

1 International Criminal Court
2 Trial Chamber II
3 Situation Democratic Republic of Congo - ICC-01/04-01/07
4 Case against Germain Katanga and Mathieu Ngudjolo Chui
5 Ex Parte Hearing – Legal representatives and Registry - Closed Session
6 Wednesday, 04 February 2009
7 The hearing starts at 14:00
8 PRESIDING JUDGE COTTE (*Interpretation from French*): Our hearing is open. The
9 legal representatives of victims are here today and they will have about an hour and
10 a half.
11 Given our constraints on interpretation service, I'd like to ask you to please
12 introduce yourself, please, in the order you choose.
13 MR. DIAKIESE (*Interpretation from French*): My name is Herve Diakiese. I am legal
14 representative of victims. And for this hearing, I have a proxy from Maitre Bapita,
15 who is now in the Lubanga hearing.
16 MR. KETA (*Interpretation from French*): Joseph Keta is my name. I am here on my
17 own behalf to raise a number of measures which are close to heart.
18 JUDGE DIARRA (*Interpretation from French*): When you say that you are here on your
19 own behalf, that's a quite an ambiguous statement. What do you mean?
20 MR. KETA (*Interpretation from French*): I am here to present an individual situation. I
21 have ... I don't have a proxy. I don't have a proxy and I am not representing a
22 colleague.
23 MR. CHRYSOSTOME (*Interpretation from French*): Jean Chrysostome. I am from the
24 Kisangani Bar Association.
25 MR. LUVENGIKA (*Interpretation from French*): Fidel Nsita. I am from the Brussels

1 bar, a legal representative of victims.

2 PRESIDING JUDGE COTTE (*Interpretation from French*): Wait. Let me go back to ...

3 Nsita Luvengika. And you arrived yesterday. And you are brand new here, then.

4 Now from the registry.

5 MR. DUBUISSON (*Interpretation from French*): Thank you, Mr. President, members of

6 the court. Laetitia Bonnet is here with us for participation and reparations for

7 victims. Ivan Waltenburg, who is the deputy for the VWU. Peter Vanaverbeke, who

8 is a jurist in my cabinet. And I am Mark Dubuisson, replacing the Registrar.

9 PRESIDING JUDGE COTTE (*Interpretation from French*): Thank you. Now, yesterday

10 during the status conference we were to bring up security of the legal

11 representatives of victims, an issue that they wanted to address in their 24

12 November contribution and that they brought up again in the status conference 27

13 and 28 November.

14 And yesterday you wanted to bring in some information, and I won't detail all of the

15 hearing yesterday, but which led us to organize this ex parte hearing today.

16 So who is going to take the floor first? Is it Maitre Keta? Please take the floor and

17 please go to the crux of the matter.

18 Yesterday, in our mind, it was a matter of summing up your situation as legal

19 representative for victims. So the Chamber wishes to know whether the concerns

20 raised in November are still in place. Has there been an improvement or a worsening

21 situation?

22 And what is the status now of the conversations you've had with the Registry to

23 attempt to find a solution for the problems you were working on in November? So

24 against that backdrop, we'd like to hear what you have to say.

25 MR. KETA (*Interpretation from French*): Thank you very much, Mr. President. During

1 the status conference in November 2008, if you can recall, I brought up protection
2 and security of legal representatives of victims appearing before the chamber. And
3 this brought up a very worthwhile discussion involving all of the participants. And
4 there have been changes.

5 And so for the legal representative of victims, this is linked to other cases involving
6 the DRC and having an impact on security of legal representatives. We are talking
7 about the Prosecutor versus Thomas Lubanga and Prosecutor versus Jean-Pierre
8 Bemba.

9 Now, to make this hearing more beneficial for the legal representatives, we are going
10 to proceed by illustration. I will be the first to intervene, and I am going to address
11 the security implications after the hearing of Thomas Lubanga in Bunia and the
12 impact in Ituri, in particular.

13 This has a great impact on the legal representatives of victims. And mon ca ... my
14 cabinet ... my cabinet, my office is located in Bunia, so we have an impact at my
15 office.

16 And most of the people who were in the direct broadcast of the hearing are former
17 students of mine. For your information, I'm also a professor at the University in
18 Bunia, in the law school there. So I'd like to inform you of the reactions, because we
19 had a direct broadcast, and there were veiled threats vis-a-vis a number of the
20 people who participated. And my statement was broadcast.

21 So what happened after the opening of the trial of Thomas Lubanga in Bunia?

22 MR. DUBUISSON (*Interpretation from French*): I'm sorry to interrupt you, but I have a
23 question: Legal representatives of victims here are also legal representatives in the
24 Lubanga case, if I am correct. So we are talking about the impact of this trial at a
25 court that is not the seat of the trial.

1 Now, to avoid any conflict affecting the judges of this chamber later on, or problem
2 of access of this transcript by another chamber, I think that when we are talking
3 about the impact of the Lubanga case, I think that should be brought before the
4 Lubanga chamber.

5 I think we need to think for a few seconds about this. Are we not committing an
6 error in law here.

7 PRESIDING JUDGE COTTE (*Interpretation from French*): So you want to avoid any
8 source of confusion. All three of you are in the Lubanga case also, but you also
9 wanted to point out that there are security implications, be it Lubanga or
10 Katanga/Ngudjolo case.

11 So I think you should leave out too many references to the Lubanga case, per se. But,
12 of course, the security implications, which were caused in the DRC, if you feel that
13 that has repercussions on our case, then I understand this. But I also understand
14 Mark Dubuisson's concerns to eliminate any source of confusion.

15 So to the extent possible, please stick to the Katanga/Ngudjolo case on the specific
16 aspect of security of legal representatives of victims.

17 JUDGE DIARRA (*Interpretation from French*): Indeed, we will listen to anything you
18 have to say which would avoid unfortunate acts, but anything that would be
19 beneficial for the decision making in this chamber.

20 PRESIDING JUDGE COTTE (*Interpretation from French*): And adding that we cannot
21 interfere in the Lubanga case. Our ex parte is intended to collect information on the
22 status of your security, because you raised concerns in November, and to improve
23 that situation. Go ahead, sir.

24 MR. KETA (*Interpretation from French*): Thank you, Mr. President. If I give specific
25 examples, I do it because there is an inter-linkage of the two cases in terms of

1 security.

2 Now, the Registry knows that since the month of August, I'm authorized for one
3 mission in the Ituri... in the Katanga/Ngudjolo case, and this has been postponed
4 several times for security reasons.

5 So in meeting my people in the Katanga/Ngudjolo case, I have to go to Bunia. But I
6 cannot go to Bunia without really learning what's going on there concretely. And
7 that's why I referred to Lubanga. But it's not to talk about Lubanga as such, but to
8 see the reaction of the people on the ground.

9 So the mission has not been executed for security reasons. And you'll see the same
10 security problem every time there are broadcasting of the hearings. And you will
11 never know who is who in the public out there, because it's very heterogenous.

12 So this raises security concerns for my team. And this interrupts my work. So if I
13 can't access my clients, how can I do my work? I can't do my work properly, and
14 that's why we are meeting today.

15 If I can go on the ground and meet my clients, then I'm ... they are going to
16 encounter a problem, and that's why I wanted to focus on this. But far be it from me
17 to bring up the Lubanga case. But it's because you have the hearings broadcast live
18 in Bunia.

19 Now, to talk about the interests of my clients in the Katanga/Ngudjolo case. These
20 clients mostly live (expunged), more or less, in the surrounding
21 areas of (expunged) where there have been conflicts, where there have been
22 hostilities.

23 Now, I need to raise one fact. In June, when I was out there, there was interference
24 by a number of politicians. And each time that you come in with an application
25 form, there is a lot of propaganda out there being bandied about.

1 So one proposal that we could make is that when we are out there meeting our
2 clients, that there be arrangements from the Court side that would allow us, legal
3 representatives, to contact our victims and clients in a sheltered area.

4 And what I mean by this ... and I learned from my own experience in June ... there
5 are agreements with the Registry and the Court between the MONUC. And there is
6 a structure in place to allow the counsel to work properly. So that would be a
7 suggestion. It's a problem of protection when we are on mission.

8 A second concern is security, and we have to distinguish security from protection.

9 The ICC texts do not govern protection of legal protection ... the legal representatives
10 of victims' protection. We have to organization it ourselves. So for our law firms, we
11 have to do this on the ground in Bunia.

12 And it's difficult to do our work serenely in this deleterious environment. We
13 represent the victims on the ground, and we can be targets one way or another. So
14 we have a suggestion to make for security, and it might lead to de-location of the
15 attorney prior to appearing before the Court.

16 PRESIDING JUDGE COTTE (*Interpretation from French*): Could you please explain
17 this?

18 MR. KETA (*Interpretation from French*): De-localising, you could have a temporary
19 suspension of activity from your bar to take care of arrangements, like appearing
20 before the Court, and you can leave those areas at risk. I have a law firm in Bunia, so
21 it would be difficult in this deleterious environment of propaganda. It's difficult to
22 exercise my function.

23 PRESIDING JUDGE COTTE (*Interpretation from French*): Now, de-location, wouldn't
24 that be organised by your local bar? How would the Court do this for your meeting
25 clients outside of Bunia? We don't know how the bar association is located ... is

1 organised in DRC, but I'm sure you must have a bar council.

2 MR. KETA (*Interpretation from French*): Yes. My esteemed colleague here is from the
3 same bar. We are in the same bar. There is one, but we have nothing in place to
4 protect a ... an attorney. We could ask for a voluntary mission, which would allow us
5 to temporarily suspend activities within the bar and to organise differently.

6 PRESIDING JUDGE COTTE (*Interpretation from French*): Before continuing and
7 before allowing the Registry to speak, we have to come back to the purpose of our ex
8 parte hearing. We had a public hearing yesterday afternoon, the way we did in 27
9 and 28 November status conference.

10 And at that time, Maitre Jean Chrysostome and Maitre Mulamba, Mr. Diakiese and
11 yourself very specifically and convincingly raised your security concerns, and that's
12 why we kept this on the agenda for a public status conference.

13 Now, we've carefully listened to you. You've said two things, protection and security;
14 but we are in an ex parte hearing, so you have to be as specific as possible.

15 And Mr. Dubuisson pointed out that during the broadcast of the Lubanga trial, there
16 were a number of reactions that you observed in your population locally that heard
17 this broadcasting.

18 Did it immediately have an impact on your power of representation for your client?
19 Did it have an impact on your client in terms of threats or is it on the environment as
20 a whole, which we will not underestimate, but which would accompany any type of
21 broadcasting where the local population could react in many different ways?

22 And everyone has his or her own opinion of Thomas Lubanga. So we need specifics
23 here. And on the second part of your statement ... he is speaking very, very quickly,
24 which is indeed the case.

25 Now, on the first part of your statement, you addressed protection. So you have to

1 say whether the reactions from the broadcasting of the Lubanga hearing had
2 immediate consequences on the exercise of your power of representation.

3 In terms of security, has there been a change since November or is it the same climate
4 that you described last November? That's what we'd like to know. In two months,
5 has there been a change ... better or worse ... and what is the status of your
6 conversations with the Registry?

7 JUDGE DIARRA (*Interpretation from French*): When you talk about de-location, do
8 you want to relocate the legal representatives of victims in another place with the
9 help of the Court or it's ... it should be the bar association, the head of the bar
10 association that would be responsible of the relocation. Do you expect help from the
11 Court on this?

12 MR. KETA (*Interpretation from French*): Thank you very much. I'd like to reply. Mr.
13 President, all of my family is out there. My elder and smaller brothers. All my
14 family. So when there's this type of broadcasting, I get flooded with letters and
15 e-mails.

16 We have an individual meeting tomorrow with the registry, but what is certain is
17 that I organise my own security with my family. And they send me messages telling
18 me that I have to be careful, bearing in mind everything that's going on in the town
19 of Bunia.

20 Above and beyond that, I don't have anything more I could provide, but I really am
21 listening to that message coming from my family. Now, I hope that that reply is
22 satisfactory.

23 PRESIDING JUDGE COTTE (*Interpretation from French*): Continue. And please be
24 specific.

25 MR. KETA (*Interpretation from French*): Now, as for the concern raised by Madame

1 Judge Diarra, as for your concern, when I talk about de-locating, I believe that it's up
2 to each counsel to organise this. Not even the bar association should do this.

3 But there are a number of avenues in the legal text governing the Court. There is the
4 ... a quasi civil servant status at the Court. And so we could use those avenues ... we
5 could explore those avenues with the Registry. But it's up to me to assume that
6 responsibility and see how I can organise. While appearing before the Court, I need
7 to organise my security at the same time.

8 PRESIDING JUDGE COTTE (*Interpretation from French*): Fine. Who else wants to take
9 the floor?

10 MR. DIAKIESE (*Interpretation from French*): I speak on behalf of Maitre Bapita also. I
11 have a proxy for that. Mr. President, members of the Court, let me give you the
12 backdrop for the Congolese attorneys.

13 You raised an important question as to whether there has been a change in the
14 situation since the last time we brought this up. Now, it's a very subjective
15 perception one could have, so I can't give you quantifiable data, but I do think that
16 we're very unsettled as the proceedings continue.

17 On the whole, Mr. President, bearing in mind what Mr. Dubuisson mentioned, I can
18 say that there is no waterproof compartmentalising of opinion, because all of this
19 involves a conflict in Ituri. And this is an ethnic-based conflict and there is such
20 exasperation over there, people are hardened into their own camps.

21 And so the legal representatives of victims are defending a particular ethnic version.

22 And bearing in mind, the counts against the accused, these are non-Lendu persons.

23 In fact, we are protecting Hemu (sic) ... Hem... Hema or Alu ethnic groups, and not
24 Lendu. And so we are identified as anti-Lendu/Ngiti.

25 Now, there has been no peace coming from loyalist troops of militia. There has been

1 a political compromise. So the militia still can be a nuisance if they want to. And they
2 have demobilised or become loyalists only for part of their troops.

3 And the FNI ... FRPI soldiers are people who had very high ranks, very high
4 responsibilities. (expunged) submitted a table with all of the responsibilities from the
5 FRPI people and those coming from the Hema community, the Hema community
6 and the positions of responsibility that they exercise at the government or security
7 level.

8 Now, in this Katanga/Ngudjolo case, those people close to them think that this is an
9 injustice. They think that they had had the support of the political powers who are
10 still in place now. And they simply cannot understand that as a thank you they have
11 been brought before the Court for trial.

12 So our appearance at the ICC, especially at the confirmation of charges hearing, and
13 with all of the media coverage on the Bemba and Lubanga cases in my country, are
14 such that there is a category of people that want to discredit the Court because they
15 are too connected to the charges against the accused here. And so they are trying to
16 discredit the Court. And consequently, we are potentially a nuisance to their
17 authority.

18 Now, what's going on is that when we appear ... like the Katanga and Ngudjolo
19 affair ... we are assimilated to a specific camp. So our opinions that we take from a
20 judicial point of view ...

21 PRESIDING JUDGE COTTE (*Interpretation from French*): You need to speak more
22 slowly. But I'm going to interrupt you. The chamber is fully aware of the fact that all
23 of you ... all your legal representatives of victims perform a mission under very
24 difficult circumstances and very difficult conditions.

25 But personally ... and I think my colleagues, the two judges, share my opinion.

1 Personally, I feel somewhat ill at ease. An ex parte hearing is the exception. Public
2 hearings as a rule.
3 On 27 and 28 November when you stated your position ... you haven't finished what
4 you were saying, but I'm interrupting you, because perhaps you will be guided by
5 my comments, as well as your two colleagues who will take the floor.
6 When you stated your position on 27 and 28 November you publically informed the
7 Chamber of some of your concerns, some of your fears with regard to your security.
8 And the information you provided to us seemed a lot more precise and abundant,
9 and information you are now providing us with, and that is why we are ill at ease.
10 Public hearings, the rule. Ex parte hearings, the exception. And we wonder why the
11 accused and their counsel can't hear what you are saying. There is nothing in our
12 opinion that they couldn't hear.
13 At the end of the hearing yesterday, the desire was expressed to express one's
14 opinion outside the Chamber. We thought that you would inform us of certain
15 things and perhaps put into question the actions of such an accused ... of a certain
16 accused from the Detention Unit, for example.
17 And this action could have had an influence on your tasks. But since the beginning
18 of this hearing, this isn't the feeling we have. So once again, I am allowing myself to
19 remind you of the fact that when an ex parte hearing is held, we cannot just deal
20 with general issues. I think you understand what I am saying quite clearly.
21 So it is important for you to provide the Chamber, if possible, with information that
22 should be provided in an ex parte hearing, that should be provided in a confidential
23 setting. And as a result, the Registry will then be in a position to respond.
24 Have I made myself clear? So we still listen to you. But, yes, Madame Judge, please
25 take the floor.

1 Just a minute, so that the interpreters have time to breathe. We can continue. Thank
2 you. Madame Judge.

3 JUDGE DIARRA (*Interpretation from French*): With regard to everything that you
4 have informed of us and with regard to Mr. Keta's information ... well, all of these
5 things could be said in the presence of the accused. I do not see why this couldn't
6 have been done in the presence of the accused.

7 Yesterday we had the feeling that this information put the accused directly into
8 question. I apologize for saying "the accused," Katanga and Mr. Ngudjolo. But at the
9 moment you are dealing with matters of a general nature, as the president has said,
10 and such matters don't have to be dealt with in an ex parte hearing.

11 PRESIDING JUDGE COTTE (*Interpretation from French*): So please, you have the
12 floor. But, once more, please try to redirect what you are going to say and make sure
13 that what you have to say is something that has to be said in an ex parte hearing;
14 otherwise, these are questions that we will have to deal with again at another ex
15 parte hearing. We will have to take into consideration the adversarial nature of the
16 proceedings. Please go ahead.

17 MR. DIAKIESE (*Interpretation from French*): Thank you, Mr. President, for those
18 comments. So I will come back to what I was saying. It is true, that the chamber has
19 the right to know to what extent a ... a certain issue should be debated in public.

20 And with regard to the delicate matter of the issue, for us we thought that we'd try
21 to let you assess the matter. And perhaps we don't quite know what would be
22 appropriate for an ex parte hearing.

23 We apologize for speaking about things in general terms, but we said that we had a
24 list here of circles of influence for people from the FNI or from the FRPI, for people
25 who held responsible positions in our country. Important positions.

1 And in our opinion, they are a threat to our exercise of this profession
2 in the course of these proceedings. And this issue is one that we didn't want to
3 initially debate in public, for quite obvious reasons. These individuals related to
4 those who have authority and related to the accused before the chamber. So that's
5 the first thing.

6 And there's another transversal issue I would like to deal with; it has to do with this
7 case. But it, in fact, is something that arises from the Lubanga case. This concerns
8 (expunged)with regard ... it concerns threats made against (expunged). And as a
9 result, (expunged) also forwarded a cassette with recordings on matters before the
10 ICC. It concerns the situation in Ituri. (expunged)
11 (expunged)
12 (expunged)
13 (expunged)
14 (expunged)
15 (expunged)
16 (expunged)
17 (expunged)
18 (expunged) provided me with some documents I should provide to the chamber or
19 the Registry. It depends on how the chamber would like to proceed. But to date,
20 what actually happens for the Congolese lawyers who are in the field ... well, we had
21 an interview, we had a discussion with the Registry yesterday, but what is
22 happening is that with regard to the proceedings before the Court ... I wanted to give
23 you an example, but there are certain things that do not only relate to the
24 Ngudjolo/Katanga case.

25 There is also a matter ... it's a matter that concerns the ICC as a whole, because it has

1 to do with a warrant for arrest for Bosco Ntaganda* (expunged)
2 (expunged)
3 (expunged)
4 (expunged)
5 We can conclude from this statement that the ICC for the moment ... or the fight
6 against impunity before the ICC is not a priority in relation to other security issues
7 that the Congolese government has to deal with.
8 And if some of our acts go against matters considered to be matters of priority, we ...
9 it's not that they will take revenge against us, but we will not be in a comfortable
10 situation in relation to the authorities.
11 So Mr. President, I, for example, have not yet encountered a situation in which I was
12 physically threatened, but I feel a certain atmosphere that is not positive. Lack of
13 trust might also be a matter for my wife, not just for me.
14 When I gave my passport at the border, the security officer who saw the certificate
15 from the Registry that allowed me to get through the border very easily, said, "You
16 come from the Court. You'll be the one making a little too much noise there."
17 It can be a nice comment, but it may not be. You never know when such remarks
18 may be interpreted differently. But at one point in time, you can become a bit
19 paranoid.
20 But they looked at my passport a little too long, longer than usual. But perhaps this
21 person had instructions on that day. But these are things that didn't happen to me
22 before. And this is happening now that the proceedings evolving here.
23 My wife also met certain individuals who congratulated her because of my presence
24 at the Court, in ... invited comments, but they also advised her to be somewhat
25 careful. So this might be friendly advice.

1 But what we are trying to say, Mr. President, is the following: We don't want to ... to
2 be too paranoid, but for as long as we feel that there are threats on the ground, we
3 feel that we should state this before the chamber, before the Court.
4 There are other mechanisms for investigation that might help us to face the situation.
5 But when we met with the Registry, we did say that as long as we are involved in
6 the proceedings here before the Court ... and given the context in our country at the
7 moment and the security conditions as a result of the agreements between the militia
8 ... well, there's still a risk that we might bother someone because of our role as legal
9 representatives of victims.
10 Unfortunately, we might find out about this too late, so if there are any mechanisms
11 that could be put into place to help us, to work calmly and perhaps to evacuate our
12 families and to move ourselves, if this could be done until the end of the proceedings
13 or until we feel that we are no longer a threat for anyone, if this is possible, it would
14 be good to reflect on this possibility.
15 But in the meantime, if there are any intermediary solutions, intermediary
16 mechanisms ... and this is something that we said to Mr. Dubuisson and the Deputy
17 Registrar the day before yesterday ... we had a constructive meeting and we did
18 have the impression that the ... we were being listened to. And that other
19 mechanisms, other mechanisms might be implemented.
20 But if we could find some mechanisms that would allow, as soon as we are under
21 threat, to find shelter within an institution, an embassy until the situation calms
22 down, well in such a case such measures they should be borne in mind. I ... I
23 apologize.
24 So to date, Mr. President, we do apologize for giving you the impression that we are
25 addressing the matter in general terms, but we would like to bear in mind all the

1 possible solutions.

2 We are ... we have spent enough time in those countries to know that one can't

3 always be sure when someone thinks that you are a nuisance.

4 PRESIDING JUDGE COTTE (*Interpretation from French*): Thank you, Mr. Diakiese. I

5 will give our interpreters a moment to breathe.

6 Yes. At the risk of repeating myself ... I think it's important, however ... when the

7 chamber was made aware of your response of 24 November, when we took note of

8 your response, the chamber also became aware of your security concerns.

9 And you quite rightly presented them at length orally in a public hearing at the

10 status conference held on 27 and 28 November. All the parties were present and

11 listened to you. The chamber wanted you to meet with the Registry. The Registry

12 agreed to that, so that to the extent possible ... because not everything is possible. So

13 that to the extent it was possible, solutions could be found. Solutions to your

14 concerns, your security concerns.

15 And this isn't paranoia, as you have said. There were certain implicit threats, as you

16 said. There is a difficult climate/atmosphere that you have to work in. And you have

17 told us about this again.

18 But once more, what you have just said ... well, I wouldn't go so far as saying that

19 there's nothing new there. What you have said is important. But the chamber does

20 not understand whether the situation is worse or not.

21 The chamber does not understand whether the accused, Mr. Katanga and Mr.

22 Ngudjolo, are playing a specific role that gives rise to your security concerns in the

23 DRC where you work; and in Ituri, in particular. And this is what we were waiting

24 to hear from you today.

25 We take what you have said seriously, but you have not really presented us with any

1 new information, nothing new that wasn't said in November. But all you have done
2 is say that you still have the same feeling. Do you see what I am saying, sir?
3 Your two colleagues, who will be taking the floor now, should try to be more
4 precise. I hope that they will be more precise.
5 If they are not able to do so, I think the chamber will ask the Registry to briefly
6 inform us of the nature of your discussions; because since the 28 November, I think
7 that there were such discussions. And not just yesterday and the day before, such
8 discussions were certainly held on their own and continued afterwards.
9 But this is an ex parte hearing, and we cannot deal at length with issues that all other
10 parties have the right to hear.
11 So Mr. Jean Christian Mulamba, I give you the floor now.
12 MR. MULAMBA (*Interpretation from French*): Thank you, Mr. President. One of
13 counsel's obligations before the ICC is to inform victims and its clients. I think that is
14 the role that we have.
15 We have the role of informing clients of the proceedings before the Court. I'm in
16 Kisangani; (expunged). To go there, (expunged)
17 or go through Beni. Beni was the rear base of Ngudjolo/Katanga.
18 And I am talking about travel. So either you go by road, it's (expunged) kilometres ...
19 and that's almost impossible for us, for counsel, to go by road, and there are many
20 dangers . or you go through Beni. Or if the MONUC accepts it, they will take
21 (expunged).
22 (expunged), before the hearing on the confirmation of the charges, I went to meet the
23 victims. I met them in (expunged). When I returned in (expunged) to inform them of
24 how the situation was evolving ... and that was just after the status conference in
25 November ... when I went there I found out that one of the victims who had
26 accompanied me

1 everywhere in (expunged) was no longer there.

2 They tried to speak to me. The victims I met tried to speak to me. I told them what

3 had happened here. And they told me that this was in relation to the work we had

4 done with her. She had accompanied me everywhere in (expunged) to see

5 what the situation was and to speak to them.

6 This victim is no longer there. So it was impossible for me ...

7 JUDGE DIARRA (*Interpretation from French*): Do you want to say that she is dead?

8 MR. MULAMBA (*Interpretation from French*): Yes, she's dead. I wasn't really informed

9 of the reasons. The other victims only said that the person you are looking for is

10 already dead just after... just after you left for The Hague. And ...

11 JUDGE DIARRA (*Interpretation from French*): I apologize for interrupting you,

12 because we want to profit from what you are saying. Was she killed because she

13 accompanied you and assisted you in seeking the truth or did she die as a result of

14 natural causes?

15 MR. MULAMBA (*Interpretation from French*): Madame Judge, that's what I wanted to

16 find out, but I had very little time to find out whether she died as a result of natural

17 causes or whether she died for other reasons. It was when I arrived that I was

18 informed of the fact ... I went there to inform her over the stage of the proceedings.

19 This was in (expunged).

20 PRESIDING JUDGE COTTE (*Interpretation from French*): Mr. Mulamba, just a minute.

21 I think Madame Bonnet would like to say something about the issue. Yes, please take

22 the floor.

23 MS. BONNET: I apologize. Just to clarify something, when you say a victim who

24 accompanied you in (expunged), as opposed to meet other victims, are you referring

25 to a person who requested to participate in the proceedings, or is this a

1 person who was authorized to participate in these proceedings or another
2 proceedings, or are you speaking about a person who was someone who assisted
3 you in the field?

4 MR. MULAMBA (*Interpretation from French*): This person (expunged)
5 (expunged).

6 PRESIDING JUDGE COTTE (*Interpretation from French*): Very well. Thank you. Mr.
7 Mulamba, are you telling us that this person ... or you are telling us this person is no
8 longer here. Are you certain about the conditions in which she died, these conditions
9 linked to certain threats made, pressure put on the person or pressure put on her
10 family?

11 Is there a link between this person's death and the accused who are currently being
12 detained in the Detention Unit in The Hague? We have to be very precise. The Court
13 can't satisfy itself with general information.

14 MR. MULAMBA (*Interpretation from French*): I understand your concern.

15 PRESIDING JUDGE COTTE (*Interpretation from French*): Could you provide us with
16 (expunged)

17 (expunged)

18 MR. MULAMBA (*Interpretation from French*): Yes, I have the number.

19 PRESIDING JUDGE COTTE (*Interpretation from French*): Could you provide us with
20 the number...

21 THE INTERPRETER: The interpreter notes that the speakers are overlapping.

22 MR. MULAMBA (*Interpretation from French*): Yes, I can provide you with the
23 number. As I was saying, I went to (expunged). It was before the end of the month. It
24 was (expunged). I was there.

25 I went there to meet them and to give them information. I put the question to them,

1 the question you have asked, but it was difficult for them to inform me of anything,
2 to tell me whether she had died as a result of illness.

3 They said that this was the person who accompanied you and she has already died.
4 That's what they said, she has died. They ... she had ... they were ... they were afraid
5 to meet me at that time. I had to organise these meetings through intermediaries to
6 try and understand what had happened.

7 We are certain that she died, but as to the reasons for this person's death, it's difficult
8 to say what they are. This happened later. I can't inform the Court of the reasons. But
9 what is certain is that she died.

10 PRESIDING JUDGE COTTE (*Interpretation from French*): Mr. Mulamba, I will
11 interrupt you there for a second. This hearing deals with security concerns, of legal
12 representatives and of the persons that they represent.

13 You said that one of the victims that you represented died. The death of a victim is
14 not something that is a matter of indifference to us. Did you meet the victim's
15 family? Did you have any contact with the local authorities in order to determine
16 whether an investigation was launched into this death or to determine whether the
17 person died as a result of natural causes or as a result of illness?

18 It's important for us to have some information about this matter. We cannot satisfy
19 ourselves with references to the atmosphere in which this will happened.

20 Can you provide us with more precise information? When you went to the site, to
21 the country, when you found out about the death, you were worried. Were you
22 provided with any other information? Even if it's a difficult situation in the DRC, we
23 know that in general when someone dies a violent death, there are issues to be
24 addressed. Can you provide us with more information.

25 JUDGE DIARRA (*Interpretation from French*): Mr. Mulamba, if you are not in a

1 position to tell us that the witness was killed because she was seen in your company,
2 if you have no information on the circumstances of her death, if you can only say
3 that the victim died, well, telling us that this person died is, in fact, of no interest to
4 us today because everyone dies; heads of State, witnesses, victims, judges. Everyone
5 dies.

6 The presiding judge in the Milosevic case died before Milosevic. The press didn't say
7 anything. So if the victim died, as is the case for many others every day, well, telling
8 us in an ex parte hearing about the fact is of no interest. If that's all you have to say,
9 it really has no importance for us in this ex parte hearing. Dying is like the rain, it's a
10 natural phenomenon.

11 PRESIDING JUDGE COTTE (*Interpretation from French*): Mr. Christian Mulamba, do
12 take the floor again and try and be as precise as possible.

13 MR. MULAMBA (*Interpretation from French*): Mr. President, of course, we could
14 explain the death by several ways, but I need to keep you in touch with what is
15 really happening.

16 I receive information. I receive clear information that such and such a victim is
17 deceased. And so I put the question to the person. And I ask for a family member to
18 come and talk to me, because I have very limited time before I had to go back.
19 So I didn't get a proper answer as to the cause of death. Not everyone was willing to
20 come and see me during my stay there, bear that in mind. And so I went back. And I
21 take avail of all possible security measures when I make that type of mission,
22 because we don't know who is who, who can do what. And we've said this.

23 There are threats, and it's usually by phone call. I get calls and I am threatened. And
24 when you try to track the number, you find out that the number is not something
25 that you can track. It's someone who buys a SIM card, calls, threat... threatens you

1 and then throws away the card.

2 I frequent the university. And most of the people who were in the militia are at the

3 university now. Some of them recognize me and they can make phone calls. And

4 these threats are mostly by phone call. I receive a phone call. I'm told you are going

5 to see what you are going to see. And then the phone call ... the phone caller hangs

6 up and it's not possible to track that number. These are phone call threats.

7 PRESIDING JUDGE COTTE (*Interpretation from French*): Thank you, Maitre

8 Mulamba.

9 MR. LUVENGIKA (*Interpretation from French*): Thank you very much, Mr. President.

10 I am going to be as succinct as possible.

11 I've arrived at the Court quite recently. I reside in Belgium, so I am not facing the

12 same problems as my colleagues. But I did have an experience in (expunged), which

13 I could recall.

14 I went to (expunged) in my capacity as counsel. And out there, I was supposed to

15 meet about (expunged)victims. And to do this, knowing that it was a conflict-ridden

16 area, I went to the MONUC and the human rights section to ask what I should do.

17 And the human rights unit replied that since you are going to meet about

18 (expunged)victims, if you have them come one after the other into our compound,

19 we don't know if they're Lendu or Hema personnel here, so you won't be safe.

20 And you are recognized as a foreigner here, and (expunged)is a small place, so the

21 word will get out as to what you are doing here. So we thought we could meet the

22 victims at the ICC office (expunged).

23 And then there was the stay of proceedings in the Lubanga trial. And so there was

24 perceptible tension between the two communities. So finally we knocked on the

25 (expunged). And that way we concluded

1 our interviews there. But at the beginning, we did it at (expunged). And the first few
2 days, it went fine. But we had one victim at a time. On a , (expunged). And being
3 sure that the (expunged) was not from an opposed ethnic group.

4 And what we were stricken by is that at (expunged) they couldn't understand why
5 these well-dressed foreigners would have contact with local villagers coming from
6 rural areas.

7 And it was impossible to travel to (expunged) went back and forth, bringing in the
8 victims. And that way we had to be sure the victims didn't see each other as they
9 came and went. So it was a major problem of organisation for ensuring security
10 when we are in the field, be it protection of victims or security of counsel. And that's
11 what I wanted to share with you today.

12 PRESIDING JUDGE COTTE (*Interpretation from French*): Thank you very much. In
13 the order of 10 December following the status conference of 27/28 November, the
14 chamber had indicated that it wanted ongoing discussions to be pursued on security
15 of legal representatives of victims with the Registry. The chamber wanted the
16 ongoing discussions to proceed so that we could reach as best possible solution.
17 And the chamber had pointed out that it wanted this proposal to be implemented as
18 soon as possible, and asked the Registry to transmit as soon as possible a
19 confidential ex parte brief laying out the respective positions of the parties to the
20 meetings and the results of the meetings.

21 That was the purpose of putting that on the status conference yesterday, for
22 determining this for the legal representatives of victims. We believe this could have
23 been examined in a public session in light of the very interesting statements, but they
24 could have been heard by the accused and their counsel. Nothing goes beyond what
25 you've said already in November.

1 Now, to give meaning to this hearing now, Mr. Registrar, can you address your side
2 of the negotiations and see if it's possible to improve or at least diminish this feeling
3 of security expressed by the four legal representatives here?

4 MR. DUBUISSON (*Interpretation from French*): Thank you, Mr. President, members of
5 the Court. I will be very brief in four parts.

6 And before doing this, I have four comments, first of all, bearing upon the fact that
7 this transcript could be made public or made available to other parties at some point
8 in the proceedings. Bearing that in mind, let me reiterate a couple of things.

9 First of all, we're not trying to judge the Kabila government. When we refer to the
10 Bosco/Ntaganda affair, the Democratic Republic of Congo has cooperated with the
11 Court at all times.

12 Secondly, on the list, a list which might be submitted containing the members of the
13 FNI or FRPI, let's be clear on this. Is it going to be future evidence? Is it a list
14 accessible on Internet only? We need to know whether the list is going to be
15 accessible to other parties or participants in the proceedings.

16 From my side, I would like to receive this information outside of the proceedings.

17 But since we have brought it up at a hearing, I needed to point this out.

18 Another comment, third comment, I have heard about noises being made, but we all
19 make noise. And that not... is not necessarily the same thing as a threat. And so the
20 good practices which we propose need to be enforced, and this goes for the new
21 counsel. They need to get in touch with the VWU and see how they can improve
22 their work out in the field.

23 And then to conclude my comments, when we refer to a deceased person and it's a
24 document in the case file, we should have a death certificate and it should be
25 introduced to the Court either as an HNE document, or a filing to the Court or a

1 VPRS for the unit, for victims and reparations.

2 And then it's up to the counsel to determine, once the death certificate is introduced,
3 to provide as much information as possible and the persons who have rights as
4 survivors.

5 Now, on the discussions between legal representatives and the registry. First of all,
6 what is the mission of the counsel in the Congo or a Congolese counsel? There could
7 be a human rights activist out there who is not at all connected with the Court. So
8 you have to distinguish between that activity outside of other activities and those
9 activities which take place before the Court.

10 Secondly, we've heard about the impact of the Lubanga trial. And the Bemba trial
11 was also mentioned. But what is the impact for people living in Ituri now and what
12 is the danger for a human rights activist, vis-a-vis the UPC or the FNI or FRPI?

13 And, of course, there is the broadcasting of the hearings which takes place at a
14 specific time, at a given date in a given month. So it's not ongoing every day.

15 So depending on this type of impact, which it is difficult for us to determine the
16 decisive factor that comes out of this, so what are the repercussions? Protection for
17 the legal representatives of victims.

18 For example, I have to go (expunged). It's outside of the United Nations perimeter.
19 You can have access to it if you have an authorisation to go there. It's a security
20 clearance that you need to go there. And it depends on the phase, also, the phase
21 used by the UN and which is common to all UN missions. This is Phase IV, I am
22 told. Phase IV, which proceeds Phase V, and it precedes evacuation. So it is restricted
23 movement.

24 And when someone says that they are a quasi civil servant, then that person must
25 respect or support, as we do, as the prosecutor does, respect the green lights that the

1 institution or partner institutions of the Court would give.
2 Now, obviously, for someone living there, this person might not feel obligated by
3 these restrictions which normally affect white persons traveling around there. But
4 you can't want to benefit from a status and then take a sidestep around that status
5 whenever you want to.
6 Now, on improving perceptions. Of course, we appreciate the problems that counsel
7 could have there, whatever the location. Some of the attorneys here don't live in
8 (expunged) Ituri. And some are very far away, not even in the province.
9 So when we talk about a possible solution, and we are ready to explore that avenue,
10 we've already said this. No information is new today, since last week. What ... are we
11 talking about when we re-settle families? There is going to be a meeting tomorrow to
12 see what family refers to, because is it extended family, people living under the same
13 roof ... roof? And then there is the professional impact. That's something else.
14 So when you reinstall the lawyers, are you going to relocate the counsel and the law
15 firm? That's something else. What about relocating that? That's something else.
16 (expunged)
17 (expunged) So this is another problem for the common legal representatives.
18 (expunged).
19 So when you talk about resettling or relocating, you have to be specific. You can't
20 have everything. You have to make choices. And you are going to have to give up
21 something.
22 So what have we discussed today with legal representatives of victims? On a
23 case-by-case basis, we are talking about protection and security. It's on a
24 case-by-case basis.
25 We are working ... for example, working with very specific embassies and see to

1 what extent some countries could take in enlarged families, have discussions with
2 law associations, bar associations who could cooperate with another bar association
3 for inscribing someone on another bar association and taking actions that wouldn't
4 be time-bound.

5 For example, the ICTY took nine years. And we had TADIC case that lasted three
6 years. Three years, I think, is a reasonable timeframe for a trial before a Court. And I
7 think that the arrested up until now, of course, are presumed innocent. We hope this
8 will be a shorter proceeding. We do think that for a three-year timeframe, we could
9 put in this type of request to move the family and the co-workers and see if we could
10 not facilitate arrangements between bar associations.

11 But in terms of missions of counsel out to the field, we have arrangements, which
12 were put to the test recently in the same case for some counsel who had to travel. So
13 we can do certain things.

14 And the people who are the most protected are the counsel. So we can set up any
15 number of things, but we have to see to what extent in terms of proof that we would
16 need to provide protection, like we do for victims. I think we are lacking quite a bit.
17 We are lacking a plethora of evidence.

18 But the Registry is committed to make a gesture of support for the legal
19 representatives of victims and will continue to work in that spirit. Thank you.

20 PRESIDING JUDGE COTTE (*Interpretation from French*): So discussions took place
21 last week or this week, and they will be pursued tomorrow? So nothing has been
22 decided yet. It's still in discussion. You are looking for solutions.

23 The Registrar referred to the possibility ... and I think this is necessary ... to make the
24 transcript public of this hearing. Do you have an objection? Nothing we've heard
25 today at this hearing, nothing prevents us from communicating this information to

1 the other parties, to the defense

2 MR. KETA (*Interpretation from French*): Thank you, Mr. President. I object to having

3 the transcript made public for a simple reason.

4 Let me give you the context of the situation in Ituri. (expunged)

5 (expunged)

6 (expunged)

7 (expunged)

8 (expunged) So what guarantees could we have? The

9 fact that he is in the Detection Center here ... if he has information, he is going to

10 lobby.

11 I'm going to give some names. I was prepared to do this with the Registrar at our

12 meeting. I know how he operates. (expunged)

13 (expunged)

14 (expunged)

15 (expunged)

16 (expunged)

17 Now, I go to the court in Bunia. I have been going there for 17 years. (expunged)

18 (expunged). And I've said there

19 are veiled threats. Maitre Keta doesn't go (expunged), because he's under

20 threat.

21 So if the transcript is made public, we object because this could have an impact in

22 Bunia.

23 (expunged)

24 (expunged)

25 (expunged)

1 (expunged)decided to cooperate with the Court, he was
2 told it would be better for him to stay home. Isn't that a threat?
3 PRESIDING JUDGE COTTE (*Interpretation from French*): Maitre Keta, you said that
4 (expunged). What do you mean by this? (expunged)
5 (expunged). And the
6 accused are now in custody in a Detention Center in ... in the Netherlands.
7 MR. KETA (*Interpretation from French*): According to my information, (expunged)
8 (expunged), and having heard other information (expunged)
9 (expunged). And I raised
10 the same question. Don't they have the right to enter into contact with their family
11 and their bases back home? They have the right to communicate with the outside
12 world. Then it's logical for them to communicate this way. But I can't tell you exactly
13 how.
14 PRESIDING JUDGE COTTE (*Interpretation from French*): So in the same spirit, you
15 say that they are lobbying.
16 MR. KETA (*Interpretation from French*): Yes, of course.
17 PRESIDING JUDGE COTTE (*Interpretation from French*): And you have no other
18 information to give the Court?
19 (expunged)
20 (expunged)
21 (expunged)
22 PRESIDING JUDGE COTTE (*Interpretation from French*): But we are now coming to
23 the fact that justifies having an ex parte hearing.
24 MR. KETA (*Interpretation from French*): Yes, Mr. President. I'm going to a meeting
25 tomorrow, and I was going to provide this information tomorrow. But I'll give it to

1 you today to avoid having the transcript fall into the wrong hands. But I was going
2 to do this with Mr. Dubuisson tomorrow. But I can do it today.

3 PRESIDING JUDGE COTTE (*Interpretation from French*): And the chamber will
4 decide whether the transcript will be public. It's important to have your reaction. Mr.
5 Dubuisson?

6 MR. DUBUISSON (*Interpretation from French*): Sorry to interrupt you. Information
7 that might be delicate ... but if it is really provided at the end of the hearing ... and if
8 the transcripts should be provided or partially redacted, we should also redact the
9 reference made (expunged)

10 (expunged)

11 I think we should re-examine the transcript, because there are two or three things
12 that could, perhaps, be redacted in the transcript.

13 PRESIDING JUDGE COTTE (*Interpretation from French*): Thank you for having said
14 that. It's important. As far as the discussions are concerned, the discussions will
15 continue with tomorrow.

16 The chamber would like to conclude with these discussions as soon as possible. And
17 we'd like to have some feedback so that we don't have to deal with this question
18 again when we have our next status conference, unless there are any new elements
19 or unless the situation becomes worse, your individual situation on the ground
20 becomes worse.

21 I was also thinking that it might be important that if a legal representative has a
22 victim who dies, well, it would be good to inform the Court of the fact. One should
23 send in a death certificate, if it's possible to obtain such a death certificate from the
24 authorities.

25 It seems to me that this is evident. The Court and the Registry's relevant organs have

1 to know that at such and such a point in time a ... a certain legal representative no
2 longer has a certain victim as a client.
3 So, counsel, it's necessary to provide this death certificate. And if you have any ... if
4 you have any other information about the circumstances of this death, you could
5 also provide this information to the relevant organ.
6 Does anyone else want to take the floor, because we are approaching the end of our
7 hearing. Are there any additional comments that you would like to make, Mr.
8 Registrar?
9 MR. DUBUISSON (*Interpretation from French*): I would just like to say that I invite
10 counsel to arrive with as many documents as possible or as much information as
11 possible. And if possible, could we avoid hearsay? I'd like to have as much specific
12 concrete information as possible. And that will allow the Registry to take the
13 necessary measures, whatever they may be.
14 PRESIDING JUDGE COTTE (*Interpretation from French*): Mr. Diakiese, Mr. Keta, Mr.
15 Mulamba and your legal representative, would you like to take the floor?
16 COUNSEL (*Interpretation from French*): No.
17 PRESIDING JUDGE COTTE (*Interpretation from French*): In that case, we will now
18 adjourn.
19 The hearing adjourned at 15:33

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