

1 International Criminal Court

2 Trial Chamber I

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

4 Status Conference - Open Session

5 Thursday, 22 January 2009

6 The hearing starts at 10.00 a.m.

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

9 PRESIDING JUDGE FULFORD: Good morning. The parties and
10 participants are represented in the way set out on the court record, and
11 we observe that today for reasons which have been explained to us by
12 Maitre Mabilille the accused is not here.

13 The first issue that time constraints compel me to raise first,
14 and I would have preferred not to have to deal with this issue first, is
15 the subject of a photograph. Some tribunals have adopted the procedure
16 whereby at the opening of the trial a number of photographers
17 representing the press come into court when the court is assembled and
18 proceed to take photographs, certainly of the accused and possibly of
19 others.

20 I have tried to -- we have tried to take steps to avoid that in
21 this case, and although we wholly understand the reasons for
22 Mr. Lubanga's absence today, I had hoped to ensure that any photographs
23 of him would be taken this morning. However, as I say, he's not here.

24 Rather than having, as it were, the press corps generally coming
25 in to do this, the decision we have taken is that only one photographer

1 should be allowed into the court to take photographs, and to the extent
2 that's possible and with the consent of those who are in court today, we
3 propose to let the photographer into the Chamber now so that he can take
4 a photograph of the Judges sitting on the Bench and of counsel sitting in
5 their respective positions, but we do not intend to impose this on you,
6 ladies and gentlemen, and so if any of you object to having your
7 photograph taken, it will not be taken. So I'm going to ask you, please,
8 to indicate whether you mind a photographer coming into court now and
9 taking one or two photographs of you so there is an up-to-date record of
10 who is representing the parties and the participants.

11 Mr. Sachdeva, any views?

12 MR. SACHDEVA: Mr. President, we have no objection.

13 PRESIDING JUDGE FULFORD: Maitre Mabilille?

14 MS. MABILLE (interpretation): No objection, Mr. President.

15 PRESIDING JUDGE FULFORD: And for the representatives of the
16 victims?

17 MS. MASSIDDA: We have no objections, your Honour.

18 PRESIDING JUDGE FULFORD: Thank you very much.

19 (The Trial Chamber confers)

20 PRESIDING JUDGE FULFORD: That will happen in a moment. Before
21 it does, Maitre Mabilille, can I raise with you the issue of your
22 lay-client. Our view is that this is matter that is entirely for you and
23 him. The press would like an up-to-date photograph of the accused, I
24 suspect taken so that there's a shot of him sitting immediately behind
25 his counsel, and they would like to take that photograph, and only one

1 photographer will be allowed to do it, on Monday morning before the
2 Chamber sits. However, we are not going to attempt to make this
3 compulsory. So it's really a matter for you as to whether or not this is
4 something that you are prepared to cooperate with.

5 Would you be able to indicate now whether or not that's
6 acceptable?

7 MS. MABILLE (interpretation): Mr. President, the absence of
8 Mr. Lubanga here today is related to poor timing, because his wife whom
9 he has not seen for one year has just arrived and he wishes to be with
10 her, and that is why he is not here, and he asked me to explain to the
11 Court.

12 Now, on the question you asked me, I discussed it with our client
13 and I would like to tell the Chamber that we will be not be comfortable
14 with 15 photographers, for example, coming to take photographs of our
15 client. We think this is going to be a bit aggressive for the client,
16 and we made a proposal, which is the proposal you've just explained,
17 Mr. President, namely that one photographer should come and take his
18 photograph within a relatively short period of time. We, as the Defence
19 team, also feel that this issue of publicity is necessary even though it
20 may be unpleasant for our photographer -- for our client, but we do not
21 want to have a group of photographers coming to take photographs. We
22 think that one photographer coming is a good solution, Mr. President.
23 Thank you.

24 PRESIDING JUDGE FULFORD: Thank you very much, Maitre Mabilille.
25 Then that will happen, and I wish to stress that arrangements need to be

1 made for that sole photographer to be here well in advance of the Chamber
2 sitting on Monday morning so that the photograph can be taken before the
3 Judges come into court to sit, and there will be one photographer only.

4 Good. Can the photographer then please now be brought into court
5 to undertake this task.

6 Yes, Mr. Walleyne? No photographs at the moment?

7 MR. WALLEYN (interpretation): On photographs, Mr. President, we
8 feel that half of the legal representatives are still on their way.
9 Since the photographers are going to come back on Monday to take
10 photographs for the accused person, we think that that will be the right
11 moment for the other legal representatives to be photographed as well.

12 PRESIDING JUDGE FULFORD: Exactly the same will apply, then, to
13 the legal representatives of victims as is going to apply to the accused
14 on Monday morning. If there are representatives of victims who'd like to
15 be included in the group photograph, then they must be available in court
16 well before the time that we sit so that a photograph can be taken.

17 Good. Please take the photographs then.

18 Gentlemen, can we allow this to take place, please.

19 Good. Thank you.

20 Mr. Sachdeva, Maitre Mabilille, for reasons which in our view are
21 wholly understandable, has raised for a second time her desire to see our
22 reasons for lifting the stay of proceedings. Before our decision can be
23 made public and before it can be filed with the Defence, the Prosecution
24 needs to check a fairly extensive annex to ensure that by filing the
25 decision we are not breaching any properly founded security concerns.

1 Our proposal is to make that annex available to the Prosecution
2 immediately, and by that I mean now, so that that reading process can
3 commence straight away if this is going to be possible, because although
4 I cannot make any absolute promises, our hope is that our decision in
5 relation to the 54(3)(e) issue will be filed before close of play
6 tomorrow. Now, if the annex is made available within the next half an
7 hour, is there somebody from the Prosecution's team who can start
8 straight away start to check it so that we ensure that there is no breach
9 of security or confidentiality.

10 MR. SACHDEVA: Good morning, Mr. President and your Honours.
11 Yes, there is someone who can conduct that exercise.

12 PRESIDING JUDGE FULFORD: Thank you. Who should -- who should
13 the e-mail containing the annex be sent to?

14 MR. SACHDEVA: It can be sent to myself and Ms. Samson, and we
15 can forward it on.

16 PRESIDING JUDGE FULFORD: Right. So somebody will -- do you have
17 access to your e-mail accounts in court?

18 MR. SACHDEVA: Yes, we do, Mr. President.

19 PRESIDING JUDGE FULFORD: Good. That's very helpful. Thank you
20 very much. Expect an e-mail in the relatively near future. Thank you.

21 Now, Mr. Sachdeva, returning then to the agenda which I am sorry
22 was only made available very late yesterday evening, but it has taken
23 some time to put together because there has been a plethora of filings
24 over the last two or three days, but returning to the agenda, the first
25 issue is the use of visual aids by the Prosecution during the course of

1 its opening speech or statement.

2 Please help me with not the -- the maps, as I'm going to describe
3 them, but the -- the footage, the video excerpts which show various
4 people in different circumstances. Is each of those either a piece of
5 evidence or part of a piece of evidence that the Prosecution intends to
6 introduce during the course of the trial?

7 MR. SACHDEVA: Mr. President, those footages are indeed items of
8 evidence that we intend to tender during the trial.

9 PRESIDING JUDGE FULFORD: And are any of them -- is it proposed
10 that for any of them they should simply come from the bar table, or is
11 there in each instance a witness who is in a position to produce them?

12 MR. SACHDEVA: Mr. President, it is the latter. For the two
13 excerpts that we have identified, we intend to call a witness who would
14 authenticate those excerpts.

15 PRESIDING JUDGE FULFORD: Right. That's very clear. Thank you
16 very much.

17 Maitre Mabilille, is there anything else that the Defence would
18 wish to say about the Prosecution's proposal, therefore, to rely on those
19 video extracts and to rely on what I've described loosely as the maps?

20 MS. MABILLE (interpretation): As concerns the maps,
21 Mr. President, we have no objection. As concerns the video extracts, we
22 wrote to say that we do not agree for the following reasons: This is
23 evidence which we have not discussed adversarially, and for us we think
24 that the Prosecutor should not use such evidence.

25 I would like to add, Mr. President, to address the second point,

1 the Prosecutor also intends to use paragraphs of witness statements. We
2 have the same comment to make on that. We think that in the introductory
3 submission the only facts which should be stated should be facts which
4 were produced by the Prosecution team, not evidence. Thank you.

5 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I think I'm right in
6 saying that you thus far haven't had an opportunity to deal with the
7 point raised by Maitre Mabilille as regards the reading or the quoting from
8 witness statements. You should have the opportunity. Is there anything
9 in particular you'd like to say about that?

10 MR. SACHDEVA: Mr. President, that's correct. We have not
11 responded, and we take the opportunity now if that's amenable to the
12 Court.

13 With respect to the paragraphs in the witness statements, of
14 course it's not intended that the -- that the opening is not an
15 evidence-taking session. It is simply a description of the anticipated
16 evidence of Prosecution witnesses, and in that regard and as I understand
17 it in other international tribunals, such conduct has been -- has taken
18 place before. And with respect to the ERNs that are retained in some of
19 the infographics, the Prosecution is happy to remove them if that's
20 required by the Court.

21 PRESIDING JUDGE FULFORD: Can you help me what the problem is
22 with the ERN numbers, Mr. Sachdeva? There is, I suspect, some kind of
23 technical issue in relation to this or an issue of formality which I'm
24 afraid has completely passed me by. What do you understand to be the
25 difficulty with the ERN numbers being referred to?

1 MR. SACHDEVA: Mr. President, I think it is that. It is -- it is
2 simply a matter of registration or formality. I don't think there's an
3 issue with the ERNs. We can remove them if that's required.

4 PRESIDING JUDGE FULFORD: I mean, we had -- we had proceeded on
5 the basis that there had been an agreement between the Prosecution and
6 the Defence that ERN numbers were not going to be referred to during the
7 course -- that ERN numbers were not going to be referred to during the
8 course of the opening. Because this had been agreed, we simply accepted
9 the stance that the parties had appeared to have arrived at, but now
10 there is an issue on this can I put this question: Is it that there is a
11 fear that if the ERN number is referred to somehow the reference to it in
12 the opening then becomes evidence?

13 MR. SACHDEVA: I suspect that's a fear, but we're happy to remove
14 them. It's not -- I understand there was an agreement, and it's not
15 required to -- to further our presentation. We just thought it might be
16 of assistance to the Court.

17 PRESIDING JUDGE FULFORD: Absolutely. To have a reference point
18 to where the evidence that's being referred to comes from. Good. All
19 right. Thank you, Mr. Sachdeva.

20 Maitre Mabilie, we will give our decision on this after the break
21 midmorning today, but could I ask for your assistance on one matter. Am
22 I right in anticipating that your fear in relation to ERN numbers is that
23 if they are referred to during the course of the opening statement that
24 that may in some way elevate the evidence that's been referred to into
25 evidence that has been presented during the course of the trial

1 proceedings?

2 MS. MABILLE (interpretation): Yes, Mr. President. That was our
3 concern, and on this point we had an agreement with the Prosecutor which
4 was based on the fact that we were not going to use the ERN. Now, but
5 the point is, is it normal to use evidence which has not yet been entered
6 as evidence in the initial submission. That's our concern.

7 PRESIDING JUDGE FULFORD: Thank you very much indeed.

8 We want to turn next, in fact, missing for a moment point 2 to
9 point 3, the issue of public and closed sessions and the potential
10 problem that we referred to during the course of the last status
11 conference, namely the difficulty for the court in moving between closed
12 and open session when issues of confidentiality need to be addressed.

13 It has been brought to our attention when we investigated this
14 matter further that there is in fact a very simple and straightforward
15 solution to the entire problem. If each team identifies a group which is
16 no larger than 20 who are entitled properly to receive the realtime
17 transcript, and I underline that word, the realtime transcript, if that
18 is done so that the Registry knows who is entitled to receive the
19 transcript, then we can move, I'm informed, between open and closed
20 session in a matter of moments.

21 Therefore, the proposal that we have is this: that at some stage
22 during the course of today, if this is acceptable to everyone, that list
23 is drawn up, that in advance of a witness being called we are informed as
24 to whether or not there are issues that will require the Chamber to sit
25 with the public being excluded so that if possible those elements can be

1 dealt with all in one go at the beginning, but this will mean that we
2 won't have to resort to the device of having the witness's personal
3 details written down on a piece of paper, because we will be able to do
4 that orally having speedily moved into closed session to begin with and
5 then moving into public session at an appropriate stage thereafter.

6 There's an advantage to that in that there may be problems for
7 some witnesses in being able to read and fully understand what has been
8 written down. So I think there are distinct advantages in doing this
9 orally rather than in writing.

10 Now, that is the general suggestion that we make. Any
11 observations, Mr. Sachdeva?

12 MR. SACHDEVA: Mr. President, the Prosecution accepts that
13 suggestion and, in fact, once it's been established that we can move from
14 closed session into open session on that fashion then that is the best
15 course of action. And in fact, the orders that we have to provide the
16 details of the witnesses and schedule of the witnesses every Friday, we
17 would intend to also indicate to the Chamber any issues that may be
18 required to go into closed session.

19 PRESIDING JUDGE FULFORD: Thank you very much indeed.

20 Maitre Mabilille?

21 MS. MABILLE (interpretation): Mr. President, well, we don't have
22 any problem with that, but we will reflect on this and see what potential
23 difficulties may occur, but for now we find it to be a good solution.
24 Well, unless there is something more concrete that may come up. Thank
25 you, Mr. President.

1 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
2 conscious that, in a sense, this has been sprung on you, Maitre Mabilie,
3 and if you have on mature reflection any concerns with this proposal, of
4 course come back to us and we will see whether we can sensibly resolve
5 them.

6 One ingredient of which I'm conscious is that we are therefore
7 requesting the Defence, in advance of the witness coming into court, to
8 identify the issues which may require us to go into closed session being
9 highlighted in advance. And consistently with other submissions that
10 you've put in on other topics, it may be that there will be an objection
11 to that. Can I ask you to focus on it, because I make it clear our
12 preference would be to have advance warning in relation to those issues
13 so that they can be dealt with all at the same time rather than having to
14 keep moving between open and closed session, and I think if that happens
15 to too great an extent, it will render the trial process -- it will tend
16 to render the trial process more artificial than it should be. So that
17 is our preference but we give you, of course, an opportunity on mature
18 reflection to come back to it.

19 MS. MABILLE (interpretation): I have just one point on this
20 topic. We have given thought to the matter because the matter has
21 already been raised. We, the Defence, are going to do all that we can to
22 try and avoid this problem. We understand the difficulties involved in
23 moving from an open session to a closed session. However, this will
24 depend on us being in a position to anticipate the need for such a
25 situation, but that is all that we can undertake to do today.

1 PRESIDING JUDGE FULFORD: And there may be issues that arise
2 which you haven't anticipated, and if that happens, then we will simply
3 have to deal with them at the time. But it's a matter of trying to make
4 all sensible arrangements that are possible in advance. Thank you very
5 much.

6 Issue 4 is the whole issue of pre-trial disclosure by the
7 Defence.

8 Mr. Sachdeva -- Mr. Sachdeva, we've received your filing in
9 relation to this. The Defence for their part have indicated that at this
10 moment in time no firm decisions have been made in relation to advancing
11 any positive case at all as opposed to testing your case. Our view, in
12 those circumstances, is that if that is the position, that is the
13 position; and if the Defence have not made up their minds in relation to
14 a positive case, we cannot seek to go down the road of seeking to compel
15 them to reveal something which they have not made a decision about. So
16 unless you have any further submissions in addition to those set out in
17 writing, I think that is the actualite.

18 MR. SACHDEVA: Nothing further, Mr. President.

19 PRESIDING JUDGE FULFORD: Maitre Mabilille, as and when or if --
20 let me start again. If the Defence position on this does change, of
21 course for the purposes of proper trial management we will be grateful to
22 have as much advance warning as is possible.

23 Point 5, the organisation of the legal teams of those acting for
24 the participating victims. We have been greatly assisted by the various
25 submissions or filings that have been made. It is clear, I think, that

1 there is no issue over the proposals that have been made which, really to
2 summarise them in the shortest possible way, is as follows: There will
3 be two teams principally. The OPCV will represent four participating
4 victims outside of those two teams. In normal circumstances there will
5 be only one counsel per team in court together, possibly, with the case
6 manager, although it is recognised that there may be occasions when
7 exceptionally there will be additional members -- or additional members
8 of the team or additional counsel present, for instance, during the
9 opening statements.

10 If any problems arise or if any problems are anticipated, please
11 bring them to our attention at the earliest possible stage.

12 Anything else from anyone on this? No. Thank you.

13 I'm told that I'm working to different numbering than everyone
14 else, so I will stop referring to numbers.

15 The next issue that we propose to deal with has been raised by
16 the Defence, and it concerns the disclosure of any evidence that the
17 legal representatives intend to present.

18 Mr. Walley, if I can address the representatives of the victims,
19 and for these purposes I include Ms. Massidda. At this point in time,
20 there have been, I think, no applications by participating victims either
21 to ask questions of witnesses or to introduce documents. It's probably
22 going to be unhelpful to try to set down definite, rather mechanistic
23 time periods within which those steps should be taken if there are going
24 to be applications, but what is important is that there is good notice of
25 applications of this kind so that the parties have an opportunity to

1 consider them, so that they can put in any written or oral observations
2 on them, and so the Chamber can have an opportunity to issue a reasoned
3 decision. So the more warning you give us, the better of chances on your
4 application for this reason: If it is too late for us to resolve it
5 reasonably, it may be for that reason alone we're going have to refuse
6 it. So the onus is on you to make sure that everyone has got sufficient
7 advance warning.

8 Now, is there anything you wish to say on that observation?

9 MS. MASSIDDA: Can we confer for one minute, your Honour?

10 PRESIDING JUDGE FULFORD: Of course, Ms. Massidda.

11 (Legal representatives confer)

12 MR. WALLEYN (interpretation): Your Honour, I think that the
13 Bench will appreciate that we do not find ourselves in ideal
14 circumstances today to respond to a question of this type in specific
15 terms, because it is only recently that we have obtained parts of the
16 dossier, and we will need a number of weeks to analyse them.

17 We do understand that as regards evidence that legal
18 representatives should give notice to the Defence and to the Prosecution
19 and to the Bench in advance before producing evidence, but we are not in
20 a position to provide a list of evidence before the commencement of the
21 trial under the current circumstances, so we need a period of time.

22 We suggest that the decision be taken at the end of the
23 Prosecution case or the presentation of Prosecution evidence, because it
24 is possible that evidence which we would like to tender will already have
25 been tendered by the Prosecution. So it might be reasonable to await the

1 completion of the Prosecution case and to give the legal representatives
2 time to reflect on the matter and then to approach you about the
3 presentation of supplementary evidence.

4 Turning now to the matter of questions put to witnesses. We
5 think that based on our reading of witness statements, we will be in a
6 position to ascertain which -- in which witnesses we have an a priori
7 interest. If, for instance, the Prosecution were to announce the list of
8 witnesses to be called the following week, we would undoubtedly be in a
9 position on the Monday morning to state that such and such a legal
10 representative wishes to put questions to such and such a witness.

11 Now, as regards the actual list of questions, that is a trickier
12 matter because it will very much depend on what the witness actually says
13 in court. It might well be the case that in the wake of an examination
14 lasting a number of days that all of the questions which we would want to
15 put will have been put. It may also be the case that there are questions
16 which arise that we would like to put during the examination, for
17 instance, that we only realise in court that the witness has knowledge of
18 matters which are of interest to one or the other of the victims. So I
19 think that we will need to be reasonably flexible.

20 That said, it is not at all our intention to take the Defence by
21 surprise, and we shall do all that we can, first of all, to state in
22 advance that on the face of things we do not intend to put questions that
23 week or on the contrary, that we do have an interest in, for instance,
24 Witness 2 and 5, and that said, we would ask of the Bench that they allow
25 us the possibility, even in exceptional circumstances, of putting

1 questions when required.

2 PRESIDING JUDGE FULFORD: You have been faced with some
3 difficulties. We've said in the past that we are acutely aware of them,
4 and we will make due allowance for them.

5 There is undoubtedly a need for flexibility. Some things can be
6 anticipated sensibly in advance, some things can't be, and, Mr. Walley, n,
7 we're obviously going to allow for that. Also, this isn't a
8 once-and-for-all process. It may well be that as the trial unfolds it
9 will become clear to those who are representing the victims that there
10 are pieces of evidence, documents, whatever, that you haven't originally
11 appreciated as being relevant and helpful but which, latterly, you
12 believe to come within that category.

13 So what we ask of you is that to the extent that it is possible
14 to anticipate these things in advance, to give the Judges and the parties
15 advance notice and good advance notice. So for witnesses, I hope you now
16 have their statements, and although you can't anticipate everything
17 they're going to say, you have a very good idea as to what the
18 Prosecution anticipates they are going to say and -- well, all right.

19 But, Mr. Walley, n, I'm not going to fence on this. You need
20 insofar as you can to have given us notification in advance of the areas
21 that you wish to explore with the witnesses. We will understand if there
22 are some things that arise during the witness's examination by others
23 that then lead you to want to develop other lines. You will have to give
24 us notice of that, but it may be it will be shortly before you ask the
25 questions. So there will be flexibility, but you also have the

1 responsibility of furnishing the Chamber with as much as possible in
2 advance.

3 Now, I hope that's reasonable and clear.

4 MR. WALLEYN (interpretation): Yes, your Honour. I think that it
5 is clear. And I also think that we will be in a better position to
6 anticipate developments as the trial moves forward. I believe that it
7 will be the first weeks of the trial that will be the most difficult for
8 us, not least because the witness statements are voluminous. They're not
9 easy to work through. There are also translations. There has been the
10 involvement of interpreters. So we will need some time to prepare, but
11 as soon as we have our case manager and as the trial moves forward we
12 will be in a better position to anticipate these developments and we will
13 make efforts.

14 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
15 Mr. Walley, so that the accused understands it is that we are, of
16 course, acutely conscious of the -- the objections which currently exist
17 to the way in which it is anticipated this may unfold, and in addition to
18 that, there may be detailed and specific objections to applications made
19 by the victims to participate either by introducing evidence and by way
20 of asking questions, and we will have to deal, and we should deal with
21 those objections as and when they arise in relation to individual
22 witnesses and individual pieces of evidence once the Chamber has received
23 notice of them.

24 MR. VAATAINEN: Mr. President.

25 PRESIDING JUDGE FULFORD: In a moment, Mr. Vaatainen.

1 Maitre Mabilie, I don't want to shut you out, of course, from
2 this discussion. What we're seeking to do is put you in the position
3 where you have got the maximum possible notice of what it is that the
4 participating victims wish to do, but I'm afraid as of today we are
5 obviously not in a position to make any rulings on any particular form of
6 intervention because we haven't at the moment received any applications.
7 But that said, is there anything else that you would wish to say on this
8 issue at this point in time without in any way prejudicing your
9 opportunity to come back to this issue once we've received specific
10 applications?

11 MS. MABILLE (interpretation): My colleague Jean-Marie Biju-Duval
12 will take the floor.

13 MR. BIJU-DUVAL (interpretation): If I might have a moment,
14 your Honour. I won't refer to the importance of due notice being given
15 to the Defence of ad hoc applications made by the victims. I would like
16 to address the suggestion which has been made by my learned friend
17 Mr. Walleyne. He has suggested that at the end of the presentation of the
18 Prosecution case the victims then be allowed to ascertain what evidence
19 they might wish to produce.

20 We are not in favour of this. Mr. Walleyne seems to be envisaging
21 a trial in three parts rather than in two parts. That means that there
22 would be two trials against the accused. That is the first led by the
23 Prosecutor and then at the close of the Prosecution case a trial by the
24 legal representatives who would also produce evidence. If I'm not
25 mistaken, this is what Mr. Walleyne is suggesting.

1 I don't think that the Bench could -- may contemplate such a
2 procedure which is contradictory to the Statute and the basic texts.
3 Legal representatives may request to participate occasionally during the
4 presentation of evidence by the Prosecution and the Defence, but their
5 role is not to act as a third party in the proceedings.

6 This is the simple contribution I wanted to make, your Honour.

7 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
8 That, as it were, puts down the marker, and we will come back to this
9 topic as and when there is something concrete before us in relation to
10 which we can make a ruling.

11 Now, Mr. Vaatainen.

12 MR. VAATAINEN: Mr. President, thank you. Just a small practical
13 point in relation to what Mr. Walleyne raised. This will have an impact
14 on the familiarisation protocol. As your Honours are well aware, the
15 courtesy meeting between the lawyers questioning the witness will take
16 place just before the in-court familiarisation, which takes place before
17 the witness starts reading his or her statements, which takes before
18 quite a few days in advance of testimony. So in this regard, the
19 decision on who is to authorise us the questions the witness would be very
20 important for us to know or an alternative mechanism will need to be put
21 in place for the courtesy meeting.

22 PRESIDING JUDGE FULFORD: Mr. Walleyne, you'll understand the
23 importance of that. However, that should not lead you to take an
24 overcautious approach which then results in you indicating that you
25 intend to ask questions of all witnesses so that you can be present at

1 each and every one of the familiarisation processes. That would
2 completely defeat the object.

3 Can you try, if you can, to make proper decisions in advance
4 as -- in advance of that familiarisation process and find out from
5 Mr. Vaatainen as to when it's anticipated that will take place for each
6 witness so that if you should -- if any of you should be participating,
7 and properly participating, you're there. So there needs to be a degree
8 of sensible liaison, please, between those representing victims and the
9 Victims and Witnesses Unit in this regard. All right?

10 Yes, Ms. Massidda.

11 MS. MASSIDDA: Sorry, your Honour. Actually, I did. I expressed
12 the intention, and I think it was also -- I sent an e-mail to Ms. Godart
13 yet. I'm thinking to question the first five witnesses, and I sent this
14 information to the Trial Chamber yesterday and to the Victims and
15 Witnesses Unit, because the Victims and Witnesses Unit requests to me my
16 intention to question or not.

17 Now, is for the Chamber sufficient the indication of the
18 intention to question or not. This is our problem.

19 PRESIDING JUDGE FULFORD: I'm going to interrupt you,
20 Ms. Massidda. It is not enough. We will need not only the expression of
21 your intention, but we will also need to be in a position to make a
22 decision as to whether or not the application is well founded. So you
23 will have to give sufficient chapter and verse to enable us to able us to
24 decide whether or not we're going to allow you to ask questions.

25 MS. MASSIDDA: Thank you, your Honour. We are - and I'm speaking

1 of myself - we are in the position to identify the areas in which I will
2 be interested to question the witness. This we can do. We cannot
3 anticipate the questions because it could be, and it probably will be the
4 case that the Office of the Prosecutor will cover all the aspects. So we
5 can identify the areas, but we cannot identify the exact questions at
6 this point in time. Would this be sufficient for the Chamber to take a
7 decision?

8 PRESIDING JUDGE FULFORD: Ms. Massidda, it would be completely
9 unrealistic for us to ask you to produce a list of question by question.
10 That would be absurd. But that is not to remove from you the obligation
11 of giving us real information as to the areas that you wish to explore
12 and the basis on which you wish to explore those -- those areas. So
13 there has got to be an element of flexibility but an element of real
14 explanation, and the shorter the description, Ms. Massidda, the greater
15 the likelihood the application will be refused. So we've got to have a
16 proper foundation for making a decision. And please remember that the
17 Defence and the Prosecution have got to have an opportunity to intervene
18 as to whether or not what is proposed is appropriate.

19 So I come back to the necessity of this being done in a timely
20 fashion.

21 MS. MASSIDDA: Thank you, Your Honour. On our side we are trying
22 to file something by at the latest tomorrow morning. Thank you. For the
23 first five witnesses. Thank you.

24 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

25 MR. SACHDEVA: Mr. President, if I may. We understand the need

1 for flexibility. Our point is simply that we would like to ensure that
2 our witnesses are not recalled unnecessarily. That really is the concern
3 that we have.

4 PRESIDING JUDGE FULFORD: Particularly if a witness has returned
5 to the DRC, Mr. Sachdeva, I anticipate that any application to recall
6 will be quite a difficult one.

7 MR. SACHDEVA: Yes, Mr. President.

8 PRESIDING JUDGE FULFORD: One should never say never, but we
9 would require, I anticipate, a certain amount of persuading.

10 Mr. Vaatainen, can you please keep the Chamber closely informed
11 as to how this is working out in practice and whether problems are
12 arising as regards the witness familiarisation process. We understand, I
13 think, the difficulties that are going to exist for witnesses and the
14 undesirability of further complicating this whole procedure for them. So
15 please inform us at the earliest opportunity if problems arise.

16 MR. VAATAINEN: Yes, Mr. President. I will certainly do so.

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 Next, Rule 134(2).

19 Maitre Mabilie, we are grateful to you for the indication that
20 you have given to the Chamber, which is, as I understand it, that you are
21 content for me to ask you today as to whether or not there are any
22 matters that you wish to raise under that sub-rule and that your
23 indication is that although there are certain observations which you wish
24 to make during the course of your opening statement, there are no
25 specific representations that you wish to make under the sub-rule. Is

1 that correct?

2 MS. MABILLE (interpretation): That is correct, your Honour.

3 PRESIDING JUDGE FULFORD: Anything from you, Mr. Sachdeva?

4 MR. SACHDEVA: No, Mr. President.

5 PRESIDING JUDGE FULFORD: Thank you very much.

6 Turning next to Article 64(8)(a). I am sure that it is entirely
7 unnecessary for me to ask Maitre Mabilille whether she has explained to her
8 client the nature of the charges he faces and has ensured that he
9 understands them. If the answer to that question is that both of those
10 things are in the affirmative, Maitre Mabilille, my proposal is to -- on
11 Monday for me simply to confirm with you that that is the position.

12 MS. MABILLE (interpretation): I have no difficulty with that,
13 your Honour.

14 PRESIDING JUDGE FULFORD: Thank you very much. Maitre Mabilille, a
15 part of this, of course, is the opportunity for the defendant to make an
16 admission of guilt in accordance with Article 65 or to plead not guilty.
17 I think it is likely that we won't focus on all of the particular and
18 separate aspects of this sub-rule. I will simply ask you whether all of
19 the matters contained with -- within the article have been set out and
20 explained to the accused to your satisfaction and to ask you whether
21 there's anything that you would wish to say about that article at this
22 stage.

23 MS. MABILLE (interpretation): I have no comment on that. Thank
24 you, Your Honour.

25 PRESIDING JUDGE FULFORD: Good.

1 Rule 94, notification of victims' applications for reparation.

2 I was led to believe that there may be an update.

3 MS. BONNET (interpretation): Your Honour, good morning. The
4 Registry has received seven applications -- has received an application
5 for reparations. This was made by a victim who is currently
6 participating in proceedings. On the 7th of May, 2008, the Chamber
7 indicated that it would first ascertain whether the person had the status
8 of a participating victim and later to deal with an application for
9 reparations. The Chamber felt that the application for reparations
10 should be provided to the parties for their comment at a later stage in
11 the proceedings.

12 On Friday the Chamber asked the Office of the Prosecutor to draw
13 the attention of the Registry to Rule 94(2), which was done. Rule 94(2)
14 stipulates that: "At the opening of the proceedings and subject to
15 the -- at the commencement of the trial and subject to any protective
16 measures, the Court shall ask the Registrar to provide notification of
17 the request to the person or persons named in the request or identified
18 in the charges and, to the extent possible, to any interested persons or
19 any interested States. Thus those notified shall file with the Registry
20 any representation made under Article 75, paragraph 3."

21 The Registry has received notice from Mr. Lubanga's Defence in
22 advance of the commencement of the trial opening on the 26th of January.

23 As no decision has yet been taken regarding requests for
24 protective measures for participating victims, the Registry shall provide
25 those applications in redacted form in the same way as the applications

1 for participation have been provided to the Defence team in redacted form
2 with the exception of Victim 2/06, in the case of whom the application
3 and identity has been disclosed fully to the Defence.

4 VPRS has made its redactions based on the usual guide-lines of
5 the Chamber. At this point in time the Registry does not plan to
6 disclose the applications or notify the applications to other
7 individuals. The Registry does not believe that at this point in time
8 the notification of the applications to another person or a state is
9 necessary at this point in time. We shall continue to analyse the
10 situation and shall inform the Chamber if a person or a state were to be
11 notified.

12 Finally, the Registry believes that any application for
13 reparations which is received during the proceedings should be notified
14 to the Defence and to interested persons as and when they are received.

15 These are my submissions.

16 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Bonnet.

17 Anything on this, Mr. Sachdeva?

18 MR. SACHDEVA: Nothing, Mr. President.

19 PRESIDING JUDGE FULFORD: Thank you. Mr. Desalliers.

20 MR. DESALLIERS (interpretation): Well, I have one concern, your
21 Honour. Now, if applications for reparations are notified to the Defence
22 next Monday, then we understand that they would be notified in redacted
23 form, except that we hope that there will be applications which will come
24 from witnesses which also -- who also have the status of victim, and with
25 the order of victims, order of witnesses which is presented, this may

1 prejudice the defence -- the preparation of the defence, because we will
2 not be able to know whether these applications will relate to any of the
3 victims who are also going to give testimony as witnesses.

4 Of course the Defence team does not wish to get this information
5 just for the mere pleasure of receiving them. We want to get them
6 because we feel that they will be relevant to the preparation of
7 questions that we are going to put to the Defence.

8 Well, that's the comment we'll have to make on this point for
9 now, but since the trial will be starting on Monday, I think these issues
10 have to be addressed. The Defence has to be provided with all the
11 applications for reparations sent by victims who are going to be
12 witnesses in this case.

13 PRESIDING JUDGE FULFORD: I suspect this is another of those
14 issues that we're really only going to be able to address properly once
15 we've seen the material. So again I think the most sensible way of
16 dealing with this is to, as it were, to park this issue, to thank you for
17 that introductory submission, and to say that once these forms or
18 applications have been served, we will then revisit the issue. Can I ask
19 the VPRS to make sure that we are included in any filing in this regard,
20 and if there are any particular issues as regards protective measures for
21 participating victims that need to be brought to our attention, that that
22 is done in a -- in a very clear way.

23 Thank you. Mr. Walley.

24 MR. WALLEYN (interpretation): Thank you, your Honour. The legal
25 representatives have no problem with the proposal made by the Registry,

1 but we think that it will be useful to receive the proposed redactions so
2 that we can verify to make sure that there are other elements which may
3 have escaped the notice of the VPRS. I think that will equally address
4 the concern raised by the Defence team. Thank you.

5 MS. MASSIDDA: (Previous translation continues) ... that for the
6 four clients that I -- we represent during trial, a request for
7 reparation will be filed in due course and I see no objection in
8 providing the unredacted version to the Defence.

9 PRESIDING JUDGE FULFORD: Thank you. There needs to be an
10 element of liaison between those representing the victims and the VPRS,
11 please, so that there is the fullest proper exchange of information.

12 Now, Ms. Massidda, we need to deal next with the suggestion that
13 you've made in an e-mail that you should be present during the process of
14 familiarisation when the four participating victims who you act for are
15 going through that process. Is that not right?

16 MS. MASSIDDA: I'm very sorry, your Honour, but I do not recall
17 any such e-mail --

18 PRESIDING JUDGE FULFORD: 21st of January.

19 MS. MASSIDDA: -- on our part.

20 PRESIDING JUDGE FULFORD: Presence by you at the courtesy meeting
21 of the familiarisation of witnesses.

22 MS. MASSIDDA: Sorry, the courtesy meeting. I was thinking the
23 familiarisation process of the four victims. Yes.

24 PRESIDING JUDGE FULFORD: Anything else you want to say about
25 that?

1 MS. MASSIDDA: No, your Honour.

2 PRESIDING JUDGE FULFORD: Thank you. Does anyone else wish to
3 make any submissions on this point? Seemingly no.

4 We will give a short ruling on that after the break.

5 Mr. Sachdeva, we have had some problems with the way in which the
6 Prosecution's witness statements are filed within Ringtail. I am going
7 to ask you, please, today to make available a member of your team who is
8 fluent with Ringtail, who can go to the office of my and
9 Judge Blattmann's secretary together with a representative of the
10 Registry so the problem can be demonstrated to you and so that individual
11 can reveal instantly where we've been going wrong.

12 MR. SACHDEVA: I'm happy to do so, Mr. President.

13 PRESIDING JUDGE FULFORD: Thank you very much. We'll fix a time
14 during the break. Thank you very much.

15 We need to indicate that on the 15th of January there were two
16 relatively short ex parte status conferences. One involved the Registry
17 only in which we were given up-to-date information as regards the
18 position of individuals within the DRC who may become what I'm going to
19 describe as Court witnesses, and this is particularly witnesses who, on
20 the face of it, provide exculpatory evidence but in relation to whom
21 there was an outstanding issue as to whether or not they would cooperate
22 with the court by coming to give evidence.

23 We have heard submissions in relation to that, and in due course
24 there will be a decision from the Chamber on that issue.

25 The second Status Conference was with the Prosecution, and it

1 concerned an issue in relation to disclosure.

2 These were both Status Conferences which in our view were wholly
3 appropriately dealt with on an ex parte basis, and to the extent that any
4 result needs wider dissemination, there will be written indications of
5 the necessary information in the relatively near future.

6 There are some additional matters that have been raised by the
7 Prosecution. Mr. Sachdeva, I have a note that there is a request to use
8 an official map of the DRC and neighbouring countries in the course of
9 your opening statement. Is that right?

10 MR. SACHDEVA: That's right, Mr. President.

11 PRESIDING JUDGE FULFORD: Yes. Are there any objections to this?
12 No. Good.

13 You have our leave.

14 Secondly, we understand that you wanted to raise an issue in
15 relation to your experts, Mr. Sachdeva.

16 MR. SACHDEVA: We do, Mr. President, and with your leave, may I
17 hand over to Ms. Samson to address that issue.

18 PRESIDING JUDGE FULFORD: Certainly.

19 MS. SAMSON: Thank you, Mr. President, your Honours. The issue
20 is that the Prosecution has been guided by the Trial Chamber's direction
21 to carefully scrutinise the evidence on its witness list in order to
22 ensure appropriate length of examination-in-chief. That process is under
23 way. In connection with it, the Prosecution intends to reduce the
24 estimated length of the examination-in-chief of the Prosecution witness
25 Mr. Prunier by calling Mr. Prunier, tendering his report into evidence

1 and asking minimal questions thereafter. The witness will be available,
2 of course, for further questioning by the Defence, the participants and
3 the Court as appropriate. This is one of the first measures that we're
4 taking in order to follow through with the Chamber's guidance.

5 PRESIDING JUDGE FULFORD: Right. Well, thank you very much for
6 making the suggestion. I'm not going to ask the Defence to respond
7 straight away because they will need time to reflect on this.
8 Mr. Prunier is witness number 3.

9 Ms. Mabilie, if it's convenient, would you please indicate by
10 close of play on Friday whether you have any objections in relation to
11 that proposal and if you would wish to be heard on the issue.

12 MS. MABILLE (interpretation): Your Honour, the Office of the
13 Prosecutor came to discuss this matter with us at the beginning of the
14 hearing. In principle we have no objection to it.

15 PRESIDING JUDGE FULFORD: Well, in those circumstances, we will
16 assume that this proposal is acceptable unless we hear to the contrary by
17 4.00 p.m. on Friday. So if there's no filing by then, Ms. Samson, you
18 may take it that Mr. Prunier will simply be tendered for questioning in
19 the first instance by others.

20 I assume that you would wish to preserve your right to ask
21 questions after the -- those representing the victims and the Defence
22 have asked questions.

23 MS. SAMSON : Thank you, yes. That's indeed correct,
24 your Honour.

25 PRESIDING JUDGE FULFORD: Good. All right.

1 Maitre Mabilie, you have raised certain issues as regards the
2 need to avoid contact between some of the Prosecution witnesses and, in
3 particular, Witnesses 298 and 299. Are there any particular submissions
4 that you wish to make in that regard?

5 Yes, of course.

6 MR. DESALLIERS (interpretation): With your permission,
7 your Honour. I would simply like to state that the situation of these
8 two witnesses is quite particular. These two witnesses are very related,
9 and their testimony relates to facts that are related as well. Of course
10 the Defence is not in a position to tell whether the witnesses have had
11 any contact with each other since they gave their statements, but we
12 think that there is need to prevent any contact between them. Our
13 concern is that since there is this relation between them, it would be
14 appropriate for us to ensure that the statements or the testimonies of
15 the two witnesses should be done in a situation where they don't have any
16 relationship with each other.

17 These two witnesses, as we understand, have been placed under the
18 responsibility of the VWU, and so what the Defence team would like is
19 that measures should be taken to ensure that when one of these witnesses
20 is giving testimony, the other should not be made aware. And when the
21 two witnesses are called to give testimony, measures should be taken to
22 ensure that they do not have any contact at all with each other to ensure
23 that their testimonies are not tainted. And so the Defence wish to raise
24 this issue, especially as these witnesses are going to be giving
25 testimony next week as the trial opens. And so the Defence wishes to

1 bring this to the attention of the Chamber and to make the request which
2 I have just put forward.

3 PRESIDING JUDGE FULFORD: Mr. Vaatainen, obviously you've got to
4 be cautious, but is there anything that you can say in open court
5 relevant to the submissions just made by Mr. Desalliers?

6 MR. VAATAINEN: Mr. President, I don't want to say anything in
7 open court other than to say that we are in a position to facilitate
8 whatever decision the Chamber would wish to take on this regard.

9 PRESIDING JUDGE FULFORD: We'll hear from you in due course
10 ex parte, Mr. Vaatainen. Thank you.

11 We will address the concern that you've raised, Mr. Desalliers,
12 and in due course let you know our answer. Thank you very much.

13 Mr. Walleyne?

14 MR. WALLEYN (interpretation): With your permission, your Honour,
15 I would like to make some comments on these matters, submit them in
16 writing.

17 PRESIDING JUDGE FULFORD: How long is it going to take you to do
18 that, Mr. Walleyne?

19 MR. WALLEYN (interpretation): (No interpretation)

20 MR. VAATAINEN: Mr. President, we would have a problem with that
21 dead-line for practical reasons that I could explain maybe outside the
22 court.

23 PRESIDING JUDGE FULFORD: Right. You will be told in an e-mail,
24 Mr. Walleyne, whether or not you're given 24 hours to put in written
25 submissions. Thank you.

1 Mr. Desalliers, I anticipate I address this then, the next point,
2 to you. Are there other issues relating to what is believed to be a
3 problem over Prosecution witnesses being able to learn the contents of
4 the statements of other witnesses.

5 MR. DESALLIERS (interpretation): Your Honour, the comments I
6 made earlier also apply to this point.

7 PRESIDING JUDGE FULFORD: Thank you.

8 Maitre Mabilie, there was a particular issue, I think, arising
9 out of our decision of the 21st of January on disclosure of victims'
10 applications - this is document 1637 - which you wish to raise.

11 MR. DESALLIERS (interpretation): Your Honour, with your
12 permission. We received the decision yesterday, and we wished to put
13 this point on the agenda given the urgency thereof.

14 We understand that the Prosecutor is supposed to disclose these
15 applications to the Defence team, and if legal representatives have any
16 observations to make, they have to make these observations in writing.
17 That is what we understood from the decision, but we want this point to
18 be discussed today given the urgency. Well, unless the legal
19 representatives concerned state now that they do not have any problem
20 with the Defence team receiving these applications. Well, if that is the
21 case, then this will address the problem, and if that is going to be done
22 we want to have it done within the shortest time possible.

23 PRESIDING JUDGE FULFORD: This needs, if possible, to be done
24 today.

25 Mr. Sachdeva, is it going to be possible for decisions to be made

1 on the disclosure of these documents following consultation with the
2 victims' representatives during the course of today?

3 MR. SACHDEVA: Yes, Mr. President, absolutely. I would hope so.
4 We're ready to disclose.

5 PRESIDING JUDGE FULFORD: Thank you very much. Therefore, we
6 will say that there -- that if our decision said that observations should
7 be in writing, I don't in fact recall whether or not that was part of the
8 decision, but if we said that, that is waived. There should be oral
9 representations to the Prosecution during the course of today. If there
10 are any difficulties because legal representatives aren't in The Hague
11 today, can those difficulties please be brought to our attention before
12 3.00 this afternoon.

13 And, Mr. Walley, I'm going to give you the responsibility, I'm
14 afraid, to investigate whether you think there are any difficulties in
15 this regard.

16 Now, there is an issue in relation to protective measures made on
17 the 21st of January, filed confidentially, document 1639, as regards one
18 particular witness.

19 There has been a fairly full filing on this issue by the
20 Prosecution. I imagine, Mr. Sachdeva, there's nothing at this stage you
21 wish to say in addition to those representations?

22 MR. SACHDEVA: That's right, Mr. President.

23 PRESIDING JUDGE FULFORD: Thank you. Maitre Mabilille, any
24 submissions now on this point?

25 MS. MABILILLE (interpretation): The Prosecutor is asking for

1 special measures -- is he asking for special measures for the first
2 witness or the -- and the second witness, special measures which include
3 a request for closed session? Is that what the Bench would like us to
4 react on? Okay. Fine.

5 The Prosecutor is requesting for a closed session for the second
6 witness because that witness could in the course of the questioning give
7 evidence that could self-incriminate him or her, and so the Prosecution
8 team is requesting that this witness should be heard in a closed session.

9 The position of the Defence remains the same, unfortunately. We
10 would like closed sessions to be limited, to be as few as possible.

11 Now, with regard to issues that can get the witness to give
12 evidence that will incriminate him or her, we would like the Prosecution
13 team to pinpoint these points which could lead to a closed session. In
14 any case, the texts state that it is up to the Bench to make the right
15 determination in this regard. And I think that if we insist on holding
16 closed sessions, then this may be prejudicial to the course of justice in
17 this case.

18 We would like the Bench, therefore, to look at this issue
19 closely, and if other witnesses are found in the same situation and then
20 we have to organise closed sessions for them, then this is going to
21 undermine the exercise.

22 PRESIDING JUDGE FULFORD: Ms. Samson, as I've understood it this
23 relates to one witness, and what is in fact requested is voice and image
24 distortion and the assignment of a pseudonym.

25 MS. SAMSON: Yes, your Honour, that's correct. The filing does

1 in fact request face, voice distortion --

2 PRESIDING JUDGE FULFORD: So this isn't a closed-session request.

3 MS. SAMSON: No.

4 PRESIDING JUDGE FULFORD: It's for those additional measures.

5 Now, obviously be careful about what you say, remembering that we're in
6 open court, but I don't think that this is a dangerous question. Do you
7 in fact identify within this filing which witness it refers to? Is there
8 a witness number to be found within the filing, because having received
9 this yesterday, I can't find one.

10 MS. SAMSON: Actually, your Honour, I think you may be right
11 about that.

12 PRESIDING JUDGE FULFORD: It was impossible for me to work out
13 whether this was a reasonable application given I was unable to link it
14 to a particular witness.

15 MS. SAMSON: Apologies. This is Witness 38 --

16 PRESIDING JUDGE FULFORD: Thank you.

17 MS. SAMSON: -- and as the --

18 PRESIDING JUDGE FULFORD: How far down the list does Witness 38
19 come?

20 MS. SAMSON: Number 4.

21 PRESIDING JUDGE FULFORD: Number 4. Right. We will not deal
22 with this today. The filing was only made yesterday. Everyone now knows
23 which witness this is.

24 Maitre Mabilie, you have the opportunity, and we will give you
25 until Monday evening at 4.00 p.m. on Monday next week, to put in any

1 written submissions you wish as regards the proposal for this witness.
2 Is that convenient?

3 MS. MABILLE (interpretation): It looks like I addressed another
4 question, a different question. I was making observations on another
5 request of the Prosecutor. So I am sorry. I apologise for that
6 confusion. I have now fully understood the request we're talking about.

7 We will make observations, if necessary, on Monday at 4.00 p.m.
8 I hope you understand this problem, I mean this confusion.

9 PRESIDING JUDGE FULFORD: Turning to the issue which you in fact
10 addressed, Maitre Mabilille.

11 For each witness, Mr. Sachdeva, it needs to be made clear in
12 advance, if it hasn't been already, what particular protective measures
13 are being sought for that witness sufficiently in advance for the Defence
14 to respond and for us to give, if necessary, some kind of short decision
15 on it. Maitre Mabilille, I think, referred to Witnesses 1 and 2. You
16 need, please, to concentrate, if you will on the early witnesses in the
17 case so that we can make sensible decisions on a fact-sensitive basis as
18 to what protective measures should be implemented.

19 Now, is that convenient?

20 MR. SACHDEVA: It is, Mr. President. However, it was our
21 understanding that those issues would be dealt with in an in camera
22 hearing, an ex parte hearing, those particular issues related to the
23 particular witnesses.

24 PRESIDING JUDGE FULFORD: Well, in camera with the Defence
25 present or the Defence absent?

1 MR. SACHDEVA: That's fine. With the Defence present.

2 PRESIDING JUDGE FULFORD: Well, I've given you an alternative,
3 Mr. Sachdeva, so I'm afraid "that's fine" doesn't answer the question.

4 MR. SACHDEVA: We're happy to do it with the Defence present.

5 PRESIDING JUDGE FULFORD: You're happy with the Defence present.
6 All right. Well, we'll reflect on whether or not this needs to be done
7 having excluded the public, but we need in writing, please, in the first
8 instance what is proposed so that we are alerted to the general issues in
9 relation to particular witnesses. Otherwise, there's going to be chaos,
10 Mr. Sachdeva, because we won't know until it's too late as to what is
11 actually necessary for each witness. So advance warning, please. Thank
12 you.

13 And this relates not only to the kind of measures it's
14 anticipated using. It may be that there are particular measures that
15 only relate to part of the witness's evidence. So if there isn't a
16 general rule but instead there's a rule that will come into play at
17 different stages, we need to know that too.

18 It's half past 11.00. We'll take a break for half an hour and
19 sit again at five past 12.00. Thank you very much.

20 COURT USHER: All rise.

21 Recess taken at 11.35 a.m.

22 The hearing starts at 12.08 p.m.

23 COURT USHER: All rise. Please be seated.

24 PRESIDING JUDGE FULFORD: Mr. Walley, it's been brought to our
25 attention that an issue to be raised is the -- is that of the security of

1 legal -- of the Legal Representatives of Victims. Am I right that we're
2 not asked to deal with that today but at some stage on -- at some stage
3 next week someone or some of you would wish to raise the point?

4 MR. WALLEYN: The request came from Ms. Bapita, Mr. President.

5 PRESIDING JUDGE FULFORD: I didn't realise that.

6 Sometime next week, Ms. Bapita?

7 MS. BAPITA (interpretation): Your Honours, we would like to
8 request an ex parte hearing next week, as early as possible, so that the
9 legal representatives concerned and who operate in the DRC in the
10 Lubanga, not just myself and Mr. Keta, can be present.

11 Why would we like to have this Status Conference next week?

12 Well, we have received an invitation to a meeting on the 2nd, an
13 invitation from the Registry, and we believe that if we have not arrived
14 at a consensus in the wake of that meeting, that we will approach you for
15 the holding of a Status Conference so that we can explain to you the
16 difficulties which we are encountering. But basically it is our position
17 that the basic texts of this court do not provide for the protection of
18 counsel.

19 For some time now we have been the object of serious threats at
20 home. In -- given the legal vacuum, the Registry is attempting to do all
21 that it can, but the fact of the matter is that the texts of the court
22 are silent. So we need to look at the matter and find a solution given
23 the silence of the texts, and this can only happen before the Chamber.

24 We have practical solutions to put to you should you convene such
25 a Status Conference. I must point out that the state itself does not see

1 it as being in its interests to provide the protection given the nature
2 of the agreement, and these are issues which we wish to discuss before
3 the Court.

4 PRESIDING JUDGE FULFORD: Thank you very much. Could we ask you,
5 obviously, to try and resolve these issues outside of court if you can.
6 If it appears to you that they are unresolvable without our intervention,
7 please, before a Status Conference is held, provide us, even if it is in
8 brief form, with a description of the problem and with any suggested
9 solutions that you seek from the Chamber, because obviously if we're
10 going to be asked to intervene it must be on the basis that there's an
11 application for us to do something. So it would be useful to know in
12 advance what is being asked of us. But apart from that, we will
13 obviously make ourselves available to deal with an issue as important as
14 this actual notice.

15 Thank you very much.

16 MS. BAPITA (interpretation): We believe that after the meeting
17 on the 2nd with the Registry would be the earliest possible date. Should
18 we need to come before the Chamber, we shall file a document with the
19 Chamber.

20 PRESIDING JUDGE FULFORD: Thank you for the warning.

21 Now, Ms. Massidda, you wanted to update us on the victims who you
22 represent. What's the point here, please?

23 MS. MASSIDDA: Thank you, your Honour. I have contacted all the
24 four victims who will not be represented any more by the office during
25 the trial. Three of them have already choose a new legal representative.

1 Victim 49 wishes to be represented by Luc Walleyrn and
2 Franck Mulenda.

3 Victim 78 wishes to be represented by Carine Bapita, as well as
4 Victim 51 wishes to be represented by Carine Bapita.

5 Victim 149 will be able to make the choice this afternoon. So
6 before the start of the trial all the four victims will be represented by
7 another counsel.

8 In accordance with Article 15 of the Code of Professional Conduct
9 I will provide the new legal representative with all the material by this
10 afternoon. I will also inform this afternoon via an internal memorandum
11 the VPRS and the VWU because for one person this is necessary. The only
12 issue that I would like to raise with the Chamber is the impossibility
13 for the victims to file with the Court a power of attorney at this point
14 in time. Therefore I respectfully submit that maybe a decision on the
15 legal representation is need by the Chamber. Thank you.

16 PRESIDING JUDGE FULFORD: In the absence of a formal power of
17 attorney.

18 MS. MASSIDDA: Yes. If the Chamber --

19 PRESIDING JUDGE FULFORD: Do we have the power to waive it,
20 Ms. Massidda?

21 MS. MASSIDDA: I guess so.

22 PRESIDING JUDGE FULFORD: Well, on the basis that we have the
23 authority to waive that requirement, we waive it, Ms. Massidda. If on
24 mature reflection it appears that this is an impermissible step on our
25 part, could somebody please bring the illegality of what I've just

1 indicated to our attention, please. But if we're able to do it, we do
2 it. Thank you.

3 MS. MASSIDDA: Your Honour.

4 PRESIDING JUDGE FULFORD: Yes.

5 MS. MASSIDDA: For Victim 149 we can proceed in the same way.

6 PRESIDING JUDGE FULFORD: Good.

7 MS. MASSIDDA: Thank you.

8 PRESIDING JUDGE FULFORD: All right. Thank you for that
9 information, Ms. Massidda.

10 Your request for access to realtime LiveNote I think has now been
11 dealt with.

12 There was then a request on your part which I'm afraid I didn't
13 understand. Notification to the legal representatives of the
14 confidential version of the Amended Document Containing the Charges.
15 What's the problem Ms. Massidda?

16 MS. MASSIDDA: We were notified of a document, document 1573,
17 Annex 1, dated 23 of December, 2008, which is the public redacted version
18 of the Amended Document Containing the Charges filed by the Office of the
19 Prosecutor. The same document was filed confidential with the document
20 number, if I'm not mistaken, 1572, on 22nd of December, 2008, without
21 redactions, and that document was notified to Mr. Walley and Ms. Bapita.

22 I am therefore seeking the notification of document 1572, the
23 confidential version of the document filed publicly on 23 of December,
24 2008. This is the first request.

25 PRESIDING JUDGE FULFORD: Second request?

1 MS. MASSIDDA: The second one, all the legal representative were
2 notified in May 2008 of the public document, document number 1363, titled
3 Submission of the Prosecution's Update Summary of Presentation of
4 Evidence. This document contains redactions. The redactions are
5 essentially locations and sometimes date of birth of the witnesses.

6 Now, the legal representative have received by the Office of the
7 Prosecutor the statements of the witnesses in full. So we consider that
8 there is no need any more to have only the public document, and we are
9 requesting to receive also the confidential version of the Summary of
10 Presentation of Evidence filed by the Office of the Prosecutor.

11 The same request apply to the previous document filed by the
12 Office of the Prosecutor, Summary of Presentation of Evidence, dated
13 19 December 2007. The number of the public version is 1099-Anx. Thank
14 you.

15 PRESIDING JUDGE FULFORD: Ms. Samson, I think this is principally
16 your concern. Is there -- do you apprehend any difficulty with the
17 Office of Public Counsel for Victims, as the representative of the four,
18 receiving the non-redacted versions of those documents?

19 MS. SAMSON: We have no concerns, your Honour. At this point in
20 time since the legal representation is now known, the materials can be
21 provided to the legal representatives.

22 PRESIDING JUDGE FULFORD: This is an unopposed application by
23 you. Thank you. Any observations elsewhere? No.

24 MR. WALLEYN (interpretation): Excuse me, your Honour, but I
25 think that this is the result of a rule which was adopted during an

1 interim period and which leaves it to the parties or participants to
2 decide who should obtain a copy of the document.

3 It strikes me as not normal that the Defence could decide that a
4 particular document should be disclosed to certain legal representatives
5 but perhaps not others. I would suggest a general rule. Now that the
6 legal representatives are known and the teams have been set up, I would
7 suggest that all documents which are not ex parte should be communicated
8 to all legal representatives.

9 (The Trial Chamber confers)

10 PRESIDING JUDGE FULFORD: Anything, Ms. Mabilille?

11 MS. MABILILLE (interpretation): I don't understand the hypothesis
12 suggested by my friend Mr. Walley. I can't imagine documents being
13 communicated only to certain legal representatives. Obviously
14 transparency is the rule and documents should be disclosed in a
15 transparent fashion.

16 PRESIDING JUDGE FULFORD: Ms. Massidda, your application is
17 unopposed in relation to those specific documents, and the Chamber is
18 persuaded of the force of it and it is granted.

19 Mr. Walley, we're going to proceed slightly more cautiously with
20 your proposal. Would you please set it out in writing so that we can
21 reflect on it and ensure that the proposition is well made. Would it be
22 convenient for you to file that by 4.00 on Monday? Thank you.

23 MR. WALLEY (interpretation): Yes.

24 PRESIDING JUDGE FULFORD: Everyone else, 48 hours thereafter to
25 respond to Mr. Walley's filing.

1 Ms. Massidda, back to you again. The -- yes -- (Microphone not
2 activated) ... during the course of these proceedings.

3 MR. DIAKIESE (interpretation): Yes, your Honour. This is the
4 first time I have appeared before your Chamber. Thank you for your words
5 of welcome. A moment ago the Chamber took a decision on a matter which
6 is of the greatest importance to us, that is to say in connection to the
7 events set out by my colleague Ms. Massidda. However, access to the
8 documents referred to in the application presented by Mr. --
9 Ms. Massidda, will that be only for the members of the OPCV or will it
10 also be for all legal representatives who also need access to those
11 documents? We understand that a decision will later be made based on the
12 application made by Mr. Walleyne, but we would like to associate ourselves
13 with the application made by Ms. Massidda.

14 PRESIDING JUDGE FULFORD: Ms. Samson, any reason for excluding
15 other representatives of identified -- or, rather, identified
16 representatives of the participating victims?

17 MS. SAMSON: No.

18 PRESIDING JUDGE FULFORD: Good. We'll extend that particular
19 ruling, then, to all the representatives, and we will address the more
20 general issue in due course following Mr. Walleyne's submission. And of
21 course, I think it would be helpful, Mr. Walleyne, if you could consult
22 with your brother and sister counsel in this regard so that it's really
23 in the form of a joint filing by all of you.

24 Transmission by the OTP to the legal representatives of documents
25 and material, et cetera, et cetera.

1 This is you, Ms. Massidda. What's the point here, please?

2 MS. MASSIDDA: Yes, your Honour. We still have not received the
3 material we have requested, as declared last week by Mr. Walley. He
4 asked for the materials in March 2008. I asked relatively late in the
5 proceeding.

6 We have been informed yesterday evening that the word search has
7 been concluded but we don't have any indication on the time and when this
8 material could be provided to the legal representative. If we can have
9 an update by the Office of the Prosecutor, I would be much grateful.
10 Thank you.

11 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

12 MR. SACHDEVA: Mr. President, I understand the materials are
13 ready today to be handed over. That was my understanding.

14 PRESIDING JUDGE FULFORD: Try and ensure that's effected today,
15 please, Mr. Sachdeva.

16 MR. SACHDEVA: Yes, Mr. President.

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 Visas, Mr. Walley, I think has been resolved, has it not?

19 MR. WALLEY (interpretation): Yes, your Honour. Yesterday
20 evening we received information from VPRS that in principle the embassy
21 of the Netherlands would issue visas to the three legal representatives
22 who are still in the Congo. However, this is not the first time which we
23 have faced this problem, and I would like to suggest that the Registry
24 take steps vis-a-vis the Dutch authorities to ensure that legal
25 representatives who do not reside in Europe receive a visa for multiple

1 entries valid for a one-year period so that each time they need to travel
2 to The Hague they do not have to commence proceedings anew.

3 PRESIDING JUDGE FULFORD: If it helps as regards this process,
4 Mr. Walley, we would wish to make it abundantly clear that it would be
5 of very considerable assistance to the functioning of this trial if the
6 arrangements in relation to visas ensured that the representatives
7 throughout the entirety of these proceedings were able to attend at this
8 court actual notice without difficulty. And if it's of assistance, I
9 would ask that these words are communicated to whichever official or
10 whichever department is considering this issue.

11 MR. WALLEY: Thank you, Mr. President.

12 PRESIDING JUDGE FULFORD: Thank you.

13 Now, Mr. Walley, I'm about to take back from you something which
14 a little bit earlier today I gave to you. I think I may have indicated
15 that on behalf of those who you represent you can comment on the
16 applications for reparations which are being prepared by the VPRS.

17 To the extent that I gave the green light in relation to this, on
18 mature consideration the Bench now indicates that we think that that is
19 in fact a bad approach in that if the work of the VPRS is to be vetted by
20 others, that is likely to mean that the procedures of this court will
21 work less smoothly than they otherwise will. You are, of course,
22 entitled to send any thoughts or observations that you have to the VPRS,
23 but we are not giving you the entitlement of being able to edit or check
24 the work which they produce for the benefit of this Chamber.

25 I hope that's clear.

1 Mr. Sachdeva, the -- the short extracts of the video material
2 which the Prosecution wishes to rely on during the course of its opening,
3 those extracts were provided to us in advance of today. Were they also
4 provided to the Defence?

5 MR. SACHDEVA: They were, Mr. President.

6 PRESIDING JUDGE FULFORD: Thank you very much indeed.

7 Now, before I turn to the decisions that we're able to give in
8 open court in relation to the outstanding matters, is there anything else
9 that anyone else wishes to raise? All right.

10 This, therefore, is the final Status Conference before the
11 commencement of the trial, and as we have already indicated on an earlier
12 occasion, subject to fulfilling the statutory obligation of ensuring that
13 the accused has understood the charges and has been given the opportunity
14 to indicate his guilt or to plead guilty, the first thing that will
15 happen on Monday morning is the opening of the case by the Prosecution.
16 And we, therefore, I hope, make it abundantly clear we do not expect to
17 be dealing with last-minute applications at the commencement of Monday's
18 hearing.

19 Therefore, by way of oral decisions, the Bench addresses first
20 the application by the Prosecution -- Ms. Bapita.

21 MS. BAPITA (interpretation): Excuse me, your Honour. I'm sorry
22 to interrupt, but there is a fundamental issue which has not yet been
23 resolved. The trial shall begin on the 26th of January but shall run
24 until when? We have some time issues also in connection to the -- our
25 arrangements with the registry for the remuneration of counsel and for

1 rotations in our team.

2 PRESIDING JUDGE FULFORD: If I was able to answer that question,
3 I would be endowed with magical powers. We know that the Prosecution has
4 34 witnesses. In some jurisdictions that would be the equivalent of a
5 trial lasting five or six weeks. Some people have said to me that the
6 trial is likely to last anywhere between 6 and 9 months. Somewhere in
7 between those two time estimates is the best I can say to you,
8 Ms. Bapita. And if you can finding a way of providing the Bench with the
9 means of arriving at a more exact estimate of trial length then please
10 give it to us as quickly as possible.

11 One thing we will do next week is to -- and not on Monday but at
12 some stage during the week, is to indicate the days the Chamber will
13 definitely not be sitting. There aren't going to be many of them in the
14 first -- in the opening stages of the trial, but there are some public
15 holidays that we'll have to recognise, and we will wish to have brought
16 to our attention any absolutely unavoidable commitments that individuals
17 have that may have an impact on the smooth running of the trial. But we
18 have set down the timetable, and we wish to keep to it.

19 Now, anything else?

20 These, then, are our oral decisions on a number of issues that
21 have been raised during the course of this Status Conference and which
22 are outstanding.

23 The Prosecution has applied to use some additional visual aids
24 during the course of its opening statement. These have been described in
25 its filing of the 12th of January, 2009, document 1596, and there are

1 three video excerpts which are set out in the filing which has been made
2 available not only to the Judges but also to the Defence.

3 In essence, as regards visual aids, the Prosecution wish to rely
4 on certain maps which it is said will assist in understanding various
5 events which the Prosecution submit are relevant to the evidence which we
6 are going to be considering during the course of the trial.

7 Additionally, there are some short excerpts which show in video
8 form certain events which the Prosecution submits are of importance to
9 the evidence which it is going to present.

10 The Defence have generally made their opposition as regards the
11 latter category of material clear in both their earlier written
12 submissions, as well as in short oral argument during the course of
13 today's hearing.

14 In summary form, Maitre Mabilie has expressed her concern that if
15 material is introduced in this way, it will result in or it has a
16 tendency to result in the material becoming evidence before it is
17 introduced properly during the course of the trial.

18 It needs to be made clear that her objections in this regard do
19 not concern the maps, that is category 1, but instead her objections are
20 focussed on the short video extracts which I have just described.

21 All of these aids are to assist the Prosecution in explaining how
22 it seeks to prove the charges. The advocate's speech is not evidence in
23 the case, and anything that is shown to the Bench during the course of
24 that speech does not become evidence because it has been viewed during
25 that process. It will only become evidence if it is introduced after the

1 speech and during the part of the trial when the evidence is formally
2 introduced and considered.

3 Mr. Sachdeva today has made it clear that in relation to each of
4 the video extracts the Prosecution will be calling a witness who is able
5 to authenticate the various sections which the Prosecution wishes to rely
6 on during the course of its opening statement.

7 In all the circumstances, we consider that there is no prejudice
8 to the Defence if this material is introduced in this way for the limited
9 explanatory purpose which Mr. Sachdeva has outlined. Additionally, it
10 will be of assistance to the Bench if we are given the relevant
11 ERN numbers. That will not turn this material into evidence. It will
12 simply assist the Bench in being able to cross-reference this material
13 and to locate it within Ringtail.

14 Exactly the same arguments and conclusions apply to the
15 Prosecution's application to read extracts from some of the witness
16 statements. It is open to the Prosecution to explain the evidence that
17 they intend to call and the way in which it relates to the charges that
18 the accused faces by telling the Bench, either in summary form or by way
19 of direct quotations, the evidence or part of it that they intend to rely
20 on, and essentially in this regard it is up to the Prosecution as to how
21 they refer to the evidence that they intend to introduce during the
22 course of their speech. However, it is necessary for us to observe that
23 excessive reading from witness statements which have been filed with the
24 Chamber is unlikely to be helpful, and so this exercise, as with
25 everything else, should be proportionate.

1 The application, therefore, is granted.

2 We turn next to the Registry's proposals as regards the
3 redactions of the records of public hearings.

4 **Introduction.**

5 The Victims and Witnesses Unit has made proposals on the measures
6 and practices that could be implemented during the trial as regards the
7 records of public hearings in order, where it is strictly necessary, to
8 implement the Chamber's decisions on protective measures, and
9 particularly in this context on anonymity. That is, anonymity as regards
10 the public and not the accused, and this latter observation applies to
11 the entirety of this decision.

12 The Defence, having received the Victims and Witnesses Unit's
13 proposals, generally reiterated its operation to the approach that has
14 been taken to redactions in this trial. Whilst recognising the necessity
15 for some protective steps, the Court is urged by the Defence to keep
16 redactions to an absolute minimum in order to retain what is submitted to
17 be the necessary public element of a criminal trial.

18 The Prosecution generally agrees with these proposals, and the
19 relevant filing is that of the 13th of January, 2009, which has been
20 filed confidentially, and in this regard we ask the Prosecution to review
21 whether or not that filing should in fact have been made confidentially
22 and, if appropriate, to re-file it publicly either in full or with
23 appropriate redactions.

24 **General issues of principle.**

25 The Chamber recognises the importance of truly open justice as

1 enshrined in the Statute. By Article 67(1), the accused is entitled to a
2 public hearing having regard to the provisions of the Statute. The
3 importance of this principle has been emphasised by the European Court of
4 Human Rights in its repeated observations that the public character of
5 proceedings is an essential element of a fair hearing.

6 See B. and P. v the United Kingdom, application numbers 36337/97 and
7 35974, judgement delivered on the 24th of April, 2001.

8 Any derogation from that principle must be for good reason and
9 the proceedings must remain fair. It is of note that it is well
10 established under the European Convention that the press and the public
11 may be excluded for a variety of reasons and including in order to
12 protect the safety of witnesses. See B. and P., paragraph 37.

13 This court is trying alleged war crimes that relate to a part of
14 Africa where there is continuing and serious instability. All of these
15 witnesses and victims have been taken into the court 's protection
16 programme because of the risks to their personal safety which have been
17 carefully and objectively assessed by the Victims and Witnesses Unit.
18 The court has a statutory obligation to protect witnesses and victims,
19 and by Article 68(2), an exception to made to the principle of public
20 hearings to enable the court to protect its witnesses by in camera
21 hearings, electronic presentation of evidence, or other special means.
22 If any of their identities were to become known, the whole purpose of the
23 protection which has been afforded to these individuals would be
24 undermined and they, together with their families, would be at risk for
25 an indefinite period of time.

1 The accused has been given the full identifying details for the
2 witnesses and is able, therefore, to deal with their evidence without
3 restriction.

4 The Chamber has no doubt that these proposals are well-founded.
5 Without the totality of these measures there is a real risk that
6 witnesses before the court and participating victims will be put at
7 significant risk of harm and the court would thereby have failed to
8 discharge its obligations under Article 68. They do not in any way
9 render the trial against the accused unfair, and in all the circumstances
10 they are necessary and proportionate.

11 For the individual reasons set out hereafter, pursuant to
12 Article 68 and Rule 87, the measures sought or indicated are granted in
13 their entirety.

14 These proposals helpfully outline the broad approach that should
15 be taken to redactions during the trial process. As a result, they will
16 help to render effective the decisions of the Chamber protecting the
17 identities of vulnerable victims and witnesses. However, it needs to be
18 emphasised that redactions to information that absent security concerns
19 would have received wider publication in this trial is a procedural issue
20 of importance which is, at all times, to be controlled by the court.

21 Although this decision outlines the approach that is to be taken
22 in general terms, the detail of any proposals that apply to individual
23 witnesses are to be given to the court in advance of each relevant
24 witness's testimony, and to the extent that this is not reasonably
25 possible, at appropriate stages whilst the evidence is being presented or

1 after its conclusion. The court will, therefore, make fact-specific
2 decisions on any proposals.

3 Therefore, although we approve the generality of the measures
4 that are proposed, we will look in detail at the particular circumstances
5 that relate to individual victims and witnesses in due course.

6 Some decisions may need to be taken quickly because of
7 unexpected developments. Those involved are to adopt a cautious
8 approach, and if in doubt, a redaction should be implemented if there is
9 insufficient time to raise the matter conveniently and immediately with
10 the Chamber. At an appropriate stage, the issue should be put before the
11 Judges for resolution. Furthermore, both parties and the participants
12 have a fundamental responsibility to ensure that the decisions of the
13 court on protective measures, and including by way of these in-court
14 precautions, are respected and are not undermined.

15 Based on the proposals of the Victims and Witnesses Unit, the
16 detail of our decision on the individual suggested measures is as
17 follows:

18 **Overview.**

19 The identity of and any identifying information about individuals
20 as itemised hereafter should be redacted from the public records and the
21 live-stream system.

22 (a) any victim or witness where a decision has been taken not to
23 reveal their identity to the public;

24 (b) any victim or witness where a decision of this kind may be
25 taken at a later stage in the proceedings;

1 (c) any individual named during testimony not falling in either
2 of the categories above but where disclosure to the public may result in
3 a risk to this individual.

4 To prevent the potential for an arbitrary approach and to ensure
5 a reliable and consistent redaction regime, the VWU proposes the
6 following categories of information which should usually be redacted.
7 The Chamber agrees in each instance that depending on the individual
8 facts relevant to the victims and witness the proposals generally appear
9 to be proportionate and subject to fact-specific decisions, it may well
10 be the position that no lesser measure will suffice.

11 **Information related to identity, names and aliases.**

12 Any names or aliases of the witness which tend to reveal the true
13 identity of a witness.

14 **Gender.**

15 Generally the risks attendant in revealing the gender of a
16 witness or victim whose identity is protected should be borne in mind
17 because it potentially reduces the size of the group which includes the
18 individual concerned. That said, however, disclosure of the gender of a
19 witness often does not cause a problem on the basis of safety in numbers.
20 However, whenever revealing the person's gender may tend to reveal the
21 witness's identity appropriate redactions should be canvassed with the
22 Court.

23 **Location and date.**

24 When the current whereabouts of a victim or witness is protected,
25 consideration should be given to redacting information that may

1 materially tend to reveal the current or previous location of the witness
2 and the relevant dates and times.

3 **Family.**

4 Whenever the identity of a witness or victim is protected,
5 consideration should be given to redacting information concerning his or
6 her family to the extent that they may reveal the identity of the witness
7 or victim. This may include issues such as individual family
8 characteristics, viz., the number and the age of the witness's siblings.

9 **Nationality, ethnic origin, or religious affiliations.**

10 When the identity of a witness or victim is protected,
11 consideration should be given to redacting information on his or her
12 nationality, ethnic origin, background, or religious affiliations. These
13 features can sufficiently distinguish a protected witness from other
14 potential witnesses so as to create an appreciable danger.

15 **Profession or function.**

16 Whenever the identity of a witness or victim is protected,
17 consideration should be given to redacting information concerning his or
18 her current or previous profession or other function. These features can
19 sufficiently distinguish a protected witness or victim who is
20 participating from other witnesses so as to create an appreciable danger.

21 **Characteristics.**

22 Whenever the identity of a witness or victim is protected,
23 consideration should be given to redacting information concerning his or
24 her personal characteristics or features. These factors can sufficiently
25 distinguish a protected witness or participating victim from others so as

1 to create an appreciable danger.

2 **Evidence.**

3 Whenever the identity of a witness or victim is protected,
4 consideration should be given to redacting information concerning part or
5 all of his or her evidence if it tends to identify a protected witness.
6 Depending on the circumstances, it may be most convenient to hear such
7 evidence or the relevant parts of it in camera or in some other form of
8 restricted session.

9 **Information relating to the International Criminal Court's**
10 **Protective Programme.**

11 The fact that a witness is in the ICCPP and the number of
12 witnesses in the programme, there are security dangers that attend on the
13 fact that a person has entered the ICCPP in part because this may well
14 generate public media and interest. Confidentiality and unpublicised
15 operations are key elements of a successful implementation of the ICCPP.
16 If the exact number of witnesses in the programme in a particular case is
17 broadcast, this may impair the operation of the programme by revealing
18 the exact number of witnesses or victims who are most at risk.
19 Consideration should be given to redacting information of this kind if it
20 tends to reveal areas of sensitivity as regards the working of the ICCPP.

21 **Location and dates.**

22 Information directed at locations where victims and witnesses
23 will be taken whilst in the programme, along with any relevant dates,
24 could reveal crucial aspects of the functioning of the VWU in this
25 regard. Consideration should be given to redacting information in this

1 category if it will facilitate identification and location of witnesses
2 in the ICCPP. The latter point applies to victims as well.

3 **Plans and procedures.**

4 Similar considerations apply to the plans and procedures of the
5 VWU to the extent that they will allow someone to monitor and predict the
6 movements of personnel employed by the VWU or acting on its behalf and
7 the steps taken by it to protect victims and witnesses. Consideration
8 should be given to redacting information in this category if it will
9 facilitate identification and location of victims and witnesses in the
10 ICCPP.

11 **Identifying relevant information relating to court staff when**
12 **carrying out duties in this regard.**

13 Some VWU staff members are in direct contact with witnesses and
14 victims, and if their identity becomes known, their movements could be
15 monitored with the concomitant heightened risk to witnesses and victims.
16 Consideration should be given to redacting information concerning staff
17 members in this category if it will facilitate identification and
18 location of witnesses and victims in the ICCPP.

19 **Implemented measures.**

20 Information concerning the protective measures implemented by the
21 VWU can increase the risk of harm for witnesses and victims. This can
22 apply to general information about these measures as well as more
23 detailed information about the particular arrangements implemented as
24 part of the programme for a particular witness or victim. It is to be
25 noted that information in relation to one witness or victim from a group

1 which is protected can imperil the entire group. Consideration should be
2 given to redacting information in this category if it will facilitate
3 identification and location of witnesses and victims in the ICCPP.

4 As we have previously indicated earlier today, information should
5 be provided to the Chamber outlining relevant issues of protection and
6 confidentiality sufficiently in advance of the evidence of individual
7 witnesses to enable the other party and the participants to make informed
8 representation and to enable the Chamber to make a decision.

9 We turn next to the issue of which legal representatives should
10 be present during the course of what has been described as the courtesy
11 meeting which forms part of the familiarisation-of-witnesses procedure.
12 Although we have already referred to this during the course of this
13 hearing, for the avoidance of doubt and consistent with the decision
14 which we delivered orally on Friday of last week, our decision is that
15 only those legal representatives who are entitled to ask questions of the
16 witness are to be present at that meeting.

17 As far as the Legal Representatives of Victims are concerned,
18 that means only those in relation to whom an application to question the
19 witness has been granted will be permitted to attend at that courtesy
20 meeting. If the meeting has taken place and if there is a later grant of
21 permission to question a witness by a representative of a participating
22 victim, consideration will need to be given as to whether it's
23 appropriate for there to be a courtesy meeting between the witness and
24 that advocate in advance of the witness's evidence. This will involve a
25 fact-specific decision as to whether or not it is going to be

1 destabilising or upsetting for the witness to have to go through this
2 procedure again with a different advocate, and we would be grateful for
3 any observations should this arise from the Victims and Witnesses Unit
4 before that stage of the witness's evidence is reached.

5 An issue of importance that will need to be addressed by the
6 parties and which calls for a decision from the Chamber relates to the
7 provision of Rule 74 of the Rules of Procedure and Evidence.

8 The rule is headed "Self-incrimination by a witness," and there
9 are detailed provisions set out within that rule as to the procedures
10 that are to be followed for witnesses who fall within this provision or
11 who may fall within the provision.

12 The Prosecution, in the first instance, will need to identify for
13 the benefit of the Chamber which witnesses this rule potentially applies
14 to. Thereafter, we'll have to establish a convenient procedure whereby
15 the parties and the participants can make any necessary submissions and
16 which will enable us to hold the ex parte hearing which Rule 74(4)
17 provides for.

18 In this area, as in so many others in this case, the real issues
19 will only emerge during the course of our consideration of the particular
20 circumstances which relate to particular witnesses. Accordingly, it
21 would be unhelpful at this stage for the Chamber to attempt to embark on
22 any general guidance as to how this will be dealt with save to repeat
23 that the Prosecution, by close of play on Friday, that is 4.00 on Friday,
24 should have indicated for our benefit those witnesses in relation to whom
25 it is considered this rule may apply.

1 The Defence has raised particular concerns as regards the
2 possibility of contact between witnesses after the first of them has
3 given his or her evidence. This concern has particular relevance to
4 Witnesses 298 and 299 because they are closely related.

5 We will at the conclusion of the public part of this hearing hear
6 the representative of the Victims and Witnesses Unit ex parte so that the
7 detail of the arrangements as proposed by the VWU can be explained to us.

8 Moreover, although Mr. Walleyne has asked for 24 hours to submit
9 written observations as regards what in his submission is appropriate for
10 these two witnesses, it is in fact not convenient, I fear, for us to
11 extend that period of time. In the event, Mr. Walleyne is asked, and it
12 can be done informally and by way of e-mail, to submit during the course
13 of this afternoon and before 4.00 any particular matters that he wishes
14 to bring to our attention in this regard.

15 The final matter is that at an earlier stage today the Bench
16 indicated that the Registry should be provided with the names of those,
17 to a maximum of 20 for each group, who should receive and have access to
18 the realtime transcript. Those lists are to be provided by 4.30 today.

19 That concludes the public part of today's Status Conference. We
20 thank all counsel for their attendance.

21 We will in fact sit again at half past 2.00.

22 There is one final matter that I am going to put on the record.
23 Now for the fourth time the computer equipment provided to me is not
24 working properly in that the mouse with which I'm provided is not
25 functioning. This must not happen again. This is an e-court which is

1 supposed to enable the Judges to work the equipment, and I have dealt
2 with this quietly behind the scenes on earlier occasions. This time I'm
3 going to put it on the record.

4 We'll sit again at half past 2.00.

5 COURT USHER: All rise.

6 The hearing ends at 1.15 p.m.

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