the office receives the applications only when they are
16 sent to the Prosecution and the Defence, following Rule 89 of the Rules
17 of Procedure and Evidence, then it is possible that in the period, in the
18 interim period, the victims may receive some legal assistance, and it
19 would not be possible because the office will not have received the
20 applications.

21 These are the two observations that I had for the Chamber. Thank
22 you.

23 PRESIDING JUDGE COTTE (interpretation): It's actually the
24 Chamber that would like to thank you, because you have given us very
25 useful additional information which will also be very useful to the

1 Legal Representatives of Victims.

2 We will now deal with the questions or answers, rather, given by
3 the Defence counsel.

4 Mr. Hooper.

5 MR. DIAKIESE (interpretation): Your Honour, I have -- would like
6 to draw the Chamber's attention to an important point on which we would
7 like to add something if we may very briefly.

8 PRESIDING JUDGE COTTE (interpretation): Very briefly.

9 MR. DIAKIESE (interpretation): Our learned colleague
10 Paolina Massidda referred to a real difficulty we were confronted with
11 concerning the support we should have had from the OPCV during the
12 confirmation hearing. What happened is it's not that we did not request
13 their support, but they were confronted with real difficulty. They
14 didn't have French-speaking legal officers they could assign to us, and
15 that's why we couldn't really use their help. It's not that we didn't
16 want to, but it's that the OPCV didn't have the expertise required in the
17 French language. That was the difficulty encountered. Thank you.

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

20 So, Mr. Hooper, I think now -- can you hear me? I'm going to
21 speak very slowly. I'm going to speak slowly so that the interpretation
22 is done correctly.

23 Yesterday afternoon I gave you the floor in advance. You
24 answered the first question concerning the conditions of detention in
25 part. You were going to give us further information on this this

1 morning, so the floor is yours.

2 MR. HOOPER: I needn't trouble you this morning with that. I
3 have nothing to add.

4 PRESIDING JUDGE COTTE (interpretation): Very well. Thank you.

5 So which were the written answers you gave and on which you would
6 like to add something? To which of your written answers would you like
7 to add something? Which answers would you like to talk about more
8 orally?

9 The document you gave us on 24 November contains seven pages.
10 You answered all the questions. However, you may today wish to go into
11 further detail concerning some of the answers.

12 MR. HOOPER: I stand by those answers, and I'm ready to answer
13 any further questions that you, Mr. President, or your colleagues may
14 have in respect of any of those answers.

15 In addition to the matters that are there, perhaps it's
16 appropriate because I appreciate that a large part of this exercise is in
17 order for you and your colleagues to see better the geography of the case
18 ahead, and at least in that respect can I just raise one matter?

19 It is proposed on behalf of Mr. Katanga to make a submission in
20 respect of Article 17, which deals with the admissibility of a case
21 before the ICC. That is a matter that must be raised before or at the
22 start of trial.

23 Appreciating the significance of that -- that motion and its
24 potential effect, of course, on the future conduct of the case, I can say
25 that we undertake, and I hope this meets with your consent, to have that

1 motion before you this year, if I can put it like that, and indeed I
2 think before the Christmas break. But I mention that because it will
3 involve or may well involve a hearing at some time in the new year, and
4 you, Mr. President, will be better positioned to know if that's necessary
5 once you've seen the motion itself, which is currently being prepared.

6 There have been a number of matters that have been raised
7 yesterday and today, and of course those added matters that appear in the
8 Registrar's addendum, as it were, to the questions that you posed to the
9 Registry. It may be that, Mr. President, you may take the view that
10 perhaps today is not, perhaps, the forum appropriate to discuss some of
11 those matters because they are, as we've already seen, very involved.
12 But we do anticipate that in the future it may well be, Mr. President,
13 that you and your colleagues will be seeking both written observations
14 and perhaps further oral argument in, perhaps, a future hearing in
15 respect, in particular, of language, the dual status of -- of victims or
16 witnesses, which is a matter of considerable concern to us and one where,
17 we would submit, the jurisdiction, and, in fact, I very much adopt
18 Mr. Dubuisson's approach to this that we are surrounded as far as
19 jurisprudence is concerned with green shoots. We haven't yet had the
20 benefit after trial here at the ICC, and there is very, very much to be
21 considered and sometimes reconsidered.

22 Witness proofing for which we feel there's a degree of, perhaps,
23 misunderstanding, which I won't go into this morning, and other
24 subsidiary matters which I know the Court will be concerned about such as
25 the 20- or 30-minute delay between a public session and moving into

1 private session. That is a matter that we've already raised concerns,
2 and I think every Bench that sat in this building has raise concerns, and
3 we're still looking and hoping that there will be a magic switch that
4 will cut off those ears that shouldn't hear while permitting those that
5 should to continue to hear whatever the particular hearing concerns.

6 We note this morning with concern the -- the issues raised by
7 many of the victims' counsel in respect of protection issues in Ituri.
8 We are concerned not only for their well-being, of course, but also for
9 the potential effect that that might have in respect of our own selfish
10 interests such as investigations out there, but that's a matter that
11 we're going to have to see how it develops.

12 The Prosecution raised another number of matters. In respect of
13 proprio motu redactions I stand by what we've said. Before the Pre-Trial
14 Chamber we anticipated that there would come a time when there would be
15 judicial overview of those matters, and we feel that it's important that
16 that connection is not lost and that such redactions, if made, must be
17 overviewed. Not least at all because there at the present time we're
18 dealing with just -- is it 38, I think, plus 9, of course, the new 9.
19 We're a bit puzzled why on the 9, the new list that you've received, for
20 example, we find that there's a reference there to newspaper reports and
21 photographs. I'm sure there is good explanation for that but it's not
22 one that immediately strikes us, but I'm sure there is probably good
23 reason for that. But in the wings, of course, over the last week, we
24 received or had notice that we will receive just a little short of 1.200
25 documents, and of course redactions may continue to play a part and a

1 wider part in that. And I mention that because we don't you to find
2 yourselves spending Saint-Sylvestre going through the redacted documents,
3 but it may be that the Court is going to find a full weight of
4 responsibility in respect of those -- those redactions.

5 I don't feel there's anything more this morning that I wish to
6 raise. Could you just give me one moment just to ensure that that is so.

7 PRESIDING JUDGE COTTE (interpretation): Of course, Mr. Hooper.

8 MR. HOOPER: Yes. Thank you very much. I have nothing further
9 to add.

10 PRESIDING JUDGE COTTE (interpretation): Well, very well. I will
11 then ask questions. Concerning Article 17 you've just referred to, if
12 indeed you had to make an application, you would do so in writing
13 probably before the end of the year; is that correct?

14 MR. HOOPER: (Previous translation continues) ...

15 PRESIDING JUDGE COTTE (interpretation): Correct. Okay. Now,
16 concerning Lingala interpretation, the Chamber and I myself wanted to
17 know what the Registry's intention is, because if -- or in the hypothesis
18 the Registry wanted to question the principle of Lingala interpretation,
19 this was done to enable parties to make their observations, and if that
20 happens at that stage you will be asked for your point of view on the
21 matter. Do you understand me? Very well.

22 Concerning the answers you gave us, the Chamber would like
23 additional information, in particular concerning question number 2 on
24 page 3 of your answer. Actually, no, I won't ask you for additional
25 information here because I already asked it you yesterday. I anticipated

1 this yesterday. I had already asked you about the conditions,
2 Mr. Hooper. Actually, the answer to question number 2 on page 3 of your
3 report concerned the investigations you intend to carry out in the
4 Democratic Republic of the Congo. You mentioned a number of dates, and
5 the Chamber would like to know whether your team can function, if
6 somebody can represent you if we have a hearing whilst you're in the
7 Democratic Republic of the Congo, but you answered us yesterday so I
8 won't come back and this question.

9 However, would it be possible to objectively and in very concrete
10 terms at this stage in the proceedings tell us how long your team needs
11 to prepare once the disclosure of incriminating and exonerating evidence
12 will have taken place?

13 MR. HOOPER: I'm not sure that I can provide it in extremely
14 concrete terms, because a lot of this is based on, as you might
15 appreciate, a feel that one has in -- confronted with a particular kind
16 of case with particular evidence, knowing that there's more yet to come.
17 In fact, I think 30 per cent more witnesses are to be provided to us on
18 the figures that were given yesterday, together with, we anticipate,
19 further -- further material, which itself will broaden as, of course, we
20 become or are placed in a position where we can indicate further our
21 areas of concern which will, of course, have the reaction of causing
22 further disclosure, we anticipate. It's almost certainly the case.

23 We have realised that this is a case of considerable --
24 considerably more factual complexity than when we came to the case that
25 we thought would exist, not least of all because there is no book that we

1 can pick up on the history of Ituri. And the history of Ituri over the
2 last ten years has been about as complex a history in terms of the
3 parties involved and their changing relationships and their
4 responsibilities, of course, as it's possible to imagine.

5 We discussed the possible starting date of a trial, and we
6 suggest that, and I very much emphasise it's a suggestion, but we hope to
7 come to the Court with what we thought was a reasonable suggestion, and
8 we thought the beginning of June. The reason why it's gone to such a
9 specific date is that the Prosecutor, the Chief Prosecutor, will not be
10 in this country on the 1st of June, and it's necessary for him to be here
11 for the beginning of the trial. So that's why it's gone to a specific
12 date, but we thought about the beginning of June, which gives us, even
13 allowing for Christmas and the new year, a period of six months to
14 prepare a complex case.

15 We, as you know, are not yet a full team. We anticipate we will
16 be by the end of this year. And it would be necessary for those who
17 come, particularly co-counsel, to obviously get up to speed with matters.

18 There have been significant distractions over the past year as is
19 evidenced by the 700, is it, and 58 filings that you can see already lie,
20 to our surprise, on the record to date.

21 We are in the position of needing to go and investigate and find
22 witnesses, and those witnesses need to be found largely in the DRC and on
23 both sides of the country, that very, very large and substantial country.
24 So for those reasons, and I think between us we can at least indicate
25 some degree of experience in -- in trials that involve investigations,

1 not my normal role as counsel in my own country as you'd appreciate, and
2 involving investigations in Africa. All-in, we've suggested to the
3 Prosecution that we would be ready, we hope, to commence the case in six
4 months' time. We hope that we're in a position to do so.

5 I say that because though it may seem a very distant date now,
6 all of us from our experience will know how time flies when it comes to
7 approaching, suddenly, the trial date. So we hope within those six
8 months to discharge our necessary responsibilities in preparing the case
9 and dealing with a number of significant matters that are going to
10 require your attention between now and then in terms of the effective
11 jurisprudence in the case, all of which is novel. And I stress that
12 there has been no trial, no hands-on experience of trial in this court.

13 So I hope that though the -- that submission perhaps lacks
14 particular details and numbers and figures and quantities, it
15 nevertheless reflects, and I hope you accept this, I hope a true and
16 reasonable reflection of what we feel is the minimum appropriate time
17 before trial commences in this case.

18 We hope that we won't have to come before the Court and beg for
19 more time, but I know, Mr. President, and your experience is considerable
20 in this, and that though it's not a -- perhaps an expectation, one must,
21 of course, allow for that possibility. But I hope it's -- the beginning
22 of June is for you also a workable objective, a reasonable and workable,
23 practicable objective.

24 Thank you.

25 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Hooper,

1 for all this information, useful information. We have taken good note.

2 I would like to come briefly back to your written submission,
3 page 4, your answer to questions 3 and 4, page 4 and 5, answer to
4 question 3 and 4, the redactions.

5 You have asked the Chamber to review all the redactions and also
6 requested the full original version of all witness statements which were
7 summarised by the Office of the Prosecutor. We note that we see at the
8 end of your answer on paragraph 3 that your request was formulated in
9 very general terms. So for us to respond to your request, we will need a
10 very precise application which lists exhaustively all documents
11 concerning which you request either the lifting of redactions or
12 redacted -- redactions or original versions.

13 Now, if you continue along these lines and want to persist in
14 requesting this, can you make this request very quickly?

15 MR. HOOPER: Well, add seriatim I don't think I can at present
16 without taking, obviously, quite a considerable time, but what I'd --
17 what I'd say is this: If we take, for example, the proprio motu
18 redactions, what was the position before the Pre-Trial Chamber? The
19 position was this: The Prosecution suggested that in order to save time
20 and not to place a burden on the Court, if the Defence were able to do
21 so, it would save time if we tolerated for the purposes of the pre-trial
22 hearing self-redaction, as it were, on the part of the Prosecution
23 without it going to the Judges. So we said, "All right, we don't want to
24 delay matters. We accept that position, but it is an exception." And
25 the Court stressed yes, it is an exception. And the Prosecution said

1 yes, it is an exception, and it will not apply post-confirmation.

2 Now, yesterday we heard that there was a suggestion that the
3 Lubanga trial had, in fact, blessed self-redaction, but the opposite is
4 the case. In the Lubanga case, my understanding is that they
5 specifically said, "We don't tolerate this, that in fact this is too
6 significant a matter to be gone about in this way, and there is judicial
7 overview."

8 So we would say that the boot must be on other foot here. It's
9 not for us to apply, it's for the Prosecution to sustain the necessity
10 of -- of tolerating this exception. There's no jurisprudence that
11 tolerates it or permits it. It was merely something that the Defence
12 agreed to in order to facilitate the Chamber's work and to assist the
13 Prosecution. So it ill-becomes them now, we say, to come and say, "Well,
14 there you go. We got away with it. Now it's up to you to justify
15 seeking they redactions." We say it's their obligation to do it. So if
16 they want to maintain these redactions, they have to come before you, the
17 Judges, in order to justify, because we're not in a position to see what
18 is not there. That's one of the problems. We would be seeking a
19 negative. What lies behind those smudged-outlines on the document? We
20 can't tell. Some of it, we suggest, is perhaps unnecessary. We can see
21 we've already found documents where it's the number of chickens that a
22 man's lost that have been redacted, and how does that help anyone?

23 So -- so we say this: If the Prosecution are earnest in these
24 redactions, then they can go about it, we hope, in a straightforward
25 manner and say, "Here's a bundle with our redactions. They're

1 highlighted and legible, and you, the Judge, can see why we've asked for
2 this particular redaction."

3 May I say there might be particular areas of redaction that we
4 can continue to, as it were, agree that can be self-redacted, as long as
5 the criteria is strictly adhered to. For example, I could give you this
6 example: Supposing that there's redactions of a particular MONUC
7 employee and his name has been taken out of the document. Well, when
8 that document comes to us we can see midway through a paragraph and a
9 sentence that Mr. Blank said this. We're in a position to judge then.
10 We can see. We've got no objection, may I say, to that kind of clear
11 redaction, self-redaction, particularly if it's -- if it's strictly
12 adhered to as a criteria. And if what Mr. Blank says about Mr. Katanga
13 is something that we wish to pursue, then in those circumstances we can
14 be in a position to come and say to this Bench, look, we would like that
15 name revealed.

16 If the Prosecution, for example, have expunged or hidden the
17 context completely, not only the name of Mr. Blank of MONUC but that
18 Mr. Blank of MONUC said, for example, that Mr. Katanga was uninvolved of
19 with something, for example, or was in a certain place or whatever it
20 might be, well, that blank is something that we can't see behind. You
21 know how these redactions are made. But you, the Judges, will be in a
22 position to do so. I won't be in a position to come to you, the Judge,
23 and say, Page 55, there's a big blank, can you look at it? The workable
24 situation is these are Prosecution documents. They know them. They're
25 familiar with them. They can highlight what they want out. They can

1 come to the Judge and ask for that. And if there wants to be -- if
2 there's a reasonable criteria of exclusion, automatic, that the Bench --
3 the Defence aren't going to object to such as specific names, then we can
4 continue working along that -- on that basis.

5 So that's our -- my response, as it were, in -- in respect of the
6 present 38 plus 9 documents.

7 PRESIDING JUDGE COTTE (interpretation): Thank you. The Chamber
8 would like to thank you, Mr. Hooper, for your oral contribution at this
9 time.

10 Yesterday morning we were fully aware when the Prosecution was
11 speaking that -- of the fact that this issue is essential. We will
12 probably also hear the explanations or intervention of Mr. Jean-Pierre
13 Kilenda or somebody from his team later on on this matter, and this
14 afternoon we will give the floor back to the Prosecutor for them to react
15 to what is on page 4, answer 3 to your written submission, and what is
16 also in Mr. Kilenda's written submission.

17 I would just like to recall that if you read the written
18 submissions correctly, on page 4 of your written submission, that you
19 clearly refer to an application for the review of the redactions and
20 request the non-redacting versions of the statements, and if the Chamber
21 wants these that we want it to be formalised in a short period of time.
22 I have a last question for you, Mr. Hooper. We need further details.
23 The Chamber needs further details on the following: On page 5 of your
24 written answer, page 5 of your written answer, you refer to summary of
25 incriminating evidence. Page 5, you refer to summaries of incriminating

1 evidence, and you use the term "incriminating statements." Sorry for my
2 pronunciation in English, "Incriminating statements."

3 Upon reading the decision of the Single Judge of the 18th of
4 April, 2008, the Chamber was of the opinion that these concerned
5 exonerating statements.

6 Did you receive incriminating statements in the form of
7 summaries, or is this just an error in your answer, a mistake in the
8 wording? If it's a mistake you can answer this afternoon.

9 MR. HOOPER: There are four incriminating statements in summary.
10 Of anonymous witnesses.

11 PRESIDING JUDGE COTTE (interpretation): Very well. Thank you,
12 Mr. Hooper.

13 Are Court Officer, how far -- how much longer can we sit for now?
14 (Trial Chamber and Court Officer confer)

15 PRESIDING JUDGE COTTE (interpretation): Perfect. We have
16 another half hour.

17 MR. HOOPER: (Microphone not activated) ... of me. Can I just
18 mention one matter? It might be that, Mr. President, you and your
19 colleagues may decide to ask for written responses in respect of certain
20 matters. This rather ties up with your question yesterday about what
21 happens when we are away, and we are away from the middle of next week
22 until, I think, the 17th of December. I mention that because if there is
23 a request put in matters, some we may be in a position to deal with quite
24 quickly, but otherwise we're wondering whether we could just point up, as
25 it were, or flag up the possibility of asking for a response date by,

1 say, mid-January. So on more involved matters, if I can put it like
2 that.

3 PRESIDING JUDGE COTTE (interpretation): I take note. Thank you
4 for speaking up again.

5 If by any chance the Chamber were to hold a hearing next week, if
6 we were not able to finish today with the two remaining hours, that is an
7 hour and a half now -- half an hour now and an hour and a half in the
8 afternoon, because I understood that we might have an extra half hour
9 this afternoon as I've been told. I would like us to conclude this
10 hearing this afternoon at 4.30, but if we were to hold a hearing next
11 week, would a member of your team be present in the courtroom?

12 MR. HOOPER: Ms. Menegon would be here, and we would almost
13 certainly try and secure support for Ms. Menegon, who for all her
14 diligence obviously lacks a degree of experience, as she would
15 acknowledge, and I don't want to put her in a position where she is --
16 feels very uncomfortable. She might very well claim to be in such
17 circumstances. But I think I indicated yesterday we are receiving
18 assistance from Professor Sluiter. I don't know how he's going to be
19 fixed next week. And there's also another person who might be in a
20 position to assist us with the assistance of the Court and the Registry
21 in getting him here into the building. In other words, there's a
22 responsible person, if I can put it like that, who may very well be
23 connected with the team in the future, who would be here and possibly
24 able to assist.

25 So I think there's a way to go about it, Mr. President, if that's

1 your intention, but I wouldn't want the weight of representation in those
2 circumstances to fall on Ms. Menegon's shoulders without support.

3 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Hooper,
4 for your goodwill, but we shall try to conclude this hearing this
5 afternoon, which would be satisfactory to everyone, I think.

6 Now, Mr. Jean-Pierre Kilenda.

7 Mr. Prosecutor, forgive me.

8 MR. MacDONALD (interpretation): Excuse me, Mr. President. I
9 just want to speak briefly because there was a reference made to
10 incriminating anonymous witnesses. I have this list. There are three
11 summaries and one statement which were redacted. I can submit it
12 immediately for everyone's benefit. Obviously, I think there was -- with
13 regard to the confirmation which was alluded to, there's nothing
14 confidential here, so the witnesses are identified with their numbers.

15 PRESIDING JUDGE COTTE (interpretation): Submit it. Thank you.

16 MR. MacDONALD (interpretation): And I have a copy for my learned
17 friends of the Defence.

18 PRESIDING JUDGE COTTE (interpretation): Thank you,
19 Mr. Prosecutor.

20 MR. MacDONALD (interpretation): One last question. You put a
21 question with regard to a hearing next week. I think we shall return to
22 this this afternoon, that is with regard to the people who can attend for
23 Mr. Katanga. I think that this question should be considered by the
24 Chamber before other members of Mr. Katanga's team are allowed to
25 represent him in replacement of Ms. Buisman or Mr. Hooper.

1 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
2 Mr. MacDonald.

3 Mr. Kilenda, I think you may stand up now.

4 MR. KILENDA (interpretation): Thank you, Mr. President, your
5 Honours. I must admit that we're not going to take up too much of your
6 time. I'd like to confirm the fact that the answers that we gave to all
7 your questions where relevant, I do not intend to return to those at this
8 point, except for one clarification in respect of the second question on
9 page 8 of your order, that is with regard to investigations in the
10 Democratic Republic of the Congo.

11 After that, I shall give the floor to Ms. Maryse Alie, who will
12 speak on a particular point with regard to the participation of victims
13 at the trial stage and to Professor Fofe with regard to the exonerating
14 investigation by the Office of the Prosecutor.

15 With regard to the question, we heard you say yesterday,
16 Mr. President, that the Chamber, your Chamber, did not wish that
17 investigations on the ground -- did not wish investigations on the ground
18 to interrupt the course of hearings when the trial will start here. Our
19 team wishes to register its support for this approach as long as it works
20 optimally. There are four of us today. You have co-counsel
21 Professor Fofe, as you know; we have Ms. Aurélie Roche, who is the case
22 manager; and Mrs. Maryse Alie, who is our legal assistant. I would like
23 to inform you that in January we shall no longer have an intern. We are
24 discussing the matter with the relevant services of the court to receive
25 a second legal assistant, and we think that if we had a five-member team

1 we would be in a position, while one assistant -- legal assistant and a
2 counsel are on the ground in the DRC, we would be in a position to have
3 adequate representation here in The Hague that would prevent the
4 interruption of the hearings.

5 Perhaps at the appropriate time you will receive an application
6 if we do not find that the measures are satisfactory. This is not the
7 case now. We are still fighting. We hope that our -- the people we are
8 dealing with will change their minds and help us to add to our team to
9 enable us to work efficiently.

10 That is all I have to say. I know that you will return to the
11 issue of redactions. For the time being, I would like Ms. Maryse Alie to
12 take the floor immediately, and if you have any further questions, I
13 shall be available to answer them.

14 PRESIDING JUDGE COTTE (interpretation): Thank you. Ms. Maryse
15 Alie has the floor. Are you Alie Maryse or Maryse Alie.

16 MS. ALIE (interpretation): Maryse Alie. Alie is my family name.

17 PRESIDING JUDGE COTTE (interpretation): Ms. Maryse Alie then.
18 After you have spoken you will have further questions probably, and you
19 will decide how to answer them. So you have the floor, Ms. Alie.

20 MS. ALIE (interpretation): Thank you, Mr. President, your
21 Honours. Just to reassure you, I shan't take up much of your time
22 because the issue of victims' participation is a complicated one; it is
23 sensitive and important at the International Criminal Court. We are
24 lucky to have this participation in this court, that is the participation
25 of victims, and we would like to return to this issue, and we shall do so

1 in an application amongst other things. However, we thought we should
2 raise this point at this very first status conference, because in
3 paragraph 6 of your order you mention that this was a matter that had
4 been settled by the Appeals Chamber, and the number is 1432 for the
5 French version, and the date is the 11th of July, 2008.

6 This morning I heard the Registry raising the first question as
7 to whether or not to reregister victims who had been accepted into the
8 proceedings for the trial stage, but in our written submissions we'd like
9 to -- in addition to our written submissions we would like to highlight
10 three remarks.

11 It is true that we have a judgement from the Appeals Chamber. As
12 you said yourself, however, it is important to extend the scope of our
13 views and to review jurisprudence, if one may term it as such, on some
14 particularly important elements. Why so? This is because, quite simply,
15 the reasons -- this is because of the reasons established in
16 Article 68(3) of the Statute. The spirit of that article is to secure
17 respect for a balance between the victims participation and the rights of
18 the Defence. And I would like to underscore this. I know we have
19 developed this in our written submissions, but I'd like to emphasise the
20 particular circumstances of Mr. Mathieu Ngudjolo Chui's case.

21 I will just name the number of victims quite simply. It is not
22 final at this stage, but at the stage when the -- when the Appeals
23 Chamber made a judgement, there were four victims in the Lubanga trial.
24 We have 57 in our case. There were two Legal Representatives. There are
25 a lot more in this case. In the legal -- in the Lubanga case there were

1 only charges pertaining to child soldiers. We have a much more complex
2 file here. We have war crimes, crimes against humanity, and more than 10
3 charges.

4 My learned friend Ms. Bapita highlighted the importance of
5 conducting investigations. The Defence would like a review of the
6 participation of victims, because while we have been told since the start
7 that legal representation should not ally with the Prosecution, we are
8 getting the feeling that we are facing a second prosecution in this
9 respect.

10 This leads me to the second remark. It is true that the Appeals
11 Chamber confirmed some positions taken by the -- by Trial Chamber I, and
12 we do not intend to challenge all the rules or rights accorded to victims
13 or their participation. It is not a participation as such that we
14 challenge. It is the modalities that must be considered on a
15 case-by-case basis. And if you recall, this Appeals Chamber judgement
16 was adopted with a low majority with two dissenting opinions, one of
17 which was quite strong.

18 What I'd like to say here is that if the Appeals Chamber
19 confirmed -- while the Appeals Chamber confirmed some of the positions
20 taken by the Pre-Trial Chamber, it did still fail to establish a positive
21 obligation. I beg your pardon, I said Pre-Trial Chamber rather than
22 Trial Chamber.

23 So as I was saying, it did not establish a positive obligation on
24 the part of the Trial Chamber which should establish a balance between
25 the rights of the Defence and the rights of victims' participation and

1 did not return, and it cannot change what was decided upon.

2 This leads me to my third remark, and I draw the Bench's
3 attention to the fact that there were a number of questions that were not
4 decided upon by the Appeals Chamber. That is with regard to
5 disclosure -- disclosure obligations. Also with regard to the time
6 limit, I would like to add something else. I have a great many things to
7 say, but I think that I will do so in a written submission, so I'm trying
8 to gather this into as few points as possible.

9 With regard to disclosure obligations, I was saying, nothing is
10 organised so far as I know for the time being, and it seems important to
11 us. If you were, if you were to afford the victims the opportunity to
12 submit or to present evidence before your Court, you could allow the
13 Prosecution or the Defence to ascertain the veracity and the provenance
14 of the elements. This requires considerable work, which is why at this
15 stage of the proceedings we thought it important to provide these
16 additional remarks to the Bench. Thank you for your attention.

17 PRESIDING JUDGE COTTE (interpretation): The Chamber thanks you,
18 Ms. Maryse Alie. We thought we were considering asking you for
19 clarifications with regard to the answer or the question, the further
20 question that you raised in pages 7 and 8 of your report, but you have
21 provided the answers orally. Since you have done so I shall not return
22 to that point.

23 In your report, in your written response of the 24th of November,
24 there are other points that you wish to develop spontaneously orally. In
25 that case, please do so.

1 Professor Fofe, is that right?

2 MR. FOFE (interpretation): Thank you very much, Mr. President.

3 I would like to come back to a point which was raised in our written
4 responses, that is point 4(2). This is related to the application of
5 Article 54(1)(a) of the Statute. And as Mr. President and your Honours
6 know, this Article is based on the need to establish the truth and to
7 enable the Honourable Bench to rule on the basis of the truth. And in
8 order to establish this truth, this provision requires the Prosecutor or
9 vests the Prosecutor with the obligation to extend the investigation to
10 all facts and evidence that may be useful to determine whether there is
11 criminal responsibility under the Statute of the International Criminal
12 Court.

13 In so doing, the Prosecutor must incriminate both -- must
14 investigate both incriminating and exonerating information. And the
15 questions that were raised in point 4 of our response to the Chamber's
16 questions are geared to secure some clarification from the Prosecutor
17 with regard to the way in which he has performed or is performing this,
18 his duties with regard to the statutory obligation.

19 I think the questions are clear and I might recall some of them.
20 The first is linked to the method followed by the Prosecutor in order to
21 conduct exonerating investigations. Concretely speaking, is the
22 Prosecutor organising separately, autonomously exculpatory
23 investigations, or is his intent not to close his eyes to any evidence,
24 exonerating evidence, in conducting an incriminating investigation? Put
25 differently, we would like to know the policy, the method used by the

1 Prosecutor to fulfil his legal obligation to also investigate exonerating
2 circumstances.

3 We consider that the Prosecutor's response to this question would
4 be edifying to the Chamber and the Defence as concerns the need to
5 establish, to seek and establish the truth, because as an organ of the
6 law, his role is to try to gather all the evidence, both incriminating
7 and exculpatory, so that the truth can be established.

8 These are the questions we raised. We noted, and we're pleased
9 to note the courtesy between the Prosecutor and the Defence, and we would
10 like to seize this opportunity to ask the Prosecutor to ensure that he
11 transmits or discloses all exculpatory materials currently in his
12 possession at the earliest opportunity and not to wait till the end of
13 the investigations, as he announced yesterday, to disclose them to us.

14 With regard to redactions or -- I would like to say that I
15 support the concerns raised by our learned friend Mr. Hooper, and I would
16 like to emphasise that Defence counsel work under oath. Defence counsel
17 are bound by the obligation to respect professional secrecy, and I think
18 that the Prosecutor can trust Defence counsel and hand to them all the
19 materials that are in his possession and all exculpatory elements without
20 needing to redact them.

21 That is my submission. Thank you.

22 PRESIDING JUDGE COTTE (interpretation): Professor Fofe, in order
23 to enable the Prosecutor to answer this afternoon, especially with regard
24 to this point, which was on page 9 of your written response under
25 questions to Mr. Ngudjolo's Defence and Prosecutor with regard to

1 exculpatory materials, I'm going to ask you with regard to the content --
2 considering the little time that we have, I'm going to ask whether you
3 have particular problems or whether this is a general reflection on the
4 methods used in seeking exculpatory materials. So is this a general
5 question or did you encounter real difficulties? Is there something in
6 fact that underpins your question? It is important so that Mr. MacDonald
7 can give you a useful response later. And incidentally, and I shall
8 return to this point this afternoon, incidentally, the time limit, is the
9 time limit important? The time limit, the important time limit requested
10 for your investigations, is this time limit set with regard to the
11 problems that you encountered in relation to this problem? Do you have
12 any suggestions to make with regard to the methods that a Prosecutor
13 should use for -- to investigate exonerating circumstances? Are we going
14 from the particular to the general, or the general to the particular?

15 Have I been clear? I have -- I'm trying to make sure that the
16 Prosecutor has as much information as possible to respond to your
17 question.

18 MR. FOFE (interpretation): Thank you very much, Mr. President.
19 We put this number of questions to the Prosecutor because we observed
20 that the Prosecutor appears, and here we may be wrong, appears to
21 organise his investigations on the ground only for incriminating
22 purposes. This is why we sought to ascertain whether when he organises
23 his investigations, to take a concrete example, does he have specific
24 staff to conduct investigations into exonerating circumstances in
25 addition to personnel conducting incriminating investigations, concretely

1 speaking? Is he only conducting incriminating investigations, and
2 accidentally, if he comes upon exonerating materials, he takes them?
3 That is the purpose of our question.

4 PRESIDING JUDGE COTTE (interpretation): Thank you, Professor.

5 We have come to the end of the hearing. I'd like to thank the
6 interpreters and the court reporters and all the surrounding technicians,
7 because we have gone slightly beyond the time allotted for us. We shall
8 resume at 2 -- 3.00 perhaps for one hour or one and a half hours.
9 Perhaps one hour would be enough. The Chamber will put more questions to
10 the Defence team of Mr. Ngudjolo, and then I shall give the floor to the
11 Prosecutor so that he can respond, in particular to the question that was
12 raised with regard to the investigation of exonerating information or
13 circumstances in addition to the lifting of redactions. We shall return
14 to this question.

15 If a party or participant wishes to provide clarifications, that
16 will be possible. That includes the Registry, of course, but I wanted to
17 put a question to Mr. Ngudjolo's Defence. I should have put the question
18 before.

19 Is it possible for the Chamber to -- to call Mr. Ngudjolo
20 Mr. Ngudjolo, or shall we say Mr. Ngudjolo Chui? Must we say
21 Mathieu Ngudjolo or Mathieu Ngudjolo Chui? It is for courtesy's sake
22 that I raise the question.

23 MR. KILENDA (interpretation): I think the question should be put
24 to him personally.

25 PRESIDING JUDGE COTTE (interpretation): Mr. Mathieu Ngudjolo.

1 MR. NGUDJOLO CHUI (interpretation): Thank you, your Honour. It
2 is Mathieu Ngudjolo Chui.

3 PRESIDING JUDGE COTTE (interpretation): Do you wish us to add
4 the name Chui?

5 MR. NGUDJOLO (interpretation): Not necessarily. I would just
6 like to be called Mr. Ngudjolo.

7 PRESIDING JUDGE COTTE (interpretation): Thank you very much. I
8 should have put this question yesterday when I began the hearing. It's
9 never too late.

10 Thank you. We shall adjourn and resume at 3.00.

11 Recess taken at 1.32 p.m.

12 On resuming at 3.02 p.m.

13 COURT USHER: All rise.

14 PRESIDING JUDGE COTTE (interpretation): We shall now resume.
15 Please be seated.

16 Could security please bring the accused, Mr. Katanga and
17 Mr. Ngudjolo, in, please. Thank you.

18 So, I'd like to come back briefly to the Defence's written
19 submission, Mr. Ngudjolo's Defence, and ask team members to give us
20 further information on the answer to question number 2, on the written
21 answer given to question number 2, page 7, if I'm not mistaken.

22 Paragraph 7 of your answer. Yes, paragraph 7, page 4 of your written
23 answer.

24 You talk about investigations lasting eight months, and we
25 wondered whether that was not a typing mistake, because at the same time

1 you suggested yourselves starting a trial on the 8th of June, 2009.

2 The Prosecutor told us yesterday that the disclosure of
3 incriminating evidence could be completed at the end of January 2009, and
4 so we have some difficulty understanding the four months and the eight
5 months you have asked. Could you give us information on that?

6 MR. KILENDA (interpretation): Thank you very much. Your
7 question is very legitimate, but I would like to draw your attention to
8 the fact that our team has not, as yet, carried out any investigation
9 whatsoever in the field, and this issue of investigations in the field
10 has been asked on several occasions to the colleagues of the Pre-Trial
11 Chamber, and we said that at the time we had great difficulty carrying
12 out investigations in the field.

13 I had just been appointed Duty Counsel at first, and then Duty
14 Counsel -- counsel for Mr. Ngudjolo, and I had problems of harassment,
15 but Maryse Alie then at the time luckily joined me, but we didn't have
16 the time to carry out investigations. So we will start, if possible,
17 next month if we manage to get everything together.

18 We don't know what this mission will provide us in terms of
19 elements to prepare our defence or further items for our defence, but we
20 thought that eight months on this wasn't a typo. We thought that eight
21 months would enable us to prepare ourselves more effectively, and we
22 understood that the Prosecution and Mr. Hooper's team agreed on the 8th
23 of June, and we considered that if everything was disclosed on time that
24 that date would be appropriate. We wouldn't have to delay things
25 further.

1 PRESIDING JUDGE COTTE (interpretation): Thank you very much for
2 that additional information. It's true that you arrived in this case
3 after Mr. Hooper's team. So very well. We understand what you've just
4 said. So it's not necessary for me to ask you the same question I asked
5 Mr. Hooper this morning. I asked him how long you would need in fact,
6 but you have answered that question already just now.

7 So as for Mr. Hooper this morning, we note that in your written
8 answer you also request all redacted text to be reinstated. You want all
9 the statements of the Prosecutor that have been summaries. You have
10 asked this in very general terms. If you want us to rule on this, you
11 will have to provide us with a very precise application which lists all
12 the documents for which you request redacted text to be reinstated or
13 original versions. So same approach as what we requested of Mr. Hooper
14 this morning.

15 Mr. Kilenda.

16 MR. KILENDA (interpretation): Thank you very much, your Honour.
17 I would like to say from the outset that concerning redactions, our team
18 was clear in the stage before this one. We were against proprio motu
19 redactions by the Prosecution. We believe that the respect of and
20 compliance of Defence's right calls for the Defence to be informed of all
21 the information. I do -- I would like to adopt Mr. Hooper's statement
22 before the break. I entirely agree with what he raised concerning
23 redactions. The Prosecution should give us all the information we need
24 to enable us to -- at best to prepare our defence best in the interests
25 of our client. Thank you.

1 PRESIDING JUDGE COTTE (interpretation): So that would be
2 paragraphs 8 and 9 of your answer. Now a last clarification concerning
3 your team. Point 18, page 6 of your answer, you say that the electronic
4 presentation of evidence at the hearing has to be modified. It cannot be
5 the same as it was at the confirmation hearing. Could you give us
6 further information on this, and do you have any concrete suggestions you
7 would like to make in this regard to improve or attempt to improve the
8 system?

9 You have the floor.

10 MS. ALIE (interpretation): If you may, President, I would like
11 to answer this question very briefly. What was agreed at the pre-trial
12 phase, because we only had to establish substantial grounds to believe,
13 was, as the evidence was not presented online, you could only find the
14 evidence through their numbers, which was very difficult because things
15 would go very fast, and especially at the trial we will move on very
16 fast.

17 The Prosecutor referred to evidence numbers, but it was
18 impossible at the pre-trial phase to verify each time the document they
19 were referring to. So we will need to agree on an adequate, a properly
20 appropriate system, protocol, that enables all parties to follow the
21 evidence referred to on their screens. And we also need a certain degree
22 of flexibility.

23 I know that this involves technical requirements that adds to the
24 difficulty of this all, but when a party presents evidence, they will
25 have to be allowed to decide on the way the evidence is presented.

1 We would like to suggest adopting a protocol which really is --
2 which is appropriate to the presentation of evidence during a trial.

3 PRESIDING JUDGE COTTE (interpretation): Thank you very much.
4 For our part we don't have any further -- we don't need any further
5 clarifications from Mr. Kilenda and his team, so this brings us to point
6 12 of our agenda, the responses to the submissions made since yesterday
7 morning.

8 We thought it would be easier to follow the same order, the
9 Prosecutor's answers, and then if they have any responses, responses by
10 the Legal Representatives of Victims, and then the response of the
11 Defence counsel for Mr. Mathieu Ngudjolo and Mr. Germain Katanga.

12 So I believe that the Prosecution already wants to answer on two
13 points, the first concerning Mr. Fofe's intervention, and Mr. Ngudjolo's
14 Defence team concerning the method used by the Office of the Prosecutor
15 in carrying out its exonerating investigation. So perhaps you could
16 start by intervening on this point, Prosecutor, and then on this issue of
17 proprio motu redactions bearing in mind the interventions made this
18 morning by Mr. Hooper and Mr. Kilenda. If you agree, please go ahead.

19 MR. MacDONALD (interpretation): Thank you very much, President.
20 Concerning the exonerating and incriminating investigations, I will refer
21 to the powers of the Prosecutor in terms of investigations. "The
22 Prosecutor, to establish the truth, carries out investigations on all the
23 facts and evidence necessary to decide whether or not there is a criminal
24 responsibility within the terms of the Statute and to do so investigates
25 both incriminating and exonerating evidence," as stated in the Statute,

1 and hence, the Office of the Prosecutor examines the evidence,
2 incriminating and exonerating.

3 When we follow certain tracks, the exonerating clues are used to
4 bring clarifications to any potentially exonerating item, and the
5 information is given to the Defence according to Article 67(2) of the
6 Statute. So the exonerating evidence is then given to my colleagues.
7 The missions consist of investigators who gather both incriminating and
8 exonerating evidence.

9 During this procedure, the Prosecution considers the Defence's
10 case in the light of Article 31 of the Statute, and moreover, respects
11 the guidelines which it filed with Pre-Trial Chamber I under number 458
12 on the 29th of April, 2008.

13 In my answer I have taken the additional information following
14 your question into account, so we have covered the general matters, but
15 as you have requested and the Defence has also requested more
16 specificities on this, the Defence also should give us any item it
17 believes to be exonerating on which it believes the Prosecution should
18 investigate, whether this is a document or whether they want us to take
19 statements in the field or gather information in the field. We haven't
20 received any requests to this end to date.

21 I refer to Rule 79 concerning this matter.

22 The Defence -- disclosure of elements by the Defence, 79(1)(a)
23 that's on the alibi, but (1)(b), so raise a ground for excluding criminal
24 responsibility provided for in Article 31(1), in which case the
25 notification shall specify the names of witnesses and any other evidence

1 upon which the accused intends to rely to establish the ground.

2 On this we are still awaiting the Defence, and I refer to Rule 80
3 for procedures for raising ground for excluding criminal responsibility.

4 So those are my answers to the items raised by Mr. Kilenda.

5 PRESIDING JUDGE COTTE (interpretation): Thank you very much. I
6 think that Mr. Mathieu Ngudjolo's Defence team notes this. We won't
7 start a discussion on this just now, but it was just important, I think,
8 for you to have an answer to the question you raised, and I believe you
9 should bear in mind what the Prosecution just raised.

10 Thank you very much, Prosecutor.

11 Mr. MacDonald, could you continue and take the floor again on the
12 issue of proprio motu redactions. Yesterday you heard me on the
13 Chamber's opinion. It's important for you to take the floor after the
14 interventions of Mr. Hooper and Ms. Alie and Mr. Kilenda.

15 MR. MacDONALD (interpretation): Yes, President. We noted
16 Mr. Hooper's statement this morning, and we noted an example he gave us.
17 The accusation will limit itself to the 39 plus 9 documents just now,
18 47 -- or 45, I beg your pardon -- no, sorry, 47. And so the Prosecution
19 is going to re-examine the redactions, and instead of referring to the
20 Defence counsel it suggests meeting with them and reviewing with them
21 which redactions could be -- could remain in the document and try to
22 explain differently the information redacted. And if we could reach an
23 agreement -- or if there is disagreement, we should then call upon the
24 Chamber. If the parties agree on the approach, on the method I'm
25 currently suggesting, then that's even better. The parties agree and it

1 is not necessary to refer this issue of redactions to the Chamber.

2 This is, I believe, a reasonable suggestion which I would like to
3 make to my colleague and is in compliance of the interests of both
4 parties, the interests of protection and the interests of the Defence's
5 rights. But I would like, however, to draw the attention of the Court
6 and to this Chamber also to the fact that redactions were carried out in
7 compliance with two decisions of the Appeals Chamber, decision 521 of the
8 27th of May, 2008, entitled "(Previous translation continues) ... (in
9 English) ... of the Prosecutor against the decision of Pre-Trial Chamber
10 I, entitled, First Decision on the Prosecution Request for Authorisation
11 to Redact Witness Statements."

12 (Interpretation) So a decision I've just quoted, decision 495 of
13 the 13th of May, 2008, and the other one is decision 521. (In English)
14 "Mr. Mathieu Ngudjolo against the decision of the of Pre-Trial Chamber I,
15 entitled, Decision on the Prosecution request for authorisation to redact
16 statements of Witnesses 4 and 9."

17 (Interpretation) That being said, your Honour, concerning the
18 exonerating and incriminating summaries disclosed before the confirmation
19 of charges, the Prosecution is currently contacting witnesses whose
20 identity we will be able to disclose with the statements.

21 Now, if necessary, we will come to this Chamber and request the
22 necessary redactions or use the same approach for these witness
23 statements. We could suggest redactions to my colleagues. They could
24 take note of them. We could sit down together, discuss the matter. And
25 concerning some of these redactions, yes, they are for the identity of

1 persons at risk such as the Appeals Chamber decision decided, but other
2 information was redacted because they concern family members of these
3 witnesses, according to Rule 81(4), and other redactions of -- to protect
4 ongoing investigations, Article 81(2).

5 However, we can provide information on the type of information
6 redacted, and often this simple exchange of information can do away with
7 any concerns concerning the information which has been redacted from the
8 Defence teams of Mr. Katanga and Ngudjolo. So I think that if ever the
9 parties were unable to agree on certain points, we could then come to the
10 Chamber.

11 This exercise is not aimed at excluding the Chamber or to govern
12 their redactions but to limit the number of cases you have to look into
13 when the parties agree. We don't want to hide information from the
14 Defence teams or from the Chamber. The objective is to protect
15 information and ongoing investigations in the Office of the Prosecutor
16 and persons at risk as well as the families of the witnesses in question.

17 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
18 Prosecutor. We have noted the approach suggested. However, we need
19 more, because this is a very important point. You understood already
20 yesterday that I insisted on this. You heard the intervention this
21 morning of the Defence counsel teams, and we have just listened to you
22 again. The obligation of protection is essential, but redactions are
23 carried out only in the last resort. It's difficult to strike a balance
24 between the two. This is a very difficult requirement asked of the
25 Court.

1 Proprio motu redactions, and this must be clear, cannot be
2 carried out at the trial stage and in the preparation of the trial which
3 has just begun. So we have to put an end to this procedure of proprio
4 motu redactions which was decided by the Single Judge on the decision of
5 the 10th of April, 2008, and which decided that the disclosure of
6 exonerating evidence -- on the terms of disclosure of exonerating
7 evidence. This decision was clear. It was only applied and applicable
8 to the pre-trial phase for the confirmation hearing. In this decision of
9 the 10th of April, 2008, it is said on several occasions that the
10 decision has a limited scope. I think things are quite clear.

11 In your intervention just now, the Chamber would like to ask you
12 to suggest to the Defence counsel a procedure for redactions which is
13 reasonable and appropriate and respecting all the judgements of the
14 Appeals Chamber on this matter. Judgements 773 on the 14th of February,
15 2006; and you have just mentioned 475, 476 of the 13th of May, 2008; and
16 judgement 521 of the 27 May, 2008, which was just issued in our case of
17 Mr. Katanga and Mr. Ngudjolo.

18 We note that these decisions, these judgements, especially of the
19 13th of May, 2008, deal with the situation of these persons at risk.

20 So, consultations with the Defence are possible. You suggested
21 them. They are possible. But we want you to put forward a redactions
22 procedure which is in compliance with the Statute and with the Appeals
23 Chamber's judgement, because we have already listed four Appeals Chamber
24 judgements on this. The Chamber will note your suggestions, we'll assess
25 them and we will issue a decision in which the mode of presentation of

1 applications for redactions will be outlined.

2 I believe that as part of Mr. Hooper's team will be away next
3 week, things might be quite complicated, but the Chamber would like this
4 to be suggested by the evening of the 5th of December of next week.

5 I'm not saying the discussion is closed on this, but I'm saying
6 that following the discussion this morning by both parties and -- which
7 continued this afternoon made us arrive at this solution which we believe
8 is reasonable, and it takes into account the desires of the parties, but
9 it also takes into account the legal requirements and the decisions --
10 the judgements of the Appeals Chamber.

11 Thank you very much.

12 Prosecutor, do you want to take the floor on other proposals
13 which were made by either the Legal Representatives of Victims by the
14 Registry or by Mr. Hooper or by Mr. Mathieu Ngudjolo's team?

15 MR. MacDONALD (interpretation): With your leave, your Honour,
16 Mr. President, I am going to be -- to try to be brief and go to the
17 essential part.

18 PRESIDING JUDGE COTTE (interpretation): We shall try to go till
19 4.30. It is true, I think, that everybody would be pleased if we closed
20 at half past 4.00. I am not going to hold anyone from taking the floor,
21 but I will urge everyone to go to the essential points.

22 MR. MacDONALD (interpretation): What we refer to, the dual
23 status of victims and witnesses, in this regard the only witness that we
24 know is the one represented by Ms. Bapita as referred to during the
25 confirmation hearing, which is Witness number W166. So this is the only

1 witness known to have that dual status. We did not discuss it during the
2 confirmation hearing with Ms. Bapita because of the protected status of
3 this witness. I preferred to avoid going into any further depth about
4 that because of the public nature of this hearing.

5 With regard to Mr. Mulamba and his application for disclosure
6 transmission of material on CD-ROM, we object, with respect, for the
7 following reason: It is to do with security. If indeed the Legal
8 Representatives have been the subject of pressure or threat, the risk of
9 losing confidential information when one travels with CD-ROMs is too
10 great to be taken. I think it is best to be perfectly informed of how
11 CITRIX works so that the evidence can be managed.

12 With regard to confidentiality still, I will call on everyone to
13 refrain from exchanging e-mails from the -- with the Prosecution or any
14 other party using a Yahoo, Google or other public account, because this
15 jeopardises the security of the information thus exchanged.

16 With regard to bodyguards as raised, I think we must be careful
17 when we are considering investigations by Legal Representatives on the
18 ground. This can be the subject of a broader discussion as raised by
19 Mr. Ngudjolo's team, because the role of the Legal Representatives in
20 investigations is to be defined. They play -- are they playing a role as
21 one of the parties? But what is the role of Legal Representatives with
22 regard to collecting information or evidence? So I raise that question.

23 To return now to the question of victims participation and
24 pending applications for the 110, I think the Appeals Chamber was clear
25 in its decision whose name -- whose title and date I cannot recall, it

1 was in the Lubanga case. This was in relation to victims linked to the
2 charges as confirmed.

3 There are some details, such as the one raised by Mr. Dubuisson,
4 which may have been decided by the Trial Chamber in the Lubanga case,
5 were discussed at length. We -- the Prosecution might return to this on
6 a case-by-case basis, but on the whole we have no problem with the
7 decisions that were taken before.

8 Subsequently, if necessary, we shall return to these issues with
9 an application for clarification but not at this stage. We shall
10 continue to apply these decisions.

11 Regarding a closed session, I think that poses a problem, how to
12 follow proceedings outside this court. I mean by that that at this point
13 my colleagues, we have colleagues behind us who are following this
14 through the LiveNote system only, and it is in realtime, so broadcast is
15 in realtime. If we have a closed session, I understand that the system
16 stops working, and my colleagues can no longer follow the broadcasts of
17 proceedings from outside.

18 This might raise problems, your Honour. The 30-minute delay is
19 there, but there's also a delay in response to questions raised,
20 especially with regard to communicating with people outside the
21 courtroom. I think perhaps something should be done to change this
22 situation as it currently stands.

23 I return to the question of the mode of presentation of material
24 as raised by Mr. Ngudjolo's Defence, and as mentioned, this -- this
25 presentation of evidence was within the very narrow scope of the

1 confirmation hearing, but I must reassure everyone that we did provide
2 this list according to the time-limits provided for in the Statute. Our
3 presentation documents were also disclosed generally the evening or the
4 day before to the Defence, including the numbers of material that we were
5 going to use during the presentation. Apart from a few photographs of
6 wounds, I think the rest of the documents were not shown on screen, and
7 we did not refer to them.

8 Obviously the practice at trial may be different. The Prosecutor
9 does not intend to continue as in this manner, but if annexes are
10 requested, all the annexes will be put up on the screen, and all the
11 parties and, of course, the Chamber will be able to examine the documents
12 and put questions if necessary. I do not think that this model can be
13 used at trial in any case.

14 This morning I raised a small matter to which I would like to
15 return. This is the representation of Mr. Hooper's team. I do not want
16 to get involved in administration, but this was raised before the
17 Chamber, before the Pre-Trial Chamber, Pre-Trial Chamber I to be precise,
18 when Mr. Hooper had to be away. As we now speak, I do not think that as
19 there is a co-counsel in Mr. Hooper -- in Mr. Katanga's team, and there
20 are rules, and I understand that without co-counsel it is difficult to
21 have representation for other lawyers within the team. However, an
22 exception was made in very precise circumstances when Mr. Hooper was in
23 Rwanda and could not return, and he asked that Mr. Goran Sluiter be
24 present along with Ms. Caroline Buisman, and this hearing was held under
25 those circumstances.

1 Once more this is an important issue, independent of the fact
2 that Mr. Katanga may agree, but it is for the Chamber to decide, but
3 hearings without co-counsel are perhaps not desirable.

4 Just a moment if you will, your Honour.

5 (Prosecution counsel confer)

6 MR. MacDONALD: These are the notes, and these are the points
7 that I wish to raise. Thank you.

8 PRESIDING JUDGE COTTE (interpretation): The Chamber thanks you,
9 Prosecutor. I think the other parties and participants in these
10 proceedings and in this hearing will have taken note of your responses.
11 I believe that the parties and participants in the proceedings will also
12 get used to, as we meet, seeing the President of this Chamber to repeat
13 himself so that he is sure that he has been understood.

14 I am returning to a matter, the matter of redactions, which is
15 very important to the Chamber, as you will have understood. So the
16 meeting between the Prosecution and the Defence. Do not forget, I may
17 not have said this clearly enough, in our mind all of this must be done
18 under judicial control.

19 Now, do the Legal Representatives of the Victims have any
20 responses to any statement made this morning or yesterday either by the
21 Prosecution or by the Defence or indeed by the Registry? The floor is
22 yours. You will share the time. So you will start, Mr. Keta.

23 MR. KETA (interpretation): Thank you very much, your Honour.
24 With the agreement of the other Legal Representatives, I am just going to
25 speak about the Registry's observations. I have three remarks.

1 The first concerns what I raised yesterday, the court's strategy
2 plan for security. In a second point I will raise the dual status of
3 victims and witnesses, and the third point will be common legal
4 representation, and this will be added to by my other colleagues.

5 With regard to my first point, generally taking into
6 consideration the objectives of the court and the Registry, we know that
7 the strategic plan has twin objectives. It is first underpinned by
8 providing a system that addresses all security and protection risks as
9 much as possible for all participants.

10 Second objective, it is to establish a system through which the
11 counsel who appear before the International Criminal Court are encouraged
12 to continue their activities in their country of origin.

13 Those are the two major objectives. These two objectives
14 necessarily raise the question of security in the country of origin, and
15 the problems -- what are the problems the counsel face? We have the
16 agreement on privileges and -- privilege and immunities and cooperation
17 with the State. For privilege and immunities, for the first point, and I
18 have faced it personally, when you go out into the field, you have a
19 certificate. The problem is how do you apply this document? If a
20 problem arises, how do you use this document? And finally, you have a
21 document which has no intrinsic value to protect you, because if you have
22 a problem, according to the principle of cooperation with States, it is
23 supposed that the State, in which case -- in this case the DRC, has to
24 set up mechanisms, in particular by contacting MONUC so that a maximum of
25 protection can be afforded, but I can assure you that on the ground this

1 raises issues.

2 As we proposed, we can discuss this problem in an ex parte
3 session, and perhaps we can examine concretely how a document issued to a
4 counsel on the ground can be used. Sincerely, I do not think that we can
5 use bodyguards or the Congolese State. Perhaps a mechanism should be
6 considered for entering into direct contact with MONUC, for example, but
7 when you submit such a document to MONUC, it has no impact. So I am
8 suggesting that this problem of security and protection be discussed in
9 an ex parte hearing if necessary.

10 My second point is with regard to the dual status of victims and
11 witnesses or witness victims, and this might raise a problem because this
12 is a hybrid system, that is the common and civil law systems.

13 I know that in the civil law system the witness-victim status can
14 be considered. For example, the Prosecutor examines a witness, and this
15 witness can come before -- can apply to the court, and in this case the
16 dual status is possible. But the victim-witness dual status can be a
17 problem.

18 I take the example of a victim who has appeared in court already.
19 Can the Prosecution then contact this witness outside of court? I think
20 that such a case is possible. I think that these two possibilities
21 should be clarified for future hearings.

22 Third problem is with regard to common legal representation, and
23 I'll be very brief, and my colleagues, the other Legal Representatives,
24 will add to this.

25 In my view, with reference to Rule 90, the problem of gathering

1 witnesses for common legal representation should take account of two
2 criteria, in particular gathering Legal Representatives based on the
3 original basic team.

4 You know that at the trial stage, according to the Registry, it
5 is provided that for Legal Representatives you have a lead counsel and a
6 case manager. So we do not have -- or we are not entitled to another
7 team member. However, there is leeway granted for -- granted for seeking
8 additional resources if there is a need to increase the size of the team,
9 but for the time being, the provision is one lead counsel and a case
10 manager.

11 There will be several teams. Suppose that we were ten Legal
12 Representatives. How do we work concretely, because we are tending
13 towards two teams, but on what basis would such two teams be formed?
14 That's the first problem.

15 The second problem is a proposal, in fact, that I'm making. I
16 think there should be grouping according to the specificity of the harm
17 that the victims have suffered. You have the category of children, young
18 women or women with specific types of harm. You have crimes against
19 property, and you have crimes against -- physical crimes. I think that
20 this is the consideration we should take. I do not think we should say
21 that you should have just one team or two teams.

22 These are my contributions for the proper administration of
23 justice. Thank you.

24 PRESIDING JUDGE COTTE (interpretation): Thank you, Mr. Joseph
25 Keta, for your three points.

1 Are there any other contributions? Mr. Diakiese, you have the
2 floor.

3 MR. DIAKIESE (interpretation): Ms. Bapita is very kind to allow
4 me to speak before her.

5 Thank you very much, your Honour -- your Honours. We are going
6 to talk about two small points. The first is obviously with regard to
7 the participation of victims, and the second is also with regard to
8 common legal representation. We are not going to repeat ourselves, we
9 assure you, but we shall add a number of questions to these issues that
10 raise more questions than it is possible to resolve.

11 When you gave me the honour yesterday morning to speak about
12 legal representation, Mr. President, we used a sentence that may have
13 been insulting but which is an underlying reality which will dog us,
14 which will dog our steps. We said that for some people the presence of
15 victims at the International Criminal Court is viewed as interference, a
16 sort of intrusion, as if it is a participation of unwanted guests and
17 undesirable elements. We can assure you that if the victims I represent
18 were to judge the need, the need to be -- the doubtful privilege of being
19 victims, I think they would say that for nothing in the world would they
20 have preferred to have this status. Unfortunately, due to circumstances,
21 they have been called to come before this court to seek justice.

22 And when we listened carefully to the two Defence teams, in
23 particular the Defence of Mr. Ngudjolo, Mr. Mathieu Ngudjolo as he would
24 like to be called, there was an allusion still with regard to the status
25 of victims which should be examined on a case-by-case basis, Chamber by

1 Chamber, stage by stage. This kind of legal trench warfare that we
2 continue stage by stage is beginning to raise some concerns in our minds.

3 Mr. President, your Honours, we are told that there's no
4 jurisprudence. Law is being built here. Proceedings are being created.
5 Let us not jump the gun.

6 On the other hand, when reference is made to redactions that
7 should be prohibited, you are told that there is jurisprudence.
8 Decisions have been issued in this or some other thing.

9 Let us not jump the gun. There is no clear position. Nobody
10 said that with regard to redactions. We should wait further. But when
11 it comes to victims, you're told, Let's not jump the gun. The
12 International Criminal Court does not yet have jurisprudence.

13 We were much reassured this morning when reference made by you to
14 something fundamental. You said that in spite of the existence of
15 various Chambers and various stages, there is only one court, this is the
16 International Criminal Court. And so, of course the Chambers have a
17 certain autonomy in determining matters submitted to them, but from all
18 indications, jurisprudence must be supported by circumstances that lead
19 the Chamber or court to take the appropriate position.

20 In this case we wonder when victims were agreed or accepted for
21 participation. In the confirmation phase these victims had to be -- had
22 to take part in the trial, and perhaps it would have been a good idea to
23 consider their participation. Put differently, although in the
24 confirmation hearing the question that was put to all of us was whether
25 there was substantial grounds to believe that the facts charged were

1 supposed to be the responsibility of the accused, then we were asked
2 whether the answer to this question was yes. And at the trial where we
3 have to determine this beyond a reasonable doubt, there is the
4 possibility that we might say, well, no, for the substantial grounds to
5 believe we might say all right, but beyond a reasonable doubt perhaps it
6 is not all right for us to participate.

7 We see, Mr. President, in this a recurrent, a recurrence of an
8 intent to have the victims play bit parts in spite of the Court's clear
9 positions at various stages in the proceedings.

10 I'll stop there for this issue, your Honours. I will take
11 concrete examples. The first is the application forms, applications for
12 participation filed by the victims. Now they have a specific question,
13 which is at what stage of the proceedings the victims intend to
14 participate. And the victims do say that. When they are admitted to
15 participate, how can they be asked at this stage, "You were at the
16 confirmation hearing and you answered this question in the forms, but the
17 Chamber would like to determine whether it is relevant for you to
18 participate because we have to examine this on a case-by-case basis."

19 We are talking about a single court. No Chamber would ever
20 consider, when Defence teams stand up to put questions, whether you agree
21 with your colleague and whether your colleague is speaking for your team,
22 because this is a unit and all the colleagues, all the Benches speak for
23 one cause. Why should we have a division of, an isolation of the
24 decision of the court, and why should the Chamber should ask to review
25 decisions based on a particular perception of what is a case-by-case

1 assessment?

2 This is the first point. We shall now move on briefly to the
3 second point, which is with regard to the question of grouping victims.

4 Before we go to that, a criticism was made or a fear expressed
5 that an impression was had that there were two Prosecutions, two -- for
6 example, you realised a while ago that the Prosecutor's team is not in
7 the same boat as that of the Legal Representatives of the Victims if you
8 see with what vigour the Prosecutor challenges some of the claims made by
9 the Legal Representatives of Victims. This is sufficient illustration
10 that perhaps protocol only dictates that we sit side by side. It does
11 not mean that we maintain the same viewpoints. The Statute, the Rules of
12 Procedure and Evidence have stated clearly and defined the real -- the
13 role that each party or participant should play. We are here to express
14 our views and concerns. We are not a substitute for the Prosecution, but
15 unfortunately we have been victimised and we have concerns to express.

16 We would like there to be grouping, but it is important that the
17 basis for such grouping is clear. As the Registry said, this has been
18 the subject of a lot of discussion amongst us. There are ethical
19 considerations connected to the mandate, the intuitu personae mandate
20 which was granted to us by our respective clients and which cannot be
21 transferred from one legal representative to another. There is the
22 question of the informed personal decision of the victims which requires
23 us how we should proceed, their criteria for determining this grouping.
24 And to conclude, when I read Article 90 -- or Rule 90, Rules 91 and 2 of
25 the Rules of Procedure and Evidence, it is as if such a grouping of

1 victims can be considered where a victim has not made a choice of legal
2 representative beforehand.

3 However, we agree that if each victim had to have a legal -- a
4 single legal representative, there would not be enough room in this
5 courtroom for us all. So there should be a grouping, but it requires
6 further discussions so that we can clearly and objectively decide how
7 this will be done for the interests of the victims and on the basis of
8 the concerns we have raised.

9 Thank you.

10 PRESIDING JUDGE COTTE (interpretation): Thank you. Ms. Bapita,
11 do you wish to take the floor?

12 MS. BAPITA (interpretation): Just to add something with regard
13 to common legal representation. I shall move on to part (b). I was
14 asked to take on part (b) of these questions based on the criteria that
15 your Chamber will define for a group or team of Legal Representatives,
16 who will be lead counsel, who will be assistant. And based on the
17 participation en masse of the victims and a fairly large number of legal
18 representatives, what criteria will you use to decide to group us in one
19 way or another. How many teams should we have so that we can have the
20 hearings in this courtroom?

21 Ms. Maryse Alie raised it in Lubanga. In the Lubanga case we had
22 two counsel and four victims, and in the Katanga case we have more than
23 54 victims and four counsel so far. Others will come. And this should
24 be dealt with on a case-by-case basis. But the major problem, you asked
25 us to discuss this, the question is how do you define roles? Who will be

1 lead counsel at the expense of someone else? And indirectly, this leads
2 a question for which I am -- which has never been elucidated. What is
3 the budget that is provided for the legal representative to enable this
4 legal representative to get organised within a team? Perhaps based on
5 the budget we could know on a case-by-case basis, on each case, and then
6 there is a number, and then there is a number of victims which can be
7 grouped according to certain criteria, and this is the amount of money
8 that will be provided for the legal representative during the trial, and
9 then the Registrar will know how to allocate these funds. But so far we
10 do not know the budget, and the question we have always raised amongst
11 ourselves is how are the finances going to be influenced by legal
12 representation? And based on Rule 92, this would concern only victims
13 who have not yet chosen counsel.

14 Mr. Diakiese said, and I agree, that we should meet so that we
15 should not have more than ten counsel in the courtroom, for instance.

16 The other point on side (b) of our list of questions, the work,
17 the Prosecution and Defence are talking about disclosures and several --
18 and a number of legal representations. But if we group together, we can
19 have common submissions at various points. And these are all matters
20 that can be discussed with our learned colleagues in the coming days.

21 However, with regard to investigation, I realised since this
22 morning that this is of concern to a number of people. I shall take the
23 liberty of saying that it is possible to present evidence. It is
24 possible to present witnesses or to call witnesses. What is not
25 prohibited is permitted.

1 When I look at the document of the sixth session of the Assembly
2 of States Parties, that is the report on the functioning on the Court's
3 judicial system and proposals for amendments. When I look at page 11 of
4 that document - this is document ICC-ASP-64 of the 31st of May, 2007 -
5 there is provision for this. You are given a budget, the investigations
6 before reparations and during reparations. Why not seize this
7 opportunity that is provided for in the instruments governing the court?
8 Because there is no jurisprudence for the victims? The court is
9 establishing the first jurisprudence for the participation of victims.
10 Give us the leeway to create this and make sure that the proceedings
11 advance.

12 It is based on these texts and the real need --

13 THE INTERPRETER: Would the speaker slow down, please. Would the
14 speaker please slow down.

15 MS. BAPITA (interpretation): This gives us a mandate to act, and
16 it is in light of all of these criteria that we consider that we can also
17 participate in investigations, and we shall do so under the supervision
18 of the Chamber and taking into account the Prosecutor's case so that we
19 do not present material that goes beyond the scope.

20 I have concluded. Thank you.

21 PRESIDING JUDGE COTTE (interpretation): We listened to you
22 attentively.

23 Mr. Jean Chrysostome Mulamba, would you like to take the floor?

24 MR. MULAMBA (interpretation): Mr. President, I agree with all
25 that my colleagues have said earlier on. It was important for them to

1 talk, so we listened to them.

2 PRESIDING JUDGE COTTE (interpretation): Mr. Hooper -- Mr. David
3 Hooper, do you have anything you would like to add, to reply or add, any
4 information to what was said either by the Prosecution or by the Legal
5 Representatives of Victims or by the representatives of the Registry?

6 MR. HOOPER: Thank you, Mr. President. I have nothing to add.
7 We can discuss with Mr. MacDonald his proposal in respect of reaching
8 agreement with particular classes of redactions. We're quite happy to
9 engage in that, and of course keep the Court fully informed as to our
10 progress and our methods, if they're agreed, in respect of that.
11 Otherwise, nothing further to add.

12 Thank you.

13 PRESIDING JUDGE COTTE (interpretation): Well, thank you.

14 Mr. Jean-Pierre Kilenda, do you and your team have anything you
15 would like to add?

16 MR. KILENDA (interpretation): We would like to leave this room
17 without creating polemics between anybody. We appreciate the courtesy of
18 this court; however, we have been excluded in some cases from the
19 courtroom. We will present ourselves every time necessary. Whenever a
20 judicial control is necessary, we will be satisfied with it concerning
21 this issue of redactions.

22 Secondly, we would like to reassure our learned colleagues in
23 front of us representing the victims. We never wanted them to play a
24 reduced role as regards this representation of victims.

25 We will probably send you an application in the coming hours.

1 Thank you very much.

2 PRESIDING JUDGE COTTE (interpretation): Thank you very much,
3 Mr. Kilenda. Thank you very much, especially for your mindset. I hope
4 it was properly understood by the Legal Representatives of Victims who
5 have shook their head, which shows that the spirit we're working in
6 should be constructive, which the most important thing out of all of
7 this.

8 Now, to bring this first status conference to a close -- and I
9 hope we have met our objectives here, I hope we have provided for an
10 exchange and information and enabled the Chamber to gather a lot of
11 information, not only information but proposals and suggestions also.

12 To close I would like to mention also, as regards the method,
13 that next week this Chamber will issue an order summarising all the
14 written documents it requires of the parties from this hearing at the end
15 of this status conference. We would like to ask you to wait until you
16 have received this order before filing the documents we have requested
17 during the hearing, except for the document for which we've already
18 requested a deadline, the document on redactions.

19 In our order we will set deadlines for the filing of all other
20 documents and for the filing of possible responses, and we also reserve
21 ourselves the right to request further written submissions on other
22 points once we have thought carefully about everything said during the
23 past two days as a lot of information was provided, and we will request
24 this if we require further clarifications.

25 It is now 4.08. We would like to thank all the persons who have

1 participated in the interpretation and especially those interpreting into
2 Lingala, who should have stopped at 4.00 but who accepted to continue.
3 Also, we thank the other interpretation teams and the court reporters and
4 the parties and participants in the proceedings, and the Registry, for
5 the very enriching contributions and the manner in which all spoke and
6 the tone in which the interventions were made.

7 The hearing is adjourned.

8 The hearing ends at 4.09 p.m.

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