

1 International Criminal Court

2 Trial Chamber I

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

4 Hearing - Open Session

5 Tuesday, 27 January 2009

6 The hearing starts at 9.31 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. I do not propose each
10 day when we sit to re-introduce counsel who are appearing. The names are
11 on the appropriate public record, but please do not consider it a
12 discourtesy on the part of the Bench. It is simply, in our view,
13 unnecessary.

14 I should indicate, because I didn't say this yesterday when I was
15 introducing those who are present in court on this side of the Glass
16 divide, that of course the accused is himself present in court attending
17 his trial, and that ought to be on the public record. Thank you very
18 much.

19 Maitre Mabilie. Mr. Biju-Duval.

20 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. Before
21 Ms. Mabilie takes the floor, the Defence would like to express a desire
22 which it considers legitimate. Yesterday we followed closely the opening
23 statements of Mr. Moreno-Ocampo, who is the highest official within the
24 Office of the Prosecutor. Now, this morning, your Honours, he is
25 missing. He is not present at the hearing.

1 Ms. Catherine Mabilille and myself yesterday followed with great
2 attention what he had to say out of respect for him as an individual and
3 for his office. However, the Chamber knows that the obligation of
4 respect can only exist on the basis of reciprocity, and that is why,
5 your Honours, the Defence wishes to invite the Chamber to request
6 Mr. Moreno-Ocampo to grace this hearing with his presence, the presence
7 at which we shall be replying to his opening statement. This is the
8 request of the Defence before Ms. Mabilille takes the floor.

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

10 It seems, Ms. Bensouda, that the Defence consider it, if nothing
11 else, a breach of etiquette that the lawyer, who in fact happens to be
12 the senior Prosecution lawyer who opened the case for the Prosecution
13 yesterday, is not here to listen to his opposite number's opening address
14 for the Defence, and of course that is the opening speech by
15 Maitre Mabilille.

16 For the moment it would be inappropriate for us express a view as
17 to whether or not this is properly to be described as a breach of
18 etiquette, but are you aware as matter of interest whether there is any
19 difficulty, given that this concern has been expressed in
20 Mr. Moreno-Ocampo being present for Maitre Mabilille's opening speech which
21 is undoubtedly an important stage in these proceedings?

22 MS. BENSOUA: Mr. President, your Honours, in fact I would have
23 taken the floor to render the apologies of the Prosecutor for not being
24 able to be present this morning due to reasons beyond his control. But
25 having said that, Mr. President, I have announced before this Chamber

1 that I am the lead counsel in this case and that I would be representing
2 the Office of the Prosecutor, and that, I think, your Honour, with all
3 humility, I have all the authority to represent the Prosecutor in these
4 proceedings. His personal presence, I don't think, is all that -- I
5 wouldn't say important, but that would not prejudice the Defence in any
6 way, Mr. President.

7 PRESIDING JUDGE FULFORD: The reality, therefore, Ms. Bensouda,
8 is that due to other commitments it is not feasible for Mr. Moreno-Ocampo
9 to be present this morning; is that correct?

10 MS. BENSOUDA: That is correct, Mr. President.

11 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I think it would be
12 inappropriate for the Judges to seek to compel the Prosecutor to attend
13 to listen to Maitre Mabilille's opening speech. You have made the
14 observation on behalf of your leader. Ms. Bensouda has explained the
15 position, and of course she is lead counsel for the trial, and we'll have
16 noted that one member of the Prosecution team is absent today without
17 drawing any particular conclusions from it. But thank you for making the
18 point.

19 Maitre Mabilille.

20 MS. MABILILLE (interpretation): Your Honours, allow me to take the
21 floor. The opening statement of the Defence shall be given in two parts
22 and cover two topics. My submissions will largely be submissions of a
23 procedural nature related to the issue of the need for a fair trial.
24 Mr. Biju-Duval, my learned friend, shall take the floor after me to speak
25 to you of the matter of Thomas Lubanga's trial in connection with the

1 objectives of the International Criminal Court.

2 I wish first to say that the Defence welcomes the creation of
3 this International Criminal Court. This International Criminal Court
4 recalls the most protective of texts on human rights and regarding the
5 rights of the accused. In the basic texts of the International Criminal
6 Court, the death penalty is abolished, and this to us is a tremendous
7 advance for humanity. This International Criminal Court has as its
8 vocation, as its objective, that we no longer see on our television
9 screens what we saw on one 30th of September, 2007, a head of state who
10 had been toppled, who was hung in the wake of a sham trial during which
11 three of his Defence lawyers were one by one assassinated in the course
12 of their duties. The International Criminal Court aims to try those who
13 bear the greatest responsibility for the gravest of crimes against
14 humanity.

15 The direct corollary of this fight against impunity is a respect
16 for the rights of the accused. What do we understand by the fundamental
17 rights of the accused? I will touch upon them briefly, and I will then
18 develop the matter in our case.

19 First of all, there is the presumption of innocence. This right
20 is not always put into practice, not always equally recognised. For
21 instance, last night we saw the rendering of the press of the
22 Thomas Lubanga case. In the press he is already convicted, convicted
23 before being tried. And in the eyes of a vast majority, as soon as there
24 is an arrest warrant and as soon as the charges are confirmed and the
25 matter is committed to trial, the presumption of innocence disappears.

1 And I would emphasise that this presumption of innocence disappears in
2 particular in these cases where these most serious of crimes are charged.
3 Such a person appearing before such a court no longer enjoys the
4 presumption of innocence.

5 The second right is the right to silence. I'll say no more on
6 that.

7 Thirdly, the right to fully know the charges bearing against
8 oneself as an accused person, that is to say full disclosure also of the
9 incriminating and exculpatory evidence.

10 And finally, the trying of the individual without excessive
11 delay.

12 And last but not least, the proceedings must be public.

13 Defence lawyers are often questioned on the merits or the basis
14 for fundamental rights, and I would like to recall here that there are
15 two objectives to be served by these fundamental rights. First of all,
16 to protect an individual from arbitrary action. A person who faces
17 charges finds themselves called before an institution which has
18 tremendous powers, tremendous resources, backed by the international
19 community, and that person stands charged and who is ill-equipped.

20 What does protect him is the respect, the safeguarding of his
21 judicial rights, and this goes to the very heart of fundamental rights.
22 Ensuring a balance between an institution who has tremendous power
23 vis-a-vis a single individual, this slight rebalancing is brought about
24 by fundamental rights.

25 And there is another essential aspect, and this is what is of

1 greatest interest to us, that is that these fundamental rights allow or
2 should allow, when they are correctly exercised by the Defence, that it
3 has the means to participate in the injustice.

4 The Defence, in exercising its fundamental rights, investigates
5 the evidence present by the Prosecutor. It scrutinises the Prosecutor's
6 evidence. It seeks to understand what in the Prosecutor's evidence is
7 close to the truth and what, on the contrary, is far removed from the
8 truth, and it brings before the Chamber its analysis and its arguments,
9 that there be an adversarial discussion before the Bench. The
10 fundamental rights of the Defence allow the Defence to -- if, that is to
11 say, they are exercised fully, allow the Chamber to come to a just and
12 equitable ruling having seen or heard argument on both sides in
13 connection with each piece of evidence.

14 This is what I wanted to say by way of opening submissions. I
15 would now like to use the 15 months which we have spent together to try
16 and understand various passages in the Rome Statute. One of the
17 challenges of this first trial is that it is the first trial. Another
18 challenge which is problematic for us is that here new texts are being
19 applied containing new prerogatives. The Prosecutor, and here we have an
20 innovation in relation to the two international tribunals for
21 former Yugoslavia and Rwanda, here the Prosecutor is obliged to
22 investigate incriminating and exonerating circumstances equally. The
23 Prosecutor, therefore, has a new rule under this Statute, and as a
24 result, it is up to us, up to all of us to take part in the development
25 of jurisprudence, that is to say an understanding of how these texts will

1 be applied.

2 I would say that today the Defence has five concerns, hopes,
3 musings. These musings, concerns, hopes arise from what we have been
4 able to do before this Court over the last 15 months.

5 Now, I'm going to say things which are not extraordinary. We
6 have all been through this together, but I would like to take a look at
7 what has happened exclusively from the perspective of the Defence. There
8 are five points which I wish to address.

9 The first is Article 54(3)(e) with which all here are familiar
10 and the consequences of it for the Defence at this point in time. The
11 second issue, and here you will not be surprised either, is the matter of
12 ex-parte. Thirdly, the charges, the charges levelled against
13 Thomas Lubanga. Fourthly, victims' participation. And finally, the
14 concept of publicity.

15 As I said, there's nothing new in what I will be saying, but I
16 would like to address these issues and express the concerns of the
17 Defence as this trial opens.

18 To begin, first of all, Article 54(3)(e). Here I would like to
19 summarise briefly the situation.

20 The main difficulty which we had in this case, and I think we can
21 be frank about this, is disclosure. The difficulties arose with the
22 disclosure of incriminating evidence and were followed with difficulties
23 encountered in disclosure of exculpatory evidence. So that all could
24 follow the ideas I'm going to put forward, I should remind all that the
25 incriminating evidence garnered by the Prosecutor must be made available

1 to the Defence as must the exculpatory evidence garnered so that the
2 Defence can identify any mitigating evidence, evidence which can assist
3 the Defence in analysing other evidence by the Prosecution or evidence
4 which tends to show the innocence of the accused.

5 Now, after many twists and turns, exculpatory evidence was
6 disclosed. The Chamber set out a set of rules to assist the Defence so
7 that it could do its work. When the time came for exculpatory evidence
8 to be disclosed, the Prosecutor informed us that he had that evidence in
9 his possession but that, unfortunately, he could not disclose it to us.
10 He could not disclose it to us because he had signed confidentiality
11 agreements with sources.

12 Now, here I must say that from the outset, this trial has been
13 badly approached by the Office of the Prosecutor, or at least the way in
14 which the Prosecutor has carried out his work strikes us as being
15 particularly problematic. The Prosecutor came to this Chamber to inform
16 us that he had obtained 55 per cent of his evidence under confidentiality
17 agreements, whereas we know that the Prosecutor should have obtained
18 evidence under -- or based on confidentiality agreements only if that
19 evidence was not going to be used or only used exceptionally and only if
20 that evidence was for the purpose of generating new evidence.

21 No. The Prosecutor travelled to Ituri, to the Congo, to conduct
22 his investigations. He obtained various documents from various sources.
23 He did not take the trouble at that time to differentiate between the
24 evidence which he was garnering and, rather, he used -- he blanketly used
25 confidentiality agreements.

1 In the wake of this, sources were -- did not wish to lift
2 confidentiality. We could discuss why the sources did not wish to lift
3 confidentiality, particularly the United Nations, but this is not the nub
4 of my argument. What I mean to tell you is that we found ourselves in a
5 situation where the Defence did not have access to the evidence. The
6 Defence, but the Judges neither, or even more so the Judges.

7 Then a decision was taken on the 13th of June, and the Defence
8 sees this decision as being courageous, courageous because it placed at
9 the heart of this trial, this first trial, the concept of a fair trial,
10 the Judges feeling that deprived from consulting that evidence, and as
11 the documents were not disclosed to the Defence, the Judges could -- felt
12 that they could not ensure a fair trial and could not be custodians of
13 fair proceedings. The only conclusion which they could take was that
14 they could not continue with these proceedings. That is to say, they
15 drew all of the consequences. This was not an easy matter at that time.
16 At that stage they also decided to free, to release Thomas Lubanga.

17 This is how I would describe the initial problem, and I will go
18 on to say, however -- however, on the 18th of November, in the wake of a
19 hearing at which the Defence could not advance arguments because the
20 Chamber decided to lift the stay. I say the Defence could not advance
21 its arguments because the only arguments that it could put forward at
22 that time were in connection with whether the documents were disclosed to
23 the Defence and in what form.

24 That oral decision was issued. The grounds for the decision were
25 not provided to us until Friday evening.

1 The Defence intends to express here its concerns, because the
2 documents which have been disclosed to us and the decision which was
3 provided to us on Friday evening should be accompanied by annexes. It is
4 a partial decision. The annexes make it possible to understand the
5 decision. The decision as we have it allow us to understand the guiding
6 principles that led the Judges to take their decision. However, we do
7 not yet have the material that allows us to know what the systematic
8 approach was on a case-by-case basis to each document, that is to say,
9 why these documents were not provided to us in their totality.

10 At this point in time, I would say that this is not an isolated
11 phenomenon. I have statistics, and to -- basically we're talking about a
12 dossier of 32.000 pages. The disclosure of which I'm speaking,
13 disclosure of exculpatory evidence from the 18th of November is some
14 5.000 pages. So quantitatively we're speaking of very large volumes.
15 However, in relation to disclosure, today we are told that the disclosure
16 cannot be complete, and because of an original error by the Prosecutor
17 and not of the proceedings in themselves. But because of an error which
18 one is attempting to rectify, the Defence still feels that the solution
19 which has been found, still prejudicial, is detrimental to the Defence.

20 There are four factors at play here. It is clear that the
21 sources have refused that certain documents be provided to us in their
22 totality without redactions. And thus, alternative measures have had to
23 be taken in place of true and full disclosure. However, I insist today
24 we should have benefitted from this full disclosure and not alternative
25 measures.

1 The Defence did not commit an original error. It does, however,
2 continue to suffer a prejudice. The Bench, the Chamber, feels that the
3 prejudice is not sufficient to impede the holding of this trial, but
4 nonetheless this is a prejudice.

5 Four months of disclosure, summaries. How are we, the Defence to
6 utilise these summaries? You know well if I appear tomorrow with a
7 summary here in the courtroom, with a summary the author of whom I do not
8 know, the source of which I do not know, which is a partial document,
9 what weight will that evidence have?

10 You speak to us of alternative evidence. You say, "Yes, we
11 cannot provide you with this document, but if you go looking in this
12 other document you will find that you can find comparable evidence in
13 this alternative evidence." This, too, for us is not entirely
14 satisfactory.

15 One of the objectives of the Defence is to provide corroborative
16 evidence. If I come tomorrow morning with evidence to this Chamber, if
17 that evidence is corroborated by other evidence, it is thereby
18 strengthened. When I am provided with corroborative evidence, I am
19 missing the original evidence. I am missing the opportunity to
20 corroborate.

21 Now, turning to this blue pencilling. The Defence needs to
22 fine-tune its skills of jigsaw puzzling. We have to deal with these
23 documents which are redacted, redacted a little, redacted a lot. Often
24 it is genuinely difficult for us to use these documents even though often
25 they are very important documents. So alternative evidence, redactions.

1 I'd like to turn now to the admissions proposed by the
2 Prosecutor. I am not convinced that we can use these admissions or that
3 they would be of real use. Part of the admissions begin with the
4 wording, "It has been said ...". What is admission? Is it the admission
5 that it has been said that, or is it the thing this has been said? These
6 admissions, once again, do not fulfil for us what is our rightful
7 expectation, and that is full disclosure. There is thus a prejudice for
8 the Defence through the application of Article 54(3)(e). We start off
9 this trial with a prejudice, whereas this is a wholesale abuse of the
10 rules by the Office of the Prosecutor.

11 There's also Rule 82. Rule 82 specifies that when evidence is
12 obtained under or based on confidentiality agreements and the Defence
13 cannot carry out its work fully, it can examine and cross-examine only if
14 the person agrees to this. This is a serious restriction to our work.

15 Thirdly, it puts the Defence in a very specific -- particular
16 situation, because the Chamber will have had access to information the
17 Defence will never ever access.

18 Those are the three consequences of the first points I was
19 making. So how can we have a fair trial under the conditions I have just
20 mentioned?

21 My second point, which the Defence has already explained at
22 length, are the ex parte hearings. Now, I would like to start by stating
23 that the Defence is aware that ex partes are provided for under the
24 Rome Statute, but the Chamber must have very good reasons to decide for
25 an ex parte hearing instead of a public one. However, if we look at the

1 case, we find ourselves in the following situation, and please forgive me
2 again if I'm not very precise in what I'm saying. However, I will give
3 you approximate numbers.

4 There were 54 hearings including the hearings in which oral
5 decisions were given. Of these 54, 24 were ex parte. As such, half of
6 the hearings took place without the Defence. There was a trial within
7 the trial in which the Defence was unable to make its -- to state its
8 case.

9 Now, we understand that there could be reasons on the grounds of
10 which the Chamber decided in favour of ex parte hearings. However, for
11 us it is difficult to understand and to accept the fact that we have
12 missed half of the hearings, that the Defence -- to accept the fact that
13 the Defence was absent for half of the hearings. And we cannot believe
14 that no information was given by the Office of the Prosecutor during the
15 discussions between the Judges and the Office of the Prosecutor at these
16 hearings. We will never know what was said at the hearings.

17 So I was saying this because, in my mind, ex partes can only be
18 held in exceptional circumstances, but I wonder how - and this is the
19 issue at stake - how can we balance the objective of security and the
20 rights of the Defence? How can we accept the fact that half of the
21 hearings took place without it, without the Defence?

22 Now, I moved on to my third point, the charges against
23 Thomas Lubanga. I have two observations. First, as my learned colleague
24 Jean-Marie Biju-Duval said, we listened to the Office of the Prosecutor
25 very carefully yesterday, and we paid particular attention to a specific

1 point, the concept of domestic armed conflict and international armed
2 conflict.

3 I would say that the Office of the Prosecutor, from the outset,
4 said that the Pre-Trial Chamber referred Thomas Lubanga for a specific
5 crime for enlisting and conscripting children in an armed conflict and
6 also for making them -- for participation in an international conflict,
7 but we had understood that the Prosecutor first stated that the conflict
8 couldn't be qualified as international. They stuck to this point for a
9 long time, but afterwards this changed. And this was difficult for the
10 Defence, because some points were confirmed by the Pre-Trial Chamber but
11 not by the Office of the Prosecutor. So now the Defence has to consider
12 charges, and it doesn't really know where the Prosecutor stands on them.

13 We understood from what was said yesterday that the Prosecutor
14 somewhat changed its stance. They looked at the national and
15 international conflict issue and stated that they would leave it up to
16 the Judges to characterize the conflict. I think they were referring to
17 Regulation 55. And I won't open a discussion on this regulation;
18 however, we have difficulty with it.

19 Now, that was the first observation on the charges. The second
20 one we had already delved into, but it remains very relevant now. It
21 concerns the threats against Mr. Thomas Lubanga from the Office of the
22 Prosecutor. So Mr. Thomas Lubanga Dyilo is prosecuted now for enlisting
23 and conscripting children and using them in armed conflict, but the
24 Prosecutor has said, "I may in future prosecute him for other crimes."

25 Now, we have some concerns. And that is an understatement,

1 because we believe it is very unfair for the Prosecutor, who has been
2 investigating the situation for five years already, who knows the
3 situation perfectly well, for the Prosecutor who has given us yesterday a
4 document that states all the locations the massacres took place and who
5 knows the historical and political context of the situation. The
6 Prosecutor knows the period during which Mr. Thomas Lubanga Dyilo had
7 authority. Actually, it is very specific in time. And now the Office of
8 the Prosecutor is saying that, "I will prosecute him for these crimes but
9 may carry out new investigations and prosecute him for another crime."

10 We believe that this approach is unfair. We looked at the
11 jurisprudence of international criminal tribunals and the only case in
12 which I read about additional charges and which was similar to the case
13 of Mr. Thomas Lubanga is the Milosevic case, but in his case the issue
14 was very different. There were three different countries, Kosovo,
15 Croatia, Serbia, Bosnia - I beg your pardon - and these were different
16 countries, different time-frames. And the Prosecutor said, "Well, I
17 started my investigations on this country for this period of time, but I
18 couldn't finish them." But now we're talking about a very specific
19 time-frame. You know exactly what happened, but you are still
20 threatening the Defence with new charges. But the Defence can't accept
21 this, because if the charges for the crimes on which Mr. Thomas Lubanga
22 is prosecuted now aren't sufficient, we will need a new trial. Well, I
23 believe that to say that is unfair and puts the Defence in a very tricky
24 situation.

25 And now my fourth point, the participation of victims. I have

1 already mentioned this to the Chamber. Our main concern about a fair
2 trial is also in relation to the participation of victims. I'll give you
3 explanations for you to interpret what I want to say properly. My
4 comments will be procedural in nature. I will not at this stage go to
5 the substance, the merits of the reasoning of the legal representatives.
6 I will only talk about procedural matters.

7 Article 68(3) provides for the participation of victims. They
8 must express their views and concerns, but this article provides that
9 they can only do so if it does not prejudice the rights of the Defence
10 and a fair trial.

11 The Rome Statute is a statute on the participation of victims.
12 It is a compromise between two different legal systems, the common law
13 system at which victims do not appear at trial - the Prosecutor
14 represents them - and the civil law system in which victims are parties
15 to proceedings.

16 The Rome Statute provides for a hybrid system, a mixed system in
17 which victims' participation doesn't mean that victims are a party to the
18 proceedings. The parties are the Defence and the Prosecution. The
19 Prosecutor has a burden of proof, and the Defence must carry out its work
20 properly too. However, victims are not parties in the proceedings.

21 Now, why is the Defence very worried at present? Well, if we
22 become parties, no longer just participants, if anybody does, this will
23 have serious consequences for the Defence, and we already have good
24 reasons for concern. I will try to explain these reasons through four
25 points, the movement from participation to party, and I will give you

1 four examples of how this can happen.

2 First, we were given applications for participation on the part
3 of victims, and the Defence was asked to give observations on these
4 applications. We looked at them. Most were almost entirely redacted or
5 redacted to such an extent that it was impossible for us to carry out any
6 type of investigation, and the only observations we could make were on
7 the form. We are dealing with applications concerning which -- or
8 applications which prevent us from carrying out our work, the reason why
9 there was a defence.

10 There were 80 victims -- 92 victims, I beg your pardon.
11 Ninety-one are entirely anonymous to date. They will come and make
12 statements that play against our client in Chamber, and the Defence will
13 not be able to do anything against it. Moreover, you have requested our
14 observations. However, 40 victims have been asked to come and give their
15 statements before the Chamber and testify in court, and we are worried
16 because we do not know anything about these people.

17 They are going to come and testify for the Prosecution against
18 our client. They are anonymous. We don't have any information about
19 them. That means a second or third trial within the trial. We'll have
20 to deal with the Prosecution, and after that we'll have to continue with
21 victims, and we won't have any of the procedural means or judicial
22 guarantees we have to defend ourselves because the Rome Statute has not
23 provided for these victims being parties in the trial.

24 And I will give you another example of why we are so concerned.
25 Yesterday we listened to a legal representative who told us that after

1 the Prosecution's evidence we would have the victims' evidence, but the
2 victims' evidence is something we know nothing about. We were told we
3 would have three months before the trial to investigate the evidence
4 furnished by the Prosecutor, but we lack visibility here because we're
5 6.000 kilometres from the place the events took place, and our ability to
6 carry out investigation is very limited. How will we be able to deal
7 with this second party accusing us?

8 And the last -- the last point which also raised our concerns
9 related to the opening statements of the legal representatives of
10 victims. They said that at one stage, and I would like to look for the
11 text because I want to read it, not to change what was said, however,
12 I'll give you a general idea of what was said. They would like new
13 charges to be made against Mr. Thomas Lubanga.

14 I know that the Chamber will not heed this in that the
15 Rome Statute doesn't give legal representatives of victims a right to
16 request for new charges to be brought. However, for them to formalise
17 this request in the way they did is something we have difficulty
18 accepting.

19 And I would like to add, and this is the only observation I will
20 make on what the Legal Representatives of Victims said yesterday, I
21 listened to much more than just reference to the crime of enlisting and
22 conscripting. I heard the word "rape" and "sexual slavery" mentioned.
23 However, those aren't charges brought against our client. The
24 Legal Representatives of Victims cannot accuse our client of crimes which
25 he isn't prosecuted for here. That is why we are concerned, because this

1 is the first case and we know that the participation of victims is still
2 not a very well-defined area, and the Defence wants to be able to stand
3 up to these new accusations.

4 I would like to finish my point about the victims by referring to
5 a protagonist in the judicial world in France, and I won't quote him just
6 because he's French but more because he actively participated in the
7 establishment of the International Criminal Court. He worked hard to
8 enable this court to function, and he is very informed about the concepts
9 I have just been mentioning, and I would like to read the -- an article
10 or a part of an article in Le Monde which wasn't written by
11 Robert Badinter in international criminal justice. It was written in
12 France when we had very important discussions at the time about
13 international criminal proceedings, but I would like to read a passage
14 which I believe to be very relevant:

15 "On behalf of the victims who are suffering and which call for
16 the whole of society to unite, we would like to state that the fair
17 trial's principles must be respected. They are enshrined in the
18 international Convention of Human Rights. Justice is not vengeance, and
19 it is not about compassion towards victims. That is why it is a very
20 complicated procedure."

21 I believe that to quote him is -- will give you a better idea
22 than my own words, what I might say in my own words about the opinion of
23 the Defence on these points.

24 Now, I would like to come back to what I was talking about
25 earlier on concerning the publicity of the discussions, which is an

1 essential feature of a fair trial.

2 The International Court of Human Rights has just issued a
3 judgement which confirms what it has written on many occasions before.
4 However, what is the novelty of this judgement is that it was just issued
5 15 days ago in a Schlumpf case, S-c-h-u-f-p-h [as interpreted], on
6 8 January 2009. The Court would like to recall that the publicity of
7 legal discussions is a principle that is enshrined in the principles of
8 the convention. It protects those subject to the law from secret
9 judicial matters and, as such, is one of the means that ensures the trust
10 people will have in courts and tribunals. Through this it will help
11 attain the aim of Article 6(1), fair trials, and the principles
12 underpinning any democratic society.

13 I know that the Chamber is very concerned that these principles
14 are applied, but we must make the following statement.

15 Now, I would like to go back on my reasoning concerning the
16 ex parte hearings. Part of the hearings were confidential for the
17 Defence and the public which didn't have access to them.

18 Now, we are going to hear the Prosecutor's evidence. We are
19 going to listen to 32 witnesses, and 23 or 24 of the witnesses will be
20 protected, meaning that part of the examinations will be in closed
21 session. The public will, therefore, not have access to the information.
22 The other part will be as public as possible. However, it might just be
23 residual.

24 I listened carefully to the arguments raised. We are dealing
25 with this very complicated issue of security. However, at some stage,

1 and I think it's my learned colleague Jean-Marie Biju-Duval who was
2 talking about the critical mass earlier on, and I wonder, because our
3 objective for all of us here is to be able to say the truth, our truth,
4 to state the reasons why we are here today. And the people are expecting
5 this adversarial discussion, because this trial should benefit the
6 international community.

7 If we look at all the cases at hand, not only that of
8 Mr. Thomas Lubanga, there are always issues of security. And if we
9 approach the matter in this way, it will mean that international criminal
10 justice will become very secretive, and this will defeat the purposes we
11 have set ourselves.

12 We have another concern. We were told that these witnesses can't
13 testify in public because threats have been made against them. The
14 Defence was not present during these debates on security. We were
15 excluded. So therefore, we don't know about them. We have just been
16 told that there are security problems. But I heard a Legal
17 Representative of Victims tell us yesterday that even though some victims
18 were anonymous, the pressure was put upon them and that they had problems
19 due to this, and I don't want to underestimate this. However, we do not
20 know all the ins and outs of situation of these anonymous victims, which
21 are still confidential, anonymous at present, and of course we won't
22 question the fact that there are security issues.

23 This issue is, after all, at the very heart of the objective of
24 the justice which we are attempting to render. If this whole trial
25 becomes opaque, secret vis-a-vis the Iturian people, that is highly

1 problematic, and I must say that I feel most ill at ease to be 6.000
2 kilometres from the scene of these terrible crimes and to be here inside
3 this secure courtroom in this cool northern country. I understand that
4 there are imperatives, there are constraints and the Chamber would have
5 liked us to be, at least in part, close to the victims and to that place
6 where these terrible acts have taken place.

7 If in addition to not being in proximity the proceedings are
8 rendered secret and untransparent, there we lose both the fairness of the
9 trial and also the objectives which we have set ourselves.

10 I propose to conclude by saying that the Defence is confident,
11 the Defence is confident. There is a French writer, author of the end of
12 the 17th --

13 THE INTERPRETER: The interpreter apologises.

14 MS. MABILILLE (interpretation): The Defence has -- hopes for a
15 fair trial. It has confidence in the Judges that its concerns, its
16 questions will be remedied as these proceedings unfold. We are
17 confident, but we are also vigilant.

18 I am gratified with your attention, and I propose to pass the
19 floor to my learned friend Jean-Marie Biju-Duval for the second part of
20 our statement with your leave.

21 PRESIDING JUDGE FULFORD: Thank you very much, Maitre Mabilille.
22 That was extremely clear and very helpful.

23 Yes, Mr. Biju-Duval. Could I ask you to keep an eye on the
24 clock. We would wish to give the interpreters and the stenographer a
25 break at around about 11.00.

1 MR. BIJU-DUVAL (interpretation): Yes, your Honour. I think I
2 can commit to that. My submissions should not last longer than a half an
3 hour, give or take a few minutes.

4 Your Honours, Catherine Mabilie has just brought to our attention
5 the threats to these proceedings, a lack of presumption of innocence, an
6 imbalance between the powers of the Prosecution and the little means of
7 the Defence, but above all, the weight of secrecy which in a multitude of
8 forms and sometimes for obscure reasons comes to trammel the revelation
9 of truth.

10 Ex parte hearings, closed-session proceedings, the selection of
11 the charges, the selection of the evidence which is carefully redacted,
12 carefully sorted by the United Nations organisation as if it were
13 inappropriate to look at the materiality of the facts, as if there was a
14 fear to name those who bore the greatest responsibility, as if the trial
15 itself was more fearsome than the crimes being tried. Well, no, your
16 Honours. No, Prosecutors.

17 Mr. Thomas Lubanga and his Defence is not satisfied by this means
18 of seeking out the full truth, this way of seeking out who bears the
19 greatest responsibility, this way of seeking to render justice. The
20 truth, yes, but nothing but the truth. In the cold light of day and
21 before all, as it has been said, justice should not simply be done, but
22 it must be seen manifestly and incontestably to be done. And it is for
23 that purpose that Thomas Lubanga has chosen to plead not guilty, because
24 he seeks no compromise, or he seeks not to negotiate with the truth,
25 whatever it may be.

1 After being held in Congolese gaols, after awaiting the opening
2 of a trial constantly postponed, after struggling with his Defence to
3 push back the wave of secrecy, he wants to have a trial where nothing
4 remains in the shadows. So, yes, let us examine together the issue of
5 child soldiers in Ituri. Let us examine together the responsibility of
6 the political leader, Thomas Lubanga. Everyone should put forward their
7 arguments, put forward their evidence, and the Judges should adjudicate
8 on the basis of the full facts. Justice should not simply be done, but
9 it must be manifestly and incontestably seen to be done.

10 Beyond a fair trial, the fair trial with justice owes to the
11 accused, the International Criminal Court must publicly demonstrate that
12 this trial fulfils the key remit which has been allocated or missions
13 which have been allocated to the International Criminal Court. What are
14 these? They are to prosecute the most serious crimes of concern to the
15 international community, to try those who bear the greatest
16 responsibility, and the International Criminal Court today must
17 demonstrate that in the framework of this trial these two missions are
18 being fulfilled. This is all the more important because this is the
19 first trial, and the fulfilling of these missions has very poorly been
20 demonstrated, Madam Prosecutor, up until now when we consider the methods
21 that have been used to fulfil the role assigned in the struggle against
22 impunity.

23 Let us dwell a moment on why, your Honours, this trial cannot
24 meet the hopes which the International Criminal Court has brought into
25 being.

1 First of all, its first remit, to prosecute the most serious
2 crimes of concern to the international community. Let us leave to one
3 side the fact that the Prosecutor seems only to be turning his attention
4 to Africa. It is true that serious crimes are many, not least in the
5 east of the Democratic Republic of the Congo, including in the period
6 which falls under the jurisdiction of the court, that is to say from the
7 1st of July, 2002. We can even probably say without any risk of error
8 that all or many of the crimes covered by the Rome Statute will have
9 taken place there.

10 However, the Prosecutor, having reflected on the situation, has
11 chosen but one crime, and that is the enlisting and conscripting of child
12 soldiers. No one would contend that this is not a serious crime, not
13 least the Defence.

14 Legal Representatives of the Victims, yes, one is always right
15 when one defends children. Children are always, everywhere, the first
16 victims of war and massacre, the most vulnerable, the most innocent of
17 victims, and in all wars they symbolise innocence, martyred innocence.
18 In modern wars, like in ancient wars, like those of the 21st Century,
19 there are no -- there is no war without war crime, and everywhere
20 children die in the fighting.

21 At the beginning of this month of January 2009, bombs are -- or
22 children are dying under the bombs of the most sophisticated democracies,
23 but this is not what we are talking about. We are talking about the
24 enlisting of children under 15 years, that is to say, the only crime that
25 cannot be -- that modern Western armies cannot be accused of. That is a

1 crime which they do not commit, or at least not anymore. The other
2 crimes, yes, but this one not. The modern armies of Western countries
3 undoubtedly approve of your choice, Madam Prosecutor. That crime does
4 not concern them.

5 The choice of this crime for this inaugural trial of the
6 International Criminal Court, is it appropriate? No. It is the very
7 image of blind justice which only looks at the crimes of communities,
8 countries which are in dire straits and not those of more privileged
9 countries.

10 In the wake of five years of investigation into the atrocities
11 and massacres perpetrated on the Iturian people, this is the only crime
12 with which Mr. Lubanga is charged.

13 Now, I know well, and Ms. Mabilie mentioned it but moments ago, I
14 know well that investigations are ongoing into other crimes, and the
15 Office of the Prosecutor reserves itself the right at some point in time
16 to issue new charges against him at a later point in time. One could
17 look at the unfairness of this in light of the rules on a fair trial, but
18 the reality is even simpler. If five years later insufficient evidence
19 has been gathered to charge Mr. Thomas Lubanga with the responsibility
20 for other crimes, it is simply because this political leader cannot be
21 suspected with substantial or with decently robust grounds of such
22 crimes.

23 Why has the Prosecutor targeted Thomas Lubanga for this first
24 trial? There is no lack of suspects of war crimes and crimes against
25 humanity between Kinshasa and Kampala. Madam Prosecutor, you know better

1 than anyone. Since 2003 all major human rights organisations have been
2 exhorting you to prosecute them, from Bunia to Kinshasa, through Beni and
3 Kampala, everybody knows them. Those who have sowed chaos and have
4 manipulated hate, armed militias, organised massacres, and turned to
5 their benefit all of it.

6 To silence rumours that are hostile to the International
7 Criminal Court, the International Criminal Court should have, from its
8 first trial, demonstrated its independence. The Prosecutor should have
9 clearly taken up the challenge of justice which dared to challenge the
10 powers and not simply be a dupe and an instrument of them, be they
11 national powers or international organisations. But what is the reality?

12 First of all, Madam Prosecutor, it is not the Office of the
13 Prosecutor who takes the initiative to investigate crimes in Ituri. It
14 is President Joseph Kabila himself who refers the situation in the DRC to
15 the court, claiming that he is unable to deal with it. It is he who
16 surrendered Thomas Lubanga to you, having held him in prison for two
17 years in Kinshasa after being dubbed a rebel by the MONUC, that is to say
18 the United Nations.

19 The United Nations. Ms. Mabilie referred to that organisation
20 moments ago. From the beginning of the investigation, confidentiality
21 agreements were signed, which placed the Office of the Prosecutor
22 through -- under the direct responsibility of the United Nations, and
23 this brought about a situation whereby the Chamber was obliged to
24 recognise the impossibility of ensuring a fair trial.

25 In this context a question arises. Has the Prosecutor indeed

1 fulfilled his mission and his raison d'etre to struggle against impunity
2 and to prosecute those who bear the greatest possibility for massacres in
3 Ituri, those who bear the greatest responsibility, those who bear the
4 greatest responsibility and who the national authorities cannot or will
5 not prosecute in light of the immunities connected with their own
6 positions? There is the possibility of negotiating immunity in the
7 framework of cynical negotiations at the international level.

8 The Prosecutor has already shown that he can be audacious in
9 requesting an arrest warrant against the president of Sudan, but we must
10 also point out that the International Criminal Court was referred the
11 situation of Sudan by the United Nations Security Council when the --
12 only after the United States, a very important power, claimed the
13 genocide taken there. Look at this. Is this independence?

14 Allow us to return our attention to the DRC and Ituri. There are
15 many leaders who undoubtedly bear responsibility, including the leader
16 with whom you collaborate, Madam Prosecutor, President Joseph Kabila.
17 Troops formed, armed, supported by the Kinshasa government. And here
18 there is no doubt about it. All of the observers agree that the former
19 rebel chief Mbusa Nyamwisi working on behalf of the Kinshasa government,
20 operating on behalf of the Kabila government, is one of those who bears
21 the greatest responsibility for atrocities committed in Ituri.

22 September 2002, just one example, the Nyakunde massacre. More
23 than 1.000 men, women and children were massacred. Hema, in the Hema
24 population, a terrible massacre. One of the most terrible committed in
25 Ituri during the period concerned. A Lendu militia supported Mbusa's

1 army, the APC, and with the support of Kinshasa troops perpetrated that
2 massacre.

3 No prosecution is underway into those who bear the responsibility
4 for that. The APC, the army of Mbusa, paid for by the Kinshasa
5 government. No reference is made to it in your opening statement,
6 Madam Prosecutor. And I'm sorry to hear that amongst the long list of
7 armed groups referred to by my learned friend Ms. Bapita she did not
8 refer to it either. There, too, there is a gap, a silence which needs to
9 be filled.

10 The name of Mbusa does not appear once if -- in your brief,
11 Madam Prosecutor. Is it by coincidence that Mbusa Nyamwisi has become
12 minister of foreign affairs in the Kabila government?

13 And that is not all. Madam Prosecutor, do you not remember the
14 direct involvement of the Ugandan government, the Ugandan troops arming
15 local groups and participating itself in massacres? Is it so difficult
16 to draw the obvious conclusions when one is charged with fighting
17 impunity and prosecuting those who bear the greatest responsibility? The
18 relations which the Prosecutor must maintain with the highest Ugandan
19 authorities, are they so precious that they must compromise its key
20 remit?

21 The same can be said for Rwanda. The Prosecutor affirms that
22 Rwandan authorities delivered arms and organised the training of
23 militiamen. Now, if that were true and if the whole concept of
24 complicity has any meaning, how can it be that no prosecution has been
25 opened? But let us return our attention to the Union des Patriotes

1 Congolais itself and the specific involvement of child soldiers in the
2 armed branch of that organisation.

3 Madam Prosecutor, you are prosecuting the political leader of the
4 Union des Patriotes Congolais. What about the leader of its armed
5 branch? What about its military leader? What about its Chief-of-Staff,
6 General Floribert Kisembo? You have not mentioned him once in your
7 opening statements. You prefer to refer to Mr. Bosco Ntaganda, who is
8 one of his subordinates. Why is he not beside Mr. Thomas Lubanga to
9 answer for matters under his direct responsibility, military affairs? Is
10 it a coincidence in -- that after trying to overthrow Thomas Lubanga as
11 the head of the organisation, he is appointed general of a brigade in the
12 national army of the DRC on the 11th of November, 2004? One is always
13 hasty and willing to get rid of a political leader.

14 That may be the situation locally, but what about the Office of
15 the Prosecutor? Why is Kisembo, this rebel leader who now is at the side
16 of President Kabila, spared but his political opponent, Thomas Lubanga,
17 imprisoned in the gaols of Kinshasa? Here, too, the Prosecutor's choices
18 are surprising, are disquieting. Uganda, Rwanda, Kabila, Mbusa, the
19 Prosecutor has chosen to spare these, the highest -- who bear the highest
20 responsibility and, rather, to focus on somebody who there is a desire to
21 eliminate for political reasons.

22 Your Honours, we await justice, uncompromised justice, justice
23 which is not compromised with the authorities, whereas what we see is
24 diplomatic goings-on that seem to involve stepping away from justice,
25 which seem to turn their back on the absolute power of international

1 criminal justice, the power to denounce crimes and identify those who
2 bear the greatest responsibility irrespective of the height of the
3 offices they hold.

4 Justice should be independent and sovereign. What have you done
5 to it, Madam Prosecutor? The Office of the Prosecutor is silent on the
6 most essential matters.

7 When it comes to crimes in Ituri, those who are the most powerful
8 are spared. Thomas Lubanga is charged in place of those who should have
9 been prosecuted, and so the accused is placed in an unacceptable
10 situation. The International Criminal Court is put before an immense
11 danger, a fearsome danger, because the International Criminal Court
12 cannot prosecute all of the suspects. And because it can never prosecute
13 all of the suspects, international criminal justice must necessarily face
14 the temptation to convict by proxy those who are absent.

15 The danger is tremendous, because beyond the prosecution of an
16 individual, an attempt is made to prosecute a criminal phenomenon which
17 is far greater than him. The accused then becomes or risks becoming a
18 scapegoat.

19 Your Honours, with the Lubanga trial the Prosecutor has placed
20 you in the worst of configurations. Not only are those who bear the
21 greatest responsibility unconcerned, untroubled, but it is one of them
22 who arrested and surrendered this person to the International Criminal
23 Court. What image of international criminal justice does this give?

24 The Prosecutor announces proudly this trial, that this trial is
25 the trial of the child soldiers, but who gave -- who scandalously gave

1 justification to that criminal practice? Who has given awful prestige to
2 the Great Lakes region of Africa and to these children taken up in war?
3 Laurent-Desire Kabila who had an army of kadogo. Who was the commander
4 of operations of that shameful army, that army of children? His son,
5 Joseph Kabila, today at the head of the country. And what is more, which
6 is the army that at this very point in time is enlisting and sending on
7 the hills of the Kivus child soldiers? The armed forces of
8 President Joseph Kabila, the army of he who delivered to you
9 Thomas Lubanga, Madam Prosecutor.

10 And we want to make -- and you want to make of Thomas Lubanga the
11 emblematic criminal of events which are not of his making and for which
12 those who bear the greatest responsibility are not being prosecuted, and
13 that is why instead of making or rising to the challenge of the
14 international criminal justice a major injustice is being created. That
15 is the nature of the first case brought before the International Criminal
16 Court.

17 Well, so be it. Let's try Thomas Lubanga, but let's do so in
18 such a way that this trial wipes from our minds this disastrous
19 situation, in such a way that it will not be said that the Judges were
20 dupes and played by the powers of the time. How do we do so? By being
21 rigorous in ensuring fair and transparent proceedings.

22 The actual facts alleged must be investigated. We must ensure or
23 investigate the credibility of the witnesses. We must investigate the
24 authenticity of the documents.

25 As regards scapegoats, we must ensure that the concept of

1 individual criminal responsibility is applied. Only this vigilance on
2 the principles and on the evidence can enable the International Criminal
3 Court to meet the challenges of justice, the human and symbolic
4 challenges inherent in any trial before it; and that double vigilance is
5 all the more important, your Honours, in that in bringing before you to
6 be judged Thomas Lubanga, and bringing before you Thomas Lubanga to be
7 judged in the place of those who bear the greatest responsibility for the
8 crimes committed in Ituri, one is seeking to have you play a role which
9 is not yours, one which cannot be yours, one which must not be yours.

10 Your judgement should not be a smokescreen behind which powerful
11 players continue to commit their crimes after a man has been convicted
12 for matters for which he was not responsible. At a point in time your
13 Court will say that is not appropriate, that that runs against the high
14 reasons that men and women have fought to have international criminal
15 justice triumph, and so justice will be done.

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

17 (Trial Chamber and Court Officer confer)

18 PRESIDING JUDGE FULFORD: We're going to rise now. That
19 concludes the opening statements. There are, however, a number of issues
20 that we wish to deal with at 20 to 12.00. The legal advisor to the
21 division, Ms. Godart, has sent through to everyone a few minutes ago an
22 e-mail setting out the agenda, and I think it's probably easiest if I ask
23 you to access that relatively speedily through Outlook rather than me
24 reading you out. I think it would be more efficient if you could,
25 immediately after we've risen, look at that e-mail so you can see the

1 various subjects that we want to raise at 20 to 12.00. If there are
2 difficulties, at least an outline in dealing with those, then of course
3 let the Judges know when we sit. Given that you will have had only short
4 notice, we will understand that it may be problematic to deal with the
5 matters fully, but we certainly want at the very least to put them on the
6 agenda to be dealt with substantively in the near future.

7 Good. Thank you all. We'll sit again at 20 to 12.00.

8 COURT USHER: All rise.

9 Recess taken at 11.08 a.m.

10 On resuming at 11.44 a.m.

11 COURT USHER: All rise. Please be seated.

12 MR. WALLEYN (interpretation): Thank you, President. Following
13 the information we received from the Victims and Witnesses Unit, I would
14 like to ask the Court whether we can have a closed session at the end of
15 this hearing to discuss matters concerning -- problems concerning one
16 witness.

17 PRESIDING JUDGE FULFORD: In principle, yes, Mr. Walley. n.

18 Mr. Sachdeva, I would like us first, please, to reflect for a
19 moment on the issue of the possibility that witnesses may incriminate
20 themselves when they come to give evidence. I'm not going to read out
21 any identifying details as to the witnesses to whom this may apply
22 because the filing certainly had a confidential element to it. I think
23 the annex or the annexes were confidential, but I think we can deal with
24 this in principle first of all.

25 I'm going to put this in the most theoretical way. It may be

1 that this will, in due course, concern some witnesses who do not have the
2 benefit of dual status. The position is much easier for those who have
3 dual status, because they have representatives who can provide them with
4 the advice which is called for under the relevant rule.

5 We need speedily to put in place a procedure whereby those
6 witnesses who don't currently have a legal representative have available
7 to them a lawyer whose function it will be to provide them with necessary
8 advice.

9 Now, I can see this as presenting some real problems in that it's
10 difficult to see how -- well, certainly as it seems to me at the moment,
11 I may be persuaded otherwise by argument, it's difficult to see how --
12 certainly as it seems to me at moment. I may be persuaded otherwise by
13 argument. It's difficult to see how the OPCV can play that role, because
14 of course the OPCV is here to represent those who have been designated as
15 participating victims in this case, and of course the witnesses I'm
16 referred to will not be within that category. Ms. Massidda may be able
17 to reassure me that she can fulfil the role, but I think it needs looking
18 at carefully.

19 Obviously the OPCD can't do this, and there is at the moment no
20 one else who has a function within the court structure to undertake this
21 role. There are language problems, too, in that those to whom this apply
22 may well want to communicate these things in Lingala.

23 The preliminary thought is that the Registry should immediately
24 identify at least one lawyer who is going to be available to provide
25 assistance on this issue.

1 Any thoughts, Mr. Sachdeva?

2 MR. SACHDEVA: Good morning, Mr. President, your Honours. That
3 suggestion is certainly amenable to the Prosecution. The filing, as
4 your Honours are aware, identifies potential witnesses where such -- such
5 assurances may be required to be given. At this stage, for the last
6 three, the Prosecution is still conducting further analysis to establish
7 exactly which assurances, if at all, would be required to be presented to
8 those witnesses.

9 Our initial submission is that witnesses that have already been
10 provided protection, in other words, granted protection by the Court,
11 their identities are in any event withheld from the public, and therefore
12 we don't see at this stage a requirement to move into closed session if
13 the evidence elicited may tend to incriminate them. However, it may be
14 that in certain situations the answer provided by a witness could have an
15 effect of identifying that witness, and then for that limited purpose we
16 would seek leave to move into private or closed session.

17 There is, however, one witness on the list that, as yet, an
18 application is pending, and of course depending upon the Court's decision
19 on that application, we would possibly seek further measures in terms of
20 how the evidence is elicited, whether in closed session or in public.

21 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I have very much in the
22 forefront of my mind Rule 74(10):

23 "If the issue of self-incrimination arises in the course of the
24 proceedings, the Chamber shall suspend the taking of the testimony and
25 provide the witness an opportunity to obtain legal advice."

1 Now, that's what I'm worried about, that we will reach that stage
2 and we will find that there is no appropriate lawyer available to provide
3 that advice, and I'm seeking to cover that eventuality. So that's what
4 I'm most wishing your assistance on now.

5 MR. SACHDEVA: Mr. President, I understand that, and our
6 submission in that regard is that if -- if perhaps as pursuant to
7 Rule 74(3), if an assurance is provided at the outset of the testimony
8 and the witness is not identified, then there may not be a issue of --

9 PRESIDING JUDGE FULFORD: The assurance that you can give is that
10 the individual is not going to be prosecuted by the Office of the
11 Prosecutor attached to this court. You're not able to offer that
12 assurance in relation to any prosecution in the DRC, are you?

13 MR. SACHDEVA: That's right, Mr. President, theoretically. But
14 also in respect of Rule 74(3), as I understand it, the -- the Chamber can
15 provide an assurance that the testimony given in this court would not be
16 used against that particular witness.

17 PRESIDING JUDGE FULFORD: And so your position, therefore, is
18 that 74(3), if applied fully, will mean that we will never -- that will
19 mean that we'll never have to reach 74(10).

20 MR. SACHDEVA: Mr. President, our submission is that it would
21 reduce that risk.

22 PRESIDING JUDGE FULFORD: Well, I'm not interested in a reduction
23 of risk, Mr. Sachdeva. I'm interested in ensuring that there isn't a
24 very substantial hiatus in the giving of evidence because we've got to
25 try to secure a Lingala-speaking lawyer who can advise the witness on his

1 or her rights as regards self-incrimination.

2 Now, if everybody is confident that a generous application of
3 sub-rule (3) will avoid us ever having to reach sub-rule (10), all well
4 and good; but if sub-rule (10) is a live possibility in these
5 proceedings, then something has got to be done about it.

6 Now, I need a clear position from the Prosecution as to what your
7 risk assessment is in this regard.

8 MR. SACHDEVA: Mr. President, in respect of witnesses where the
9 identity is withheld, if answers are given that may be used in this court
10 or in any other jurisdiction by another -- by another prosecuting
11 authority, then for that to be successful, the court would have to
12 release the identity upon request from that State to that prosecuting
13 authority, and in our submission that -- that can't be done unless the
14 Prosecutor's views are heard. And so if other prosecuting authorities,
15 other jurisdictions, do not -- are not aware of the identity of the
16 person making -- if indeed that person does make incriminating
17 statements, then the chances of prosecution, in our submission, are very
18 limited.

19 Now, as I said with respect to the -- the three witnesses that we
20 notified on our list, and again that list is not exhaustive, we are
21 currently undergoing further analysis, and in respect of those witnesses
22 perhaps the suggestion by your Honour concerning the Registry providing
23 legal advice may be -- may be a suggestion that is prudent at this stage.

24 PRESIDING JUDGE FULFORD: The problem, Mr. Sachdeva, is we've all
25 this morning heard the submissions of Maitre Mabille and Mr. Biju-Duval

1 about the need insofar as possible to make sure that these proceedings
2 are public. This would be -- or this could be another entirely separate
3 reason for effectively holding a private trial, because it would mean, as
4 I understand it, excluding this evidence from the public, whereas we may
5 not have to take that route if advice has been provided under
6 Rule 74(10).

7 MR. SACHDEVA: Well, Mr. President, in fact that was the reason
8 why I brought up Rule 74(3). It is exactly in that interest to have the
9 evidence given publicly. And if Rule 74(10) can also be examined for
10 that very purpose to have the evidence given in public, then the
11 Prosecution would do that.

12 PRESIDING JUDGE FULFORD: All right. Thank you, Mr. Sachdeva.

13 A lawyer? In a moment, Maitre Mabilie.

14 (Trial Chamber confers)

15 MS. MASSIDDA: Mr. President?

16 THE INTERPRETER: Please switch off the microphone, please.

17 PRESIDING JUDGE FULFORD: In due course, Ms. Massidda, in due
18 course.

19 Ms. Schon, I'm going to interrupt these discussions because we
20 need to progress this. The concern we've raised - it may be in due
21 course it will be found to be unjustified - but the concern we've raised
22 is that there is a risk that individual witnesses will require the
23 benefit of independent legal advice on the issue of self-incrimination.

24 Now, subject to any submissions in a moment by Ms. Massidda and,
25 of course, from the Defence, it may be that there's no one currently

1 retained by the court who is in a position to provide the kind of
2 independent advice which is needed in these circumstances.

3 If that analysis is right, inevitably this is going to have to be
4 a job for the Registry and to be undertaken extremely quickly. Are you
5 going to be able to do that?

6 MS. SCHON: Thank you, Your Honour. Yes, of course we will do
7 everything with -- within our limitations we can to facilitate the
8 process. The concern we would like to raise in this regard is that in
9 our reading of especially Rule 74, it would require any lawyer to give
10 the advice to the witness to have quite an in-depth understanding of the
11 statement as such, which -- where we would like to flag concerns in
12 relation to the neutrality of the unit as we have consistently submitted
13 that we would refrain from any discussion of the statement. So --

14 PRESIDING JUDGE FULFORD: I'm going to cut across to you. We're
15 not asking for this to be done through the Victims and Witnesses Unit.
16 I'm addressing you as -- and I should perhaps have made this clear, as a
17 representative of the Registry generally in court today rather than as a
18 representative of the Victims and Witnesses Unit. We -- we well
19 understand that this could compromise the neutrality of the Victims and
20 Witnesses Unit if it was done within your unit, which is why I've
21 underlined the expression "a lawyer with suitable and sufficient
22 independence and impartiality."

23 MS. SCHON: Thank you for this clarification, Mr. President.
24 What we had submitted earlier in our -- in our familiarisation filing is
25 that our -- one of the possibilities for this legal advice to be given

1 could be of the list of duty officers of the Registry. So this is an
2 opportunity that we could explore further.

3 PRESIDING JUDGE FULFORD: That's fine, but we mustn't have a
4 position where a witness is simply handed a list of telephone numbers and
5 said, "Here are the duty lawyers. Start ringing round," and we must
6 ensure that whoever is being suggested as the lawyer to fulfil this role
7 has appropriate language skills.

8 MS. SCHON: So -- thank you for this clarification again, and I
9 think you've -- there's like a twofold process that could -- initially,
10 there could be the in-court duty officers of the Registry which could
11 facilitate the help of probably also finding a lawyer and then this list
12 of counsel, the witness would have to be assisted in finding suitable
13 counsel as soon as possible from the list of counsel which are
14 registered.

15 PRESIDING JUDGE FULFORD: Yes, that's right. But the reality is
16 we need lawyers who have undertaken to fulfill this task if they're
17 called upon at short notice who have the requisite skills. That's the
18 essence of it. Thank you, Ms. Schon.

19 In a moment, Mr. Sachdeva.

20 Ms. Massidda.

21 MS. MASSIDDA: Thank you, your Honour. I'm afraid I do not think
22 that the OPCV could fulfill the task in this specific case.

23 PRESIDING JUDGE FULFORD: You needn't give reasons. That's
24 sufficient. Thank you very much.

25 MS. MASSIDDA: Thank you.

1 PRESIDING JUDGE FULFORD: Maitre Mabille.

2 MS. MABILLE (interpretation): At this stage we don't have any
3 relevant observations.

4 PRESIDING JUDGE FULFORD: Thank you very much. Now,
5 Mr. Sachdeva, you wanted to come back.

6 MR. SACHDEVA: Mr. President, I just wanted to, perhaps, offer a
7 possible solution. Some of these witnesses, because they were
8 interviewed pursuant to Article 55(2), they have counsel as required by
9 the Rule, and as I understand it, counsel were retained for the purposes
10 of those interviews. Perhaps a suggestion would be to -- I don't know if
11 it comes via the Registry, but those counsel that were previously
12 involved in the interview be retained for the purposes of explaining the
13 rule of self-incrimination.

14 PRESIDING JUDGE FULFORD: Those are presumably counsel who are
15 based in the DRC.

16 MR. SACHDEVA: As I understand it, not all of them, but --

17 PRESIDING JUDGE FULFORD: Right. Well, Mr. Sachdeva, you've said
18 that some of the witnesses. So this may be helpful in relation to some,
19 and if there are names that can be given to Ms. Schon in order to deal
20 with the issue as regards a portion, although I'm not going to be
21 dogmatic about this, I would have thought that the advice critically
22 needs to be given at about the time when the witness gives evidence,
23 having had the opportunity of refreshing his or her memory from the
24 statements. Now, that's all going to happen here, and I would have
25 thought that advice on this before that process takes place is going to

1 be a lot less valuable than advice given once the witness is fully in
2 mind again of the evidence that he or she is going to give. So I think
3 it's important that there's a witness [sic] available to advise the
4 witnesses in this category in The Hague.

5 MR. SACHDEVA: Very well, Mr. President. That's understood. And
6 we will endeavour to do that, and if we have suggestions, we will pass
7 that over to the Registry.

8 PRESIDING JUDGE FULFORD: Thank you very much.

9 Now, Ms. Schon, I'm going to ask you, please, to -- to the extent
10 that it's appropriate, liaise with the Prosecution as to who comes within
11 this group and to identify lawyers who can assist -- a lawyer or lawyers
12 who can assist if necessary.

13 I need to stress that in the process of giving advice in relation
14 to self-incrimination care must be taken not to stray -- not to stray
15 into the field of witness proofing. We have given very clear guidance, I
16 hope, in relation to that, and the lawyer who provides the advice must
17 separate out the two roles. They are, in fact, fairly self-evidently
18 self-contained, but it needs to be stressed, nonetheless, to whoever
19 undertakes this task.

20 If it appears this is going to be a problem, the Bench needs to
21 be told about this sooner rather than later; and in any event, we would
22 like a report, please, within the next 48 hours as to what the Registry's
23 proposals are. All right?

24 MS. SCHON: Thank you, your Honour.

25 PRESIDING JUDGE FULFORD: Maitre Mabille.

1 MS. MABILLE (interpretation): We were about to raise the issue
2 you just raised, President. We think it would be better for the counsel
3 to be someone who hasn't yet assisted the witness, and we don't think
4 that the Prosecutor's proposal is good for the reasons you mentioned.
5 The counsel that -- who will have assisted the suspect witness will know
6 the whole of the statement and might be tempted to carry out some
7 proofing.

8 So if it's an independent person who comes and explains to the
9 witness what their rights are outside of the context of the statement, I
10 think that that would be more convincing.

11 PRESIDING JUDGE FULFORD: Thank you, Maitre Mabilille. Without
12 offering a definite answer to the point that you've raised, I'm going to
13 slightly amended what I said, if necessary.

14 Can we have a report, in any event, on the proposals as regards
15 this issue within 48 hours? We can then see what is practical and
16 possible and whether or not it is going to be realistic and easy or
17 sufficiently easy to accommodate the concern that Maitre Mabilille has just
18 raised. Thank you very much.

19 We need to turn next to the issue of the request that's been made
20 for clarification as regards the extent to which the victims'
21 applications should be disclosed to the Defence.

22 Maitre Mabilille, you have kindly put in a filing recently in
23 relation to this issue which I think, consistent with other submissions
24 on related topics, you've objected to anything less than full disclosure,
25 and particularly you've set out your opposition to redactions, and we of

1 course fully understand the nature of your objection.

2 Is there anything else on this subject that you would wish to
3 say? No. Thank you very much.

4 The view of the Bench is that these application forms should be
5 treated by the Office of the Prosecutor in exactly the same way as all
6 other Article 67(2) and Rule 77 material. They should be looked at to
7 see whether they contain evidence or other material which comes under
8 that statute -- that statutory provision or that rule. If it does, we've
9 set out a procedure whereby the representative of the relevant victim
10 applicant should be consulted to see whether there are objections to
11 disclosure taking place in relation to those portions that have been
12 identified.

13 If disclosure is to take place with redactions, the proposed
14 redactions need to be brought to the attention of the Bench, because it
15 is for us to decide whether or not redactions are appropriate and accord
16 with the interests of justice and, in particular, the accused's rights to
17 a fair trial.

18 Now, Mr. Sachdeva, I hope that's clear, but could you let me know
19 whether it is or not?

20 MR. SACHDEVA: It's clear, Mr. President.

21 PRESIDING JUDGE FULFORD: Thank you. Mr. Walley, you have filed
22 a request seeking to ask questions as necessary on the first two civilian
23 witnesses who are to be called, who in fact are the first two witnesses
24 in the case; and as I understand it, you have particularly stated that on
25 behalf of the two victims who you represent, whose identities are known

1 to the accused, you wish to deal with the harm, both physical and
2 psychological, that has been experienced by those two clients of yours.

3 Can I --

4 MR. WALLEYN: That's right, Mr. President.

5 PRESIDING JUDGE FULFORD: That's right, I think, Mr. Walley, is
6 it not? Good. Thank you.

7 Can I ask whether there are any objections or observations in
8 relation to the particular request that has been made by Mr. Walley on
9 behalf of those two joint-status victims to ask questions on those topics
10 if necessary?

11 MS. MABILLE (interpretation): Just concerning the form,
12 President. Our learned colleague Mr. Walley seized the Chamber by
13 e-mail, and in future we would like such requests to be made in a public
14 filing so that we can respond and object, if necessary. We don't have
15 any observations, especially as he says that as regards the substance he
16 will not go into the harm suffered. However, in the form, we would like
17 in the future requests to be made by means of written filing so that we
18 can respond if necessary and respond to a decision in which the rights of
19 the accused are respected.

20 PRESIDING JUDGE FULFORD: In a moment, Mr. Walley.

21 (Trial Chamber confers)

22 PRESIDING JUDGE FULFORD: Yes, Mr. Walley.

23 MR. WALLEYN (interpretation): President, this issue is going to
24 be important also in the next couple of months. As regards this discrete
25 written application, the way I understood the term was that it didn't

1 mean a formal filing for procedural reasons, because a formal filing, or
2 a formal application is a document which the Prosecutor defends and other
3 participants have to respond to within a time-frame set in the
4 Regulations of the Court and which calls for -- a decision by the Court,
5 if necessary, to change the time limits, and that requires a formal
6 decision by the Chamber in response.

7 I believe that if we have to do this every time we want to ask a
8 question to a witness, it could mean that the court's procedure will lose
9 in efficiency. I don't think it is in the advantage of the court.

10 PRESIDING JUDGE FULFORD: I think, Mr. Walley, we will adjourn
11 until tomorrow the issue of whether or not this should be done by way of
12 a formal filing, because as you have rightly just outlined, the
13 requirements then are for responses within a particular period of time
14 and an intervention by the Chamber adjusting those time periods. Now, it
15 may be that we could give a blanket -- we could make a blanket order
16 amending all time periods in relation to all requests under this heading,
17 but I think it needs a little bit of thought.

18 I'm going to ask for there to be collaboration, please, between
19 the parties and the participants on this issue, and I'm going to ask you
20 to use your best endeavours, particularly since there will be some time
21 this afternoon, to see whether an agreed procedure can be established so
22 as to ensure that everybody gets sufficient notice without encumbering us
23 with a formal procedure that actually proves to be unwieldy.

24 So in the first instance, can you all put your heads together to
25 see how this can best be done? Critically within this is full notice to

1 the Defence so that the accused's advocates have appropriate time to
2 respond to the applications that are made.

3 Now, Mr. Walley, I'm afraid once again I'm going to load
4 responsibility on your shoulders. Could you please coordinate that
5 activity?

6 MR. WALLEYN (interpretation): I would be happy to do so,
7 Mr. President.

8 PRESIDING JUDGE FULFORD: I don't want there to be a -- I don't
9 want this to proceed on the basis of a misunderstanding, Mr. Walley. In
10 part of Maitre Mabilles's submissions just now, as it's come across in the
11 interpreted version, Ms. Mabilles has said, "We don't have any
12 observations, especially as Mr. Walley says that as regards the
13 substance he will not go into the harm suffered." Now, is that right?
14 No, I didn't think that was right.

15 MR. WALLEYN: No, it's the opposite. I intend to go into the
16 harm suffered.

17 PRESIDING JUDGE FULFORD: Maitre Mabilles, in light of that
18 correction is there anything else you want to say?

19 MS. MABILLE (interpretation): No. I'm sorry if I mis-expressed
20 myself. What I meant to say was that if it was a matter of only
21 concerning the harm. That's what I meant to say. Perhaps I misspoke or
22 perhaps the interpretation was faulty.

23 PRESIDING JUDGE FULFORD: Something was originally lost in
24 translation, Maitre Mabilles.

25 Right. There is no opposition to your application, Mr. Walley.

1 It, in the view of the Bench, is an appropriately made application,
2 because on the issues that you have identified, these are under the
3 relevant statutory provision areas where the views and the concerns of
4 the two victims that you represent should be investigated at appropriate
5 length in relation to the two participating victims that you represent.

6 We would wish to make it clear that we consider this to be, in
7 all the circumstances, a model application.

8 MR. WALLEYN: Thank you, Mr. President.

9 PRESIDING JUDGE FULFORD: Right. And the subject matter and the
10 way it's been presented may be of assistance in relation to future
11 applications that are to come in that the scope of the questioning -- of
12 proposed questioning is clear, and the link between the questioning and
13 the evidence that is going to be given and the victims that you represent
14 have been clearly set out, and that is extremely helpful for us in terms
15 of being able to make an appropriate decision as to whether or not this
16 is a reasonable intervention.

17 Ms. Massidda, we need to turn now to the application that you
18 have made in this regard. Please correct me if I'm wrong, but as I
19 understand your application, you are indicating that until the
20 Prosecution has completed its questioning of the witnesses, you're not in
21 a position to give further specificity as to the questions that you would
22 wish to ask.

23 Now, first of all, am I right in understanding that that is part
24 of your position?

25 MS. MASSIDDA: That's correct, your Honour.

1 PRESIDING JUDGE FULFORD: I would wish to ask you to consider an
2 alternative approach. Statements and these two witnesses, particularly
3 the first but both -- for both of them, the statements of the witnesses
4 and the interviews of them set out, as it seems to me, with considerable
5 clarity the areas that are likely to be covered by Ms. Bensouda when she
6 asks these witnesses questions. So subject to any observations that you
7 would wish to make, it may be appropriate for you to proceed on the basis
8 that those matters that are set out in the witness statements or the
9 interviews that have been disclosed by the Prosecution are going to be
10 the subject matter of the questions which will already have been asked by
11 the time you seek to stand up.

12 Therefore, as with Mr. Walley, it may be the position that what
13 we would be best assisted with is knowing with some degree of accuracy
14 what it is in addition to those matters that you say are the areas that
15 are appropriately to be investigated as reflecting the views and concerns
16 of the four dual-status victims that you represent.

17 Now, is that a reasonable and appropriate request, Ms. Massidda,
18 or not?

19 MS. MASSIDDA: Thank you, Your Honour. Before filing the
20 application we have tried to do the same exercise that you are suggesting
21 now. The problem we have is that the witness can, during the testimony,
22 identify supplementary areas which are not covered in the statement.

23 PRESIDING JUDGE FULFORD: Of course. And if that happens,
24 Ms. Massidda, we will deal with brand new matters separately. We're
25 working on the basis of the material currently before us, and what we're

1 asking from you is for a sufficiently clear indication as to what the
2 views and the concerns are of those who you -- of those who you represent
3 above and beyond the matters that the Prosecution, through their
4 statements and the interviews, have indicated that they're going to deal
5 with. That's all.

6 MS. MASSIDDA: Thank you, Your Honour. We will try to do it. I
7 have to inform the Chamber, by the way, that we are currently
8 experiencing serious problem in accessing the documents and the video via
9 Ringtail, which is also causing some issue on the discrete reader
10 application. So this is also part of the problem. We have received
11 something like 1.712 documents we cannot --

12 PRESIDING JUDGE FULFORD: Ms. Massidda, I'm going to interrupt
13 you again. I'm going to interrupt you again. For the first two
14 witnesses it is a very slender folder indeed. That's what we're really
15 dealing with today, and if you haven't got the witness statements and the
16 interviews for those two witnesses, I'm sure that Mr. Sachdeva can give
17 them to you within half an hour. That's really in relation to those two
18 at this moment in time that we need your assistance.

19 MS. MASSIDDA: For these two witnesses there is no problem, your
20 Honour.

21 PRESIDING JUDGE FULFORD: Right.

22 MS. MASSIDDA: We will try to do as indicated by the Chamber,
23 but --

24 PRESIDING JUDGE FULFORD: Good. By 10.00 tomorrow morning?

25 MS. MASSIDDA: Yes, okay. But the problem we have is that this

1 is a continuous issue and we need to solve it as soon as possible. Thank
2 you.

3 PRESIDING JUDGE FULFORD: I agree. We have also experienced
4 problems with Ringtail, Ms. Massidda. If they're ongoing, let us know
5 about them, please. Thank you very much.

6 Mr. Sachdeva, I want to raise next the -- Mr. Biju-Duval.

7 MR. BIJU-DUVAL (interpretation): Thank you. Please excuse me,
8 your Honour. Just to make two final observations on this issue. We are
9 speaking of applications for participation by anonymous victims, that is
10 to say victims whose identity is unknown to the Defence.

11 On this point the decision would align itself on the 18th of
12 January, 2008, decision of this Chamber in which it recalls that
13 before -- that extreme caution -- or caution must be taken before
14 accepting the applications of victims to participate.

15 The Defence maintains its position that the participation of
16 anonymous victims should not be allowed. One of the conditions for
17 active participation in the courtroom should be the lifting of anonymity
18 at least vis-a-vis the Defence if not vis-a-vis the public.

19 Regarding the second issue, the scope of intervention, et cetera,
20 there the Defence can certainly agree to the precisions or the specifics
21 which you have given, your Honours.

22 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we intend at this
23 moment in time to say nothing on this issue save to remind everyone that
24 we have addressed this issue at least once, and I think twice in our
25 written decisions, and we encourage all those who are interested and who

1 are involved with this issue to re-read what we have set out in writing.

2 Mr. Sachdeva, the provision of English translations of French
3 statements that are in draft form. It would be of assistance, certainly
4 to some of us, to have translations even if they're only to provide
5 assistance as working documents that will assist one in coming to a
6 better understanding as to exactly what is set out in the originals.

7 Is there a difficulty with these drafts being provided to the
8 Bench and to the Defence, really as a matter of courtesy, on the full
9 understanding that these are not said to be either necessarily fully
10 accurate or as being translated statements which have received the
11 agreement of the person who provided the original?

12 MR. SACHDEVA: There is no difficulty whatsoever, Mr. President.

13 PRESIDING JUDGE FULFORD: Thank you. We could --

14 MR. SACHDEVA: May I just -- excuse me, Mr. President. May I
15 just qualify? It's only in respect of translations that we currently
16 possess.

17 PRESIDING JUDGE FULFORD: No, no. I'm not asking you to -- to
18 start translations of documents where you haven't already undertaken that
19 task, Mr. Sachdeva. It's just that we can't receive -- or we shouldn't
20 receive those translations if the Defence do not also receive them.

21 Can you simply make sure that they are appropriately marked to
22 indicate that either they are unchecked drafts or they're drafts of some
23 sort or that they are deemed to be full translations but they may not
24 have received a signature or some form of approval from the person who
25 wrote the original statement?

1 MR. SACHDEVA: Mr. President, we will do that, absolutely.

2 PRESIDING JUDGE FULFORD: Thank you very much. Now, there is an
3 ex parte matter that we've got to deal with. I need to stress that this
4 concerns directly the protection that is to be provided to witnesses who
5 are coming to give evidence, so in our judgement it is right that we
6 should deal with this ex parte, but before we rise are there any other
7 matters that anybody wishes to raise during the course of this hearing?

8 Mr. Sachdeva.

9 MR. SACHDEVA: Mr. President, thank you. I raise this now
10 although it is our understanding that this should only be done on Friday
11 before the next week's witness schedule. However, given the fact that
12 the Chamber is interested with respect to Mr. Prunier, unfortunately
13 events that transpired that Mr. Prunier will not be testifying as the
14 third witness but most probably the fourth or even the fifth. In fact,
15 we understand that he is available on the 9th of February to testify.

16 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I would have preferred it
17 if you'd phrased that observation slightly differently given that the
18 Bench had indicated that Mr. Prunier is to be the third witness. This
19 should, strictly speaking, be an application by you to call him out of
20 order given that we have expressed a very firm view as to when he should
21 be called. Now, if Mr. Prunier has got professional difficulties that
22 means he can't be here for the time originally expected, can we have that
23 in writing, please, and we will consider it.

24 MR. SACHDEVA: Very well, Mr. President. Thank you.

25 PRESIDING JUDGE FULFORD: Thank you.

1 Mr. Vaatainen, the hearing that now needs to take place, is it in
2 fact ex parte or is it confidential?

3 MR. VAATAINEN: A private session would be sufficient,
4 Mr. President.

5 PRESIDING JUDGE FULFORD: So the Defence can remain, but the
6 public are to be excluded; is that right?

7 MR. VAATAINEN: That is correct.

8 PRESIDING JUDGE FULFORD: Good. Thank you.

9 So, Mr. Vaatainen, just to be clear, you are happy for all of
10 those sitting this side of the glass divide to remain in court; is that
11 right?

12 MR. VAATAINEN: Yes, that is correct, as this concerns the
13 special measures under Rule 88.

14 PRESIDING JUDGE FULFORD: Thank you very much. This, therefore,
15 is going to conclude the public session of this hearing, and I'm afraid
16 that I'm going to have to say to the ladies and gentlemen in the public
17 gallery you will in a moment no longer be able to hear anything, and some
18 blinds will magically appear which will mean that we will disappear, but
19 that is what is now going to happen. Good.

20 Let us then turn, please, from open session into private session.

21 (Closed session)

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14 The hearing ends at 12.43 p.m.
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