

1 International Criminal Court  
2 Trial Chamber III - Courtroom 1  
3 Before: Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito  
4 and Judge Joyce Aluoch  
5 Situation: Central African Republic - ICC-01/05-01/08  
6 In the matter: The Prosecutor v. Jean-Pierre Bemba Gombo  
7 Hearing - Open Session  
8 Wednesday, 7 October 2009  
9 (The hearing starts at 2:00 p.m.)

10 THE COURT USHER: All rise. The International Criminal Court is now in session.  
11 Please be seated.

12 PRESIDING JUDGE FULFORD: Good afternoon and welcome to the first status  
13 conference in this trial. A number of preliminary issues that need to be dealt with in  
14 relation to representation. It is with regret that it is necessary to note that the mother  
15 of the representative of victims, Ms. Douzima-Lawson, has recently died and accordingly  
16 she is not present here this afternoon. The Chamber is grateful to the Office of Public  
17 Counsel For Victims for holding her brief and we send our condolences to Ms. Lawson.

18 The Prosecution are represented by the Deputy Prosecutor, Ms. Bensouda, and  
19 Petra Kneuer. The Registry we had expected but I don't see Mr. Dubuisson, but instead  
20 Ms. Dahuron is present and I understand that Ms. Acuna for the VPRS is present this afternoon.  
21 For the accused Maitre Liriss is lead counsel, Maître Kilolo appears with him, and  
22 Ms. Massidda is present as the representative of victims in the sense that she acts for  
23 the OPCV but also for individual victims as we understand it in a separate capacity.

24 You are all welcome and thank you for your attendance.

25 We turn to the first issue on the agenda, which are the charges which the accused

1 faces. Under Article 64, at the commencement of the trial the Trial Chamber shall have  
 2 read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Chamber  
 3 shall satisfy itself that the accused understands the nature of the charges, and it shall  
 4 afford him in this case with the opportunity of making an admission of guilt in accordance  
 5 with Article 65, or to plead not guilty.

6 There is an issue which we need not address today as to when the trial formally  
 7 commences. Is it the first substantive status conference or is it when the trial proceedings  
 8 begin with the Prosecutor's opening speech?

9 We propose to have the charges in their summary form read out today. The accused  
 10 will not be asked to respond, but instead will be afforded this opportunity when the  
 11 trial proceedings commence when the Prosecutor makes her opening speech and calls the  
 12 first witnesses in the case. By then, of course, the accused will have had explained  
 13 to him the charges which he faces. They will then be read out again on that occasion  
 14 when the outstanding formalities under Article 64 will be completed.

15 Should the accused wish to enter a plea before then, his counsel simply has  
 16 to raise the matter with the Chamber. Therefore, in summary, at this stage we simply  
 17 intend to have the charges read out and no more. Are there any objections, or submissions,  
 18 on that extremely limited proposed course of action? Prosecution first.

19 MS. KNEUER: No objections, your Honour.

20 PRESIDING JUDGE FULFORD: Thank you. On behalf of the Defence.

21 MR. LIRISS: (Interpretation) No objection, your Honour.

22 PRESIDING JUDGE FULFORD: And anything from the representatives of victims?

23 MS. MASSIDDA: No objections, your Honours.

24 PRESIDING JUDGE FULFORD: Let the charges then please be read out.

25 THE COURT OFFICER: (Interpretation) On 15 June 2009 Pre-Trial Chamber II

1 confirmed that Mr. Jean-Pierre Bemba Gombo is criminally responsible within the meaning  
2 of Article 28(a) of the Statute for the following charges:

3 1. Murder constituting a crime against humanity (Count 7) within the meaning  
4 of 7(1)(a) of the Statute.

5 2. Rape constituting a crime against humanity (Count 1) within the meaning  
6 of Article 7(1)(g) of the Statute.

7 3. Murder constituting a war crime (Count 6) within the meaning of Article  
8 8(2)(c)(i) of the Statute.

9 4. Rape constituting a war crime (Count 2) punishable within the meaning of  
10 Article 8(2)(e)(vi) of the Statute and;

11 5. Pillaging constituting a war crime (Count 8) within the meaning of Article  
12 8(2)(e)(v) of the Statute.

13 PRESIDING JUDGE FULFORD: Thank you very much. There is a clear impasse as regards  
14 the funding of this accused's defence. Although funds and property which are said to  
15 belong to the accused or which he is said to have a proprietary interest in have been  
16 identified, there are no indications that he presently has the ability to pay his lawyers.  
17 It needs to be observed that this is, in no small part, the result of the Court's own  
18 involvement in freezing his assets, although others have, of course, participated in  
19 this process.

20 There needs to be an immediate solution to this problem which is now at least  
21 seven months old, going back to March of this year, and in order to explain the solution  
22 which we propose, it is necessary to set out what seems to us to be the most important  
23 aspects of the recent history. Although we shall refer to certain confidential and ex  
24 parte filings and hearings, we will avoid any sensitive material that merits protection.  
25 We observe that, in fact, much of this material which has been filed or dealt with

1 confidentially or ex parte should, in fact, have been dealt with publicly.

2           On 10 October 2008, the Pre-Trial Chamber issued its "Decision on the Defence's  
3 Application for lifting the Seizure of Assets and Request for Cooperation to the Competent  
4 Authorities" (document 149). The Pre-Trial Chamber particularly highlighted that the  
5 Registrar's provisional decision was based on an estimation of the financial resources  
6 of Mr. Jean-Pierre Bemba which include assets that have been frozen or seized at the  
7 Court's request, such as at least one bank account holding a substantial sum of money  
8 (see paragraph 14).

9           Having observed that the Defence had to undertake preparatory work for the case  
10 and having acknowledged the accused has financial obligations to his family, the Chamber  
11 partially granted the Defence request in that it temporarily authorised the competent  
12 authorities in one particular country to release €36,260 on a monthly basis from an account  
13 ending with the numbers 001 at a particular bank until the decision on the confirmation  
14 of charges (see paragraph 17).

15           Seemingly acknowledging that there may be difficulties in implementing this  
16 order, the Chamber: (a) requested "the competent authorities of the country concerned  
17 to inform the Court in accordance with Article 96(3) of the Statute of any specific  
18 requirements under its national law in order to execute the present request", (b) requested  
19 "the competent authorities to consult with the Court in accordance with Article 97 of  
20 the Statute on any difficulty encountered in implementing the present decision"; and  
21 (c) ordered "the Registrar to transmit the present decision to the competent authorities  
22 to report to the Chamber no later than 3 November 2008 on the status of its implementation."

23           This calculation of €36,260 has never been the subject of an appeal, although  
24 there has been at least one substantive submission to the Pre-Trial Chamber, which was  
25 rejected, for additional funds (see the Defence request of 28 October 2008).

1           The sum of €36,260 was paid in October, November and December. In a filing  
2 made by the Defence on 17 July 2009 (document 452) the Defence reminded the Court that  
3 on 29 December 2008 it made an urgent application to the Pre-Trial Chamber because the  
4 account referred to above ceased to have sufficient funds to meet this monthly outlay.  
5 The Defence requested access to funds held in another account. The Pre-Trial Chamber  
6 partially granted this request to enable the €36,260 to be paid out of that second account.  
7 This arrangement seems to have operated until March 2009, when the funds in the second  
8 account were frozen or refrozen.

9           The Registry addressed the Chamber on these difficulties during a confidential  
10 status conference on 29 June 2009, parts of which it is appropriate to reveal now publicly,  
11 and it informed the Judges that more time was needed to unfreeze this account. The  
12 representative of the Registry made a proposal that the Registrar could resolve this  
13 lack of funds by affording the Defence temporary legal assistance whilst awaiting the  
14 release of funds from the second account.

15           However, after a rather complicated history, on 16 July 2009 the Defence Support  
16 Section of the Registry retracted this offer, although in an email of 17 July 2009 sent  
17 at 15:32, which was attached to a later Defence filing (see document 452, confidential  
18 annex 4) the support section indicated that the matter would be examined and the Defence  
19 would receive a response in the near future. Thereafter, no funds have been made available  
20 to the Defence and we are unaware of any further contact by the Defence support section  
21 on this issue, although of course there may have been informal communication which we  
22 would not have been informed about.

23           On 18 September 2009, the Pre-Trial Chamber (document 531) rejected a Defence  
24 application to lift the seizure orders on certain items of the accused's property on  
25 the basis that the application was premature. On the same day, the Single Judge rejected

1 the accused's application to suspend the proceedings advanced because of his lack of  
2 funds (document 530) on the basis inter alia that the Registry is in the process of reaching  
3 a solution to this matter. And with respect to the non-implementation of the 31 December  
4 2008 decision, every step has been taken so far to ensure its execution at the earliest  
5 opportunity.

6           Regrettably, the only further development that we are aware of is that on 24  
7 September 2009 the Registrar refused to grant legal aid and offered no immediate alternative  
8 solution. We observe that this decision appears to respond to a request from the Defence  
9 of 25 August 2009 which was not filed in the Court's paper management system (see a reference  
10 that is made to it in a confidential document numbered 505 at paragraph 13).

11           The Registrar suggested that the seizure order on one account will be lifted  
12 soon and that the winding-up of certain property in which the accused has a beneficial  
13 interest is in progress. No date for either of these events was indicated, nor was there  
14 any basis given for the expectation that funds would soon become available. In the result,  
15 there are simply no sufficient indications as to when, in the near or distant future,  
16 that the accused will be able to pay his lawyers. Until then, the Defence team is apparently  
17 expected to act unfunded.

18           Critically, the Registrar, contrary to the position advanced in Court before  
19 the Judges on 29 June 2009, now maintains that she has no power to advance funds to a  
20 non-indigent person using the funds allocated by the States Parties for this purpose.

21           We do not currently accept that latter suggestion by the Registrar that she  
22 does not have the power to advance funds to the accused on a temporary basis. At present,  
23 we can find no prohibition within the Rome Statute framework which prevents her from  
24 advancing funds on at least a temporary basis to ensure that the accused receives a fair  
25 trial without undue delay, with adequate time and facilities for the preparation of his

1 defence. We consider that the real question is exactly the opposite. Is there anything  
2 that positively prevents the Registrar from providing at least temporary assistance and,  
3 in part, assistance retroactively? It seems to us that it would be a surprising result  
4 indeed if the Registrar is able to fund the multiplicity of undertakings currently paid  
5 for in her name, but she was wholly unable to put the accused in the position of being  
6 able to fund his lawyers during a period when he apparently has no access to his property,  
7 in part, we observe, as a result of the actions of the Court in freezing some of his  
8 own assets. Moreover, a number of regulations appear *prima facie* to support the suggestion  
9 that the Registrar is able to assist in these circumstances.

10 When determining the accused's means under Regulation 84, the means of the  
11 Applicant include all those in respect of which he has a direct or indirect enjoyment  
12 or power freely to dispose. With frozen assets, it seems to us on a provisional basis  
13 that it would be difficult to describe them realistically as means which he directly  
14 or indirectly enjoys or over which he has power freely to dispose. Further, the Registrar  
15 has the power to make a provisional decision granting the payment of legal assistance  
16 (and that is Regulation 85(1)).

17 Putting all this together, our current proposal, therefore, which matches the  
18 Registrar's own submissions to the Pre-Trial Chamber on 29 June, is that the Registry,  
19 on a temporary basis, should meet the shortfall retrospectively since the last payment  
20 in March of 2009 and that this should be continued hereafter until sufficient funds from  
21 the frozen assets, or other monies, become available to this accused.

22 As a precondition it will be necessary for the accused to sign an appropriately  
23 binding document that any assistance he receives from the Registry in advance of his  
24 funds becoming available is to be repaid by way of an enforceable first charge in the  
25 Registry's favour on any of the seized or other funds as and when they are released or

1 otherwise become accessible. Subject to any contrary submissions that we accept, the  
2 Registry should prepare this document for the accused's signature forthwith.

3 We propose to give the parties, the participants and the Registry until 4 p.m.  
4 on Friday, 9 October 2009, therefore, two days hence, to file submissions on the issue  
5 of whether or not there is a statutory or regulatory bar to the Registry providing this  
6 immediate temporary assistance which is to be repaid, as we have observed, when adequate  
7 funds are released. Immediately thereafter, we will issue a written decision on this  
8 issue.

9 We stress and repeat that in our view the present position is wholly untenable  
10 and needs to be resolved immediately. In the meantime, and in any event, the Defence  
11 may wish to resubmit a realistic document, and I underline the word "realistic", to the  
12 Registry forthwith, setting out all of its anticipated funding needs for the trial part  
13 of this case so that there can be a complete and immediate review of the funding needs  
14 of Mr. Bemba for his trial.

15 Now, within those observations there is a considerable amount for everyone to  
16 digest. A little bit later this afternoon, we are probably going to have to allow the  
17 shorthand writers and the interpreters a half-an-hour break so that they are not put  
18 in an impossible position and we will -- and we ask everyone to use that break to see  
19 whether there are any submissions that need to be made this afternoon on this issue,  
20 given the preliminary indications which we have, I hope, clearly and firmly set out.

21 We recently received an application for an ex parte status conference by the  
22 Defence on this issue. It may be that, having heard our preliminary observations, that  
23 request is now unnecessary, but the Defence will be afforded the half-an-hour break later  
24 this afternoon to make a decision as to whether or not they need to make that request,  
25 having consulted with Mr. Bemba. So, those are our preliminary observations and we wait

1 to hear later today as to whether anything further needs to be said.

2 We turn next to the date of trial. I want to ask the Prosecution whether they  
3 are ready.

4 MS. KNEUER: Mr. President, your Honours, the Prosecution submits that the  
5 ultimate authority for determining the date for the commencement of the trial is the  
6 Trial Chamber, taking into account inter alia Article 67(1)(b) and (c), thus ensuring  
7 a fair and impartial trial for all participants.

8 PRESIDING JUDGE FULFORD: I am aware of that. My question is whether you are  
9 ready.

10 MS. KNEUER: Yes, the Prosecution is ready.

11 PRESIDING JUDGE FULFORD: And that meant seriously.

12 MS. KNEUER: Yes.

13 PRESIDING JUDGE FULFORD: The evidence on which you rely has been served and  
14 filed and there is nothing outstanding which the Prosecution intends to introduce on  
15 which it is going to rely. Is that the position?

16 MS. KNEUER: The position is that, as I said, the Prosecution is ready. However,  
17 we can anticipate to conclude the disclosure of the material that we are intending to  
18 rely on during trial will be concluded by the end of November 2009.

19 PRESIDING JUDGE FULFORD: Well, I do not understand the submission that the  
20 Prosecution is ready when the Prosecution says in the same breath, "We have outstanding  
21 material on which we intend to rely." You are not ready. You haven't filed all of the  
22 evidence which is outstanding which the Defence is entitled to see before the trial commences.  
23 Now you will have to set out in a filing by Friday evening at 4 p.m. what the outstanding  
24 material is that you now seek to introduce. You will have to give us a summary of the  
25 ambit of that material and what issues it goes to, and you will have to explain why this

1 hasn't already been filed so that we can make a decision as to whether or not it is fair  
2 for you at this late stage to be seeking to introduce further material.

3 Now, is that acceptable for you to provide us with that document by 4 p.m. on  
4 Friday afternoon?

5 MS. KNEUER: Yes, it is, your Honour.

6 PRESIDING JUDGE FULFORD: Thank you very much indeed. This is, in a sense, an  
7 almost unanswerable question for the Defence, but once all the Prosecution material has  
8 been filed, if we allow any further material to be filed, and once the Defence funding  
9 position has been resolved so that there can be a fair trial, is the Defence able to  
10 assist us at all as to how long after that you will require in order to be ready for  
11 this case?

12 MR. LIRISS: (Interpretation) Your Honour, the Defence is in your hands. First  
13 of all, we have to beef up the Defence team. We need a second co-counsel and an investigator,  
14 because we need to start our own investigation on the basis of the documents which will  
15 be disclosed to us finally by the Prosecution team. We will also need a legal assistant,  
16 but everything would depend on the determination which you have just made. At this point  
17 in time it is difficult for us to give you our schedule. That said, we are completely  
18 at your disposal, whatever decision you are going to take. Thank you.

19 PRESIDING JUDGE FULFORD: Well, that is extremely politely and graciously put,  
20 Mr. Liriss, but I would like, if it is possible, to have a little bit more solid assistance.  
21 You now know, except for the outstanding documents, what the shape is of the Prosecution  
22 case, and I would hope that you would be able to give us some kind of estimation as to  
23 how long you think it will take for you to investigate that case properly once your team  
24 is sufficiently and properly funded. What we need to know is whether you are thinking  
25 of one or two months, or two or three years. What sort of length of time do you have

1 in mind?

2 MR. LIRISS: (Interpretation) Your Honour, our investigations will be carried  
3 out in Bangui. This is an area which is hostile to us. We sincerely really don't know.  
4 Well, we are better placed to know that we have to have a speedy, expeditious trial.  
5 We know what we have to look for. I would say as soon as possible, but quite honestly,  
6 I don't have a date, and if you would allow me, please allow me to consult with my client  
7 and my other colleagues.

8 PRESIDING JUDGE FULFORD: Do you want to do that now, Mr. Liriss, or over the  
9 break later this afternoon?

10 MR. LIRISS: (Interpretation) During the break, your Honour.

11 PRESIDING JUDGE FULFORD: Certainly. What we would like to do, if it is at all  
12 possible, is to identify at least a tentative trial date which we will ask everyone to  
13 work towards, although we are fully aware that investigations of this kind may throw  
14 up unexpected difficulties which may result in an inevitable adjournment to any trial  
15 date that has been provisionally identified, but we would like to identify, if we can,  
16 a reasonable proposed trial date.

17 Length of trial? How long will your case last?

18 MS. KNEUER: Your Honours, the Prosecution --

19 PRESIDING JUDGE FULFORD: In a moment.

20 MS. KNEUER: Your Honours, the Prosecution foresees that the trial may take  
21 four to six months. We are planning to call around 30 to 35 witnesses, and we calculated  
22 the length of trial due to the experience in the Lubanga case.

23 PRESIDING JUDGE FULFORD: Now, the four to six months, is that four to six months  
24 to hear the Prosecution witnesses, or is that four to six months to hear the Prosecution  
25 witnesses and an equivalent number of Defence witnesses?

1 MS. KNEUER: Your Honour, it relates to the Prosecution case.

2 PRESIDING JUDGE FULFORD: That is very helpful. Thank you very much.

3 Now, Ms. Massidda, you are on your feet?

4 MS. MASSIDDA: Thank you very much, your Honour. I would like to intervene on  
5 the date of trial, simply to inform the Chamber that, as you know, at this point in time  
6 Legal Representative have no access to confidential documents. We have only access to  
7 the public record of the case. We are assuming that part of the jurisprudence in the  
8 Lubanga trial will be probably applied in the Bemba case. We consider that this is possible  
9 and this should solve part of the issues. We can estimate at this point in time that  
10 we will need between six weeks and twelve weeks after all the documents are served to  
11 the Legal Representatives in order to prepare for trial. This estimated period of time  
12 is in line with the estimation of the Chamber in the Lubanga case in respect of the same  
13 issue. Thank you.

14 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Massidda. We will come in  
15 a moment to the issue of the existing jurisprudence of the Court, but we take on board  
16 what you say about the length of time that you will need to prepare once you have had  
17 full and proper access to the documents to which you are entitled.

18 The Prosecution's summary. We found in the Lubanga trial that a document which  
19 explains the Prosecution's case by reference to the witnesses it intends to call and  
20 the evidence it intends to rely on extremely helpful. Furthermore, in the Lubanga case  
21 that document explained how the evidence relates to the charges, and if anybody wishes  
22 to see the document to which I am referring, it would be relevant to look at our decision  
23 of 9 November 2007, document 1019.

24 Any objections on the part of the Prosecution to providing the Court with a  
25 document of that kind?

1 MS. KNEUER: No objections, your Honour.

2 PRESIDING JUDGE FULFORD: Thank you very much indeed. We ask for it then by  
3 4 p.m. on 4 November. A month to draft it sufficient?

4 MS. KNEUER: Yes, your Honour.

5 PRESIDING JUDGE FULFORD: Thank you. We turn next to an amended document  
6 containing the charges. Again, in the Lubanga trial it was extremely helpful to have  
7 the Prosecution submit a fresh document containing the charges which reflected the final  
8 way in which the Pre-Trial Chamber had described them.

9 Content to provide us with that document?

10 MS. KNEUER: Yes, your Honour.

11 PRESIDING JUDGE FULFORD: 4 p.m. on 4 November?

12 MS. KNEUER: Yes, your Honour.

13 PRESIDING JUDGE FULFORD: Thank you. Languages next. The accused chose French  
14 as the language which he wished to use in this trial at the first status conference.  
15 The Prosecution and the Bench are essentially going to be speaking as I anticipate in  
16 English and we will therefore need for there to be French and English interpreters and  
17 simultaneous transcripts in both languages throughout.

18 Now for the witnesses, Swahili, Lingala, Sango or any others?

19 MS. KNEUER: Your Honours, at this point in time the Prosecution foresees that  
20 witnesses will provide evidence or their testimony in Sango and Swahili. We, however,  
21 do not want to rule out at this point in time Lingala. In addition, we would like to  
22 flag with the Chamber that Sango is an official language meanwhile; however, not fully  
23 developed in written and the Prosecution would be grateful for your guidance if the  
24 Prosecution should prepare translations into Sango for the witnesses for the witness  
25 familiarisation process.

1           PRESIDING JUDGE FULFORD: We are going to ask for your assistance in writing  
2 on this issue. Can you please set out in detail the exact nature of the problem once  
3 it has been identified, but this must be done no later than 4 p.m. on 4 November and  
4 we encourage you to enter into immediate discussions with the head of the interpretation  
5 and translation section so as to find a suitable resolution to any problem that may arise.

6           Please.

7           MR. LIRISS: (Interpretation) Pardon, your Honour. Just to go back to the issue  
8 of languages, when the Court was seized with the case in a pre-trial we requested that  
9 the time frames with regards to the proceedings not be taken into account where it concerns  
10 the Defence apart from, from the moment of notification of the translation of the application  
11 in French. This is even more important given that we haven't been able to respond to  
12 applications of the Prosecutor and we have done so late precisely because we did not  
13 have the French translations of them.

14           If you would be so kind as to adopt the same principle, this would help us  
15 considerably in our work and if the Prosecutor who has all the means could also take  
16 that into account I would be very grateful. Thank you.

17           PRESIDING JUDGE FULFORD: Mr. Liriss, you will understand that we have not been  
18 in possession of these papers for very long and that there is a huge amount of documentation  
19 in this case which we have got to become familiar with. My memory is that that application  
20 which you made in relation to when time starts to run was rejected by the Judge of the  
21 Pre-Trial Chamber, but if I am mistaken on that please let me know. I can see that you  
22 are nodding in agreement. Do I take it, therefore, that your application was rejected?

23           MR. LIRISS: (Interpretation) The application was rejected, but the Single Judge  
24 did authorise once that the deadline would only go from notification of the French translation  
25 and that was a decision taken on the confirmation of charges.

1           PRESIDING JUDGE FULFORD: We will of course revisit the earlier application  
2 then that you made before the Pre-Trial Chamber for this to apply to each and every filing.  
3 Would you wish to put in additional submissions on the point, or do you want us to decide  
4 it on the basis of the submissions currently before the Court in the sense that I am  
5 referring to the filings before the Pre-Trial Chamber?

6           MR. LIRISS: (Interpretation) You can rule on the basis of the present  
7 application, your Honour.

8           PRESIDING JUDGE FULFORD: We will do so and you will have a written decision  
9 from us I hope in the near future. Thank you very much.

10          We now need to deal with any outstanding issues in relation to disclosure. We  
11 have dealt to the extent that we need to with the Prosecution's incriminating case in  
12 the sense that any outstanding material has got to be dealt with in the way that I have  
13 already identified. Now, what about exculpatory or Rule 77 material? Ms. Kneuer, is  
14 there anything else that is due to be served in relation to Rule 77 or exculpatory material?

15          MS. KNEUER: Your Honour, if I may elaborate on this matter a little bit. For  
16 the confirmation hearing, the Prosecution disclosed 2,434 documents out of which 331  
17 were disclosed as incriminatory evidence, 40 documents as potentially exonerating material  
18 and 2,064 documents as Rule 77 material.

19          Post-confirmation hearing investigations revealed that we collected 2,111  
20 documents comprising 8,103 pages and we are in the process of reviewing them to fulfil  
21 and discharge our obligation under the Statute and the Rules to disclose it to the Defence  
22 in a timely manner.

23          PRESIDING JUDGE FULFORD: Right. How long -- how long do you need to complete  
24 the process of review and to complete your disclosure obligations to the accused?

25          MS. KNEUER: The calculation of the Prosecution is that we are capable to conclude

1 this review and disclosure to the Defence by the end of November 2009.

2 PRESIDING JUDGE FULFORD: Right. Can I please have the date for the last working  
3 day in November? Can somebody get it up on their diary, please?

4 MS. KNEUER: It would be the 30th -- Monday, 30 November, your Honour.

5 PRESIDING JUDGE FULFORD: Right. You have until 4 p.m. on Monday, 30 November  
6 to complete that exercise. If it becomes clear that you are going to be unable to fulfil  
7 that obligation, we are not to be told 30 minutes before the deadline expires. You are  
8 to notify the Chamber sufficiently in advance so there can be a hearing so that we can  
9 resolve the issue.

10 Now, the next question, Ms. Kneuer, is whether it would be either convenient  
11 or helpful for us at this stage to review the disclosure regime which did not follow  
12 the disclosure regime which Trial Chamber I established and which has been followed by  
13 Trial Chamber II, or whether it would be unhelpful to do so and to no effect to do so  
14 at this stage?

15 MS. KNEUER: The Prosecution proposes that we follow the procedure that was  
16 established in the Bemba case, meaning that we disclose the incriminatory evidence inter  
17 partes with the Defence and file it to the record and the potentially exculpatory material  
18 and the Rule 77 material to the Defence, notifying the Chamber.

19 PRESIDING JUDGE FULFORD: But not entering it into the Court documents system  
20 so that each and every item is given a number by the Registry?

21 MS. KNEUER: That is correct.

22 PRESIDING JUDGE FULFORD: Thank you. Now, the last question on this issue,  
23 Ms. Kneuer, I am sorry to keep bowling balls at you, is the evidential significance of  
24 the EVD numbers which have now been given to each and every item of incriminatory evidence  
25 which has been filed. Our experience in the Lubanga trial is that it is only a selection

1 of that incriminatory material which in the event comes before the Judges to form part  
2 of the Prosecution's evidence. Now, how are the Judges and the Defence and the participating  
3 victims to know which documents are positively relied on and which documents happen to  
4 be included but which are no longer relied on? We are not going to read everything on  
5 a serendipitous basis that it may become relevant.

6 MS. KNEUER: Your Honour, with your permission we would like to reflect this  
7 problem during the break and come back to you after the break.

8 PRESIDING JUDGE FULFORD: Yes. We would in fact give you longer than that if  
9 you need it in order to resolve this problem, because it is not altogether an easy question  
10 in my view and it may be that when you are compiling your - the Prosecution's - summary  
11 you may wish to use that opportunity of listing each and every one of the documents which  
12 have been filed with an EVD number which you are going positively to rely on. I simply  
13 set that out as a suggestion for your consideration, but reflect on it over the break  
14 and come back to us in due course.

15 We have dealt with exculpatory material.

16 I turn next to the eCourt protocol. There have been two substantive decisions  
17 on this issue by Trial Chamber I and we wish to ask whether this has been working satisfactorily  
18 during the pre-trial stage and whether it is apprehended that there is any need for any  
19 amendments during the trial?

20 MS. KNEUER: Your Honour, the Prosecution submits that there should be an  
21 amendment of the eCourt protocol for the reason to standardise the eCourt protocols.  
22 It is our observation that there are differences between the cases and it may be beneficial  
23 for this case and also for future cases to standardise it. However, due to its technical  
24 background, we would appreciate if we could submit our observations in writing.

25 PRESIDING JUDGE FULFORD: 4 p.m. on 4 November?

1 MS. KNEUER: Yes.

2 PRESIDING JUDGE FULFORD: You are going to have a lot of work to do for that  
3 date, Ms. Kneuer.

4 Anything from the Defence on this issue?

5 MR. LIRISS: (Interpretation) Your Honour, where it concerns the Defence, this  
6 protocol has functioned in a satisfactory manner.

7 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Liriss.

8 Expert witnesses -- ah, Ms. Massidda?

9 MS. MASSIDDA: Thank you, your Honour. On the eCourt protocol we would like  
10 to suggest a few amendments following the Lubanga practice. We are requesting the same  
11 deadline as for the Prosecutor if this is convenient? Thank you.

12 PRESIDING JUDGE FULFORD: Yes, Ms. Massidda, could you liaise with the  
13 Prosecution and it may be that it would be convenient for a joint submission to be made  
14 rather than us having to consider separate submissions. Obviously if there is no meeting  
15 of minds then put in separate submissions, but if it is possible to put in a joint submission  
16 we would be grateful and with the same deadline.

17 MS. MASSIDDA: Absolutely, your Honour. I am guided, thank you.

18 PRESIDING JUDGE FULFORD: Thank you. Expert witnesses. Again, Ms. Kneuer, you  
19 must forgive me for potentially showing at the moment not an entirely global knowledge  
20 of every document in this case, but have all or any of the experts to be relied on by  
21 the Prosecution been identified?

22 MS. KNEUER: Your Honours, the Prosecution is still considering upon which experts  
23 the Prosecution wishes to rely during the trial.

24 PRESIDING JUDGE FULFORD: Well, you have only got until 16:00 on Friday to make  
25 up your mind on that, Ms. Kneuer. This is going to have to form part of the submission

1 which needs to be with us in writing by Friday evening.

2 MS. KNEUER: Sure, your Honour.

3 PRESIDING JUDGE FULFORD: Thank you very much. If there is to be a suggested  
4 reliance on experts, we ask the parties and the participants to look at the relevant  
5 jurisprudence of the Court on this issue and to consider the possibility of joint instruction  
6 of any expert witnesses. If there are any proposals that the established jurisprudence  
7 should be departed from, we would be grateful for an early filing indicating any suggested  
8 departure.

9 Now, protection issues for witnesses and any other outstanding issues for victims.  
10 Yes, certainly Mr. Liriss.

11 MR. LIRISS: (Interpretation) Your Honour, where it concerns the experts, I  
12 think that the Defence will have experts.

13 PRESIDING JUDGE FULFORD: That is very helpful. And can I essentially re-direct  
14 the observations I have just made towards the Defence benches: If there are to be experts,  
15 we would ask you please to look at the jurisprudence of the Lubanga Chamber in which  
16 we encouraged the parties at the very least to consider joint instructions to any expert  
17 to try to avoid the unnecessary calling of a multiplicity of experts on any issue. We  
18 won't compel the parties to jointly instruct experts, but we do ask you to consider it.

19 Protective and other issues in relation to witnesses and victims. On 5 October,  
20 the Victims Participation & Reparations Section in a confidential ex parte filing submitted  
21 its detailed report on victims' participation. This cannot be discussed publicly. However,  
22 a representative from the section has volunteered now to provide a short general summary  
23 on the pending applications. And can I ask, please, for that to happen now?

24 MS. ACUNA: Mr. President, your Honours, regarding the applications that have  
25 been received but have not been filed, I would like to inform that the Registry has received

1 107 applications subsequent to the deadline set by the Pre-Trial Chamber which have not  
2 yet been filed either in the record of the situation or in the Bemba case.

3 The Registry would like to inform that from these 100 applications, four have  
4 been withdrawn. And taking into account these withdrawn applications, there will be 95  
5 in total applications that are still outstanding that appear to be linked to the case.

6 PRESIDING JUDGE FULFORD: Well, we must thank you very much indeed, Ms. Acuna.  
7 That is sufficient. The Chamber is, obviously, going to have to deal with those applications  
8 as quickly as possible, because one of the issues in relation to the suggested trial  
9 date is whether or not the victims' applications have been dealt with and sufficient  
10 time has been afforded to participating victims to prepare for the trial. So we will  
11 need to process those applications as quickly as possible.

12 We would seek to bring to the attention of those who are concerned that on 28  
13 January 2009, transcript 110 in the Lubanga trial, the Chamber ordered that applications  
14 for protective measures for witnesses must be made in a timely fashion to enable the  
15 Victims & Witnesses Unit to implement any proper requests and the Prosecution needs very  
16 much to have this in mind in relation to its witnesses.

17 These applications must not be submitted so late as to mean that the trial date  
18 is endangered because the Victims & Witnesses Unit has not had a sufficient opportunity  
19 of investigating the requests. We will also need early warning of any particular in-court  
20 measures for witnesses that the parties or the Victims & Witnesses Unit apprehend may  
21 be necessary.

22 Now, Ms. Kneuer, we need to deal with the issue of any outstanding applications  
23 for redactions. This has involved the first two Trial Chambers in a simply huge amount  
24 of work. And are there currently any substantive outstanding applications either to impose  
25 or to lift redactions?

1 MS. KNEUER: Your Honour, we are reviewing the redactions of the witnesses the  
2 Prosecution relied upon during the confirmation hearing, so there may be some requests  
3 for lifting to adjust to the situation of the witnesses. Also, with respect to new witnesses,  
4 we are in the process of reviewing the statements. And there may be requests applying  
5 redactions in a limited form.

6 PRESIDING JUDGE FULFORD: Right. Can you have all of your applications in writing  
7 with the Chamber and the Defence by 20 October?

8 MS. KNEUER: Your Honour, we would, of course, do our utmost. However, we may  
9 need some more time.

10 PRESIDING JUDGE FULFORD: Right. I am going to set the 20 October. I am going  
11 to give you 48 hours in which to reflect on it; and if on mature reflection you think  
12 it is unachievable, can you communicate by email with the legal adviser to the division  
13 and suggest an alternative date? And so long as that is a reasonable one, we will grant  
14 it.

15 MS. KNEUER: Thank you, your Honour.

16 PRESIDING JUDGE FULFORD: Thank you. Article 54(3)(e), an article with  
17 Judge Odio Benito and myself and Judge Blattmann will never forget. Now have all of the  
18 issues on Article 54(3)(e) now been resolved? We are aware that there have been four  
19 reports provided to the Chamber, the last of which was on 12 November 2008, in which  
20 at paragraph 10 it was suggested that all of the relevant information providers had consented  
21 to lift the redactions on all the relevant material. Now, that therefore seems to make  
22 Article 54(3)(e) a non-issue, but I wish to make sure that that is truly the position.

23 MS. KNEUER: Your Honour, that reflects the situation correctly. All items were  
24 disclosed and no further items under Article 54(3)(e) were collected.

25 PRESIDING JUDGE FULFORD: That demonstrates that no two trials are the same,

1 Ms. Kneuer.

2 Now, English translations of the Prosecution witness statements. As we  
3 understand the position, these are now fully available, although some of them are in  
4 draft form. We understand that in the general decision on disclosure of 31 July 2008,  
5 which is document 55, the Single Judge, as I recall it was, ordered that these translations  
6 should be filed in the Court system using the eCourt protocol.

7 So my question, Ms. Kneuer, is: Are these now all in final form or are some  
8 of them still in draft and have they been filed in the Court system?

9 MS. KNEUER: Your Honour, if I could be given two minutes to consult with my  
10 colleague?

11 PRESIDING JUDGE FULFORD: Most assuredly.

12 MS. KNEUER: Your Honour, the translations that relate to the witnesses that  
13 we relied upon during the confirmation hearing were filed in the record.

14 PRESIDING JUDGE FULFORD: Translated?

15 MS. KNEUER: Yes. Related to new witnesses, we are in the process of finishing  
16 translation into English with respect to four witnesses and into French with respect  
17 to six witnesses. This should be finished soon.

18 PRESIDING JUDGE FULFORD: Ms. Bensouda knows that I like dates, Ms. Kneuer.

19 MS. KNEUER: At the latest by the end of November.

20 PRESIDING JUDGE FULFORD: Right. 30 November, 16:00.

21 Mr. Liriss?

22 MR. LIRISS: (Interpretation) Your Honour, I would like to return to this point.  
23 There are also witnesses who gave their testimony in English; they gave their statements  
24 in English, and those statements need to be translated into French. I don't know if the  
25 Prosecution team has looked into that problem. Thank you, your Honour.

1           PRESIDING JUDGE FULFORD: Thank you very much, Mr. Liriss. As I understood the  
2 submission just now, this is going to happen both ways; English into French, French into  
3 English. Is that right, Ms. Kneuer?

4           MS. KNEUER: That is absolutely correct, your Honour.

5           PRESIDING JUDGE FULFORD: Good. All right.

6           Next, the manner in which evidence is to be submitted, in reality what the Judges  
7 are asking is, whether there is to be any suggestion that the procedures developed in  
8 the Lubanga case should be varied during the course of this trial. We ask you, please,  
9 all to review the jurisprudence on this issue, namely the manner in which evidence is  
10 submitted; and if there are any substantive submissions, they are to be filed, please,  
11 by 16:00 on 4 November 2009.

12           Agreements as to facts. We anticipate that not everything in this case will  
13 be in dispute. We will expect the parties and the participants to liaise, to see whether  
14 agreement can be reached about the non-contentious issues. There is no need for submissions  
15 at this stage, but please liaise with each other. And I see from a nod from Mr. Liriss,  
16 and I am sure there will be a nod from Ms. Massidda, that there are no objections to  
17 entering into discussions.

18           We ask the Prosecution, please, to take the responsibility of providing the  
19 Chamber with an update on how these discussions are going. And Ms. Kneuer, it will come  
20 as no surprise now, 16:00 on 4 November, please.

21           Disclosure by the Defence. Mr. Liriss, we well understand that, particularly  
22 given the difficulties you have experienced, this is going to be an extremely sensitive  
23 issue for you and so I am going to introduce this in the gentlest possible way that I  
24 can. All I request at the moment from you is that you look at the public decision that  
25 was issued by the Trial Chamber in Lubanga which is effectively headed "Disclosure by

1 the Defence" and if you have any suggested amendments to the approach taken by that Chamber  
2 to Defence disclosure, once again, could you please provide us with your written submissions  
3 by 4 p.m. on 4 November? Is that satisfactory?

4 MR. LIRISS: (Interpretation) Yes, your Honour.

5 PRESIDING JUDGE FULFORD: Thank you. We turn next to the issue of -- ah, Ms. Kneuer,  
6 certainly.

7 MS. KNEUER: Your Honour, the Prosecution would appreciate if he could be invited  
8 to submit our observations on this topic as well by 4 November 4 p.m.

9 PRESIDING JUDGE FULFORD: I am going to be more generous than that, Ms. Kneuer.  
10 You need to know what it is that the Defence are submitting and so the -- unless we abridge  
11 time the usual rules will apply as regards responses to the Defence submissions. Generous  
12 of you to offer 4 November, but you really need to know what the submissions are before  
13 you put in the Prosecution submission.

14 Victims giving evidence. Ms. Massidda, on this we clearly understand that these  
15 are very early days indeed, and you are going to need to know who is participating and  
16 what their interests are. Do you have any sense today as to when, looking at what is  
17 likely to be the Court's chronology, as to when it is that you are likely to be in a  
18 position together with your colleagues to inform the Chamber as to whether or not there  
19 are going to be applications by participating victims to give evidence?

20 MS. MASSIDDA: Thank you, your Honour. We estimate that in the time between  
21 four and six weeks after we receive the entire material we will be able to inform the  
22 Chamber. However, we are already reflecting upon two issues. The first one is if there  
23 is any need for legal representative of victims to call expert witnesses, and we are  
24 waiting for the submissions by the Prosecution in this respect, and we have taken also  
25 the point of the Chamber in respect of joint instructions.

1           And the second issues that we are reflecting upon is the possibility for some  
2 victims to appear in person before the Trial Chamber, either in accordance with the practice  
3 established in the Lubanga trial or simply under Rule 93 of the Rules of Procedure and  
4 Evidence.

5           I think we have to discuss this together, the two teams, and I think we will  
6 be able to arrive to a conclusion once we have consulted the victims concerned. It will  
7 take I think not more than two months. Thank you.

8           PRESIDING JUDGE FULFORD: Ms. Massidda, I am reluctant to set a date at this  
9 stage given there are so many unknown issues on this point. Can you please ensure that  
10 all of this is done in a timely fashion so the Chamber is not confronted at a very late  
11 stage with applications of this kind and we will in any event revisit this issue in due  
12 course to establish a timetable if necessary once the position has become clearer.

13           MS. MASSIDDA: I will, your Honour, thank you. With the leave of the Chamber,  
14 may I address two issues in relation to the participation of victims? Thank you, your  
15 Honour.

16           The first issue relates to whether the Office of Public Counsel for Victims  
17 will be representing for the time being unrepresented applicants. We will need to have  
18 a ruling by the Chamber as soon as possible since the office has to eventually organise  
19 internally and also for future missions in the near future.

20           PRESIDING JUDGE FULFORD: How long do you need to put in a written application,  
21 Ms. Massidda?

22           MS. MASSIDDA: Well, I can submit now if you want, your Honour.

23           PRESIDING JUDGE FULFORD: No, in writing please.

24           MS. MASSIDDA: 4 p.m. by Friday, your Honour.

25           PRESIDING JUDGE FULFORD: Thank you. Anything else?

1 MS. MASSIDDA: The second question: In the Lubanga trial the Chamber decided  
 2 at the beginning of the procedure at trial to provisionally admit victims already authorised  
 3 to participate in the case. We would respectfully request to depart from this approach  
 4 of the Chamber in the Lubanga case.

5 PRESIDING JUDGE FULFORD: In writing by 4 p.m. on Friday?

6 MS. MASSIDDA: May I seek the indulgence of the Chamber and request until 15  
 7 October?

8 PRESIDING JUDGE FULFORD: Certainly, 4 p.m. Thank you.

9 MS. MASSIDDA: Thank you very much.

10 PRESIDING JUDGE FULFORD: Trials in situ. Isn't this, Ms. Kneuer, in reality  
 11 an issue that should be dealt with in writing so as to give the Defence and the participants  
 12 an opportunity of considering your submissions before they respond, rather than having  
 13 to deal with it off-the-cuff, as it were?

14 MS. KNEUER: The Prosecution will submit its observation in writing.

15 PRESIDING JUDGE FULFORD: You are sitting down too quickly, Ms. Kneuer. By when?

16 MS. KNEUER: By Monday the -- by next Monday, 4 p.m.

17 PRESIDING JUDGE FULFORD: Certainly. Thank you very much.

18 Yes, certainly, Mr. Liriss?

19 MR. LIRISS: (Interpretation) Your Honour, I don't know if we needed to include  
 20 this observation as we are talking about victims, or when we are talking about redactions  
 21 or when we are talking about disclosure. The Defence would like, taking into consideration  
 22 the need to protect victims, the Defence would like that the dates of the events at least  
 23 should be disclosed. That way the Defence would be able or the accused would be able  
 24 to prepare for his defence. So long as the dates of the facts with respect to the victims  
 25 with respect to each and every one of the victims are not disclosed it will be impossible

1 for us to prepare our defence.

2 PRESIDING JUDGE FULFORD: Well, that is very clear and very straightforward.  
3 Ms. Massidda, together with the other representatives of victims, can you please reflect  
4 on that request by Mr. Liriss and can you please in writing give the Chamber your response  
5 by 4 p.m. on Monday evening of next week?

6 MS. MASSIDDA: We can, your Honour. Thank you.

7 PRESIDING JUDGE FULFORD: Thank you very much indeed.

8 Mr. Liriss, it may have been a false hope on my part, but I had hoped that having  
9 given the indication that we have at the beginning, in relation to Defence funding, that  
10 we would essentially have addressed your concerns in relation to equality of arms which  
11 is the next item on the agenda.

12 What I propose, if it is convenient to you, is that in a moment once we have  
13 dealt with the one or two other outstanding issues, is to adjourn for half-an-hour so  
14 that you can have an opportunity to discuss with Mr. Bemba whether or not there is now  
15 still anything which you would wish to say as regards equality of arms, whether you are  
16 able to help us with a provisional date for trial with the clear understanding that the  
17 Chamber will be wholly sympathetic if you are unable to complete your researches within  
18 the time that is allowed, and for you to consider whether there is anything else that  
19 needs to be said on the whole issue of Defence funding. Would that be convenient if we  
20 were to give you half-an-hour in a moment to reflect on those issues with Mr. Bemba?

21 MR. LIRISS: (Interpretation) Thank you, your Honour.

22 PRESIDING JUDGE FULFORD: Well, then, can I turn then finally to the two  
23 outstanding issues. The first relates to admissibility. On the -- I think in fact the  
24 Court was notified yesterday, but there is a filing dated 5 October 2009 which is document  
25 542, which is in essence an application for disclosure so that the Defence will be in

1 a position to file a substantive argument in relation to admissibility.

2 We need to set a timetable. Ms. Kneuer, have you had an opportunity of considering  
3 that filing at least to the extent of being able to establish in your own mind how long  
4 the Prosecution need to respond to it?

5 MS. KNEUER: Yes, your Honour, we can do a response by Monday.

6 PRESIDING JUDGE FULFORD: Thank you, 4 p.m. Are the participating victims likely  
7 to want to put in a filing on this, Ms. Massidda? I don't think disclosure is likely  
8 really directly to affect you, is it?

9 MS. MASSIDDA: No, I don't think so, your Honour, thank you.

10 PRESIDING JUDGE FULFORD: No, good. Mr. Liriss, obviously it depends on what  
11 the Prosecution say, but if I were to give you seven days thereafter to respond to the  
12 Prosecution's submissions, would that be appropriate?

13 MR. LIRISS: (Interpretation) Certainly, your Honour.

14 PRESIDING JUDGE FULFORD: So we say 4 p.m. Monday of next week for the Prosecution,  
15 and 4 p.m. on the following Monday for the Defence for their response.

16 Ms. Massidda, I think you have now already dealt essentially with the issue  
17 of the established jurisprudence of the Court. You, I think in particular, have in mind  
18 the jurisprudence as regards participating victims. We in fact have a more general interest  
19 in knowing from the parties and the participants as to whether or not they would seek  
20 us to depart from the guidance that has been given so far by Trial Chambers I and II.  
21 I think at the moment, although there are slight differences of emphasis, there is no  
22 conflict in the jurisprudence of Trial Chambers I and II and the general proposition  
23 that we would make, therefore, is that if there are any suggested departures from that  
24 jurisprudence we should hear of it in writing by 4 p.m. on 4 November. Now, does that  
25 satisfactorily resolve the points that you wish to raise?

1 MS. MASSIDDA: Yes, your Honour, it does. Thank you very much.

2 PRESIDING JUDGE FULFORD: Thank you.

3 Now, before we adjourn to give Mr. Liriss and Mr. Bemba half-an-hour for a  
4 discussion, are there any other matters that anyone would wish to raise? No. Well, thank  
5 you all very much, indeed.

6 We will now rise for half-an-hour and we will sit again at five to 4:00 to deal  
7 with the final outstanding matters. Thank you all very much for your assistance.

8 THE COURT USHER: All rise.

9 (Recess taken at 3:21 p.m.)

10 (Upon resuming at 3:55 p.m.)

11 THE COURT USHER: All rise. Please be seated.

12 PRESIDING JUDGE FULFORD: Mr. Liriss, have you had long enough to formulate  
13 your response?

14 MR. LIRISS: (Interpretation) Your Honour, having examined the proposals from  
15 the Prosecution, we think that six months after the disclosure that the Prosecutor will  
16 make, six months will be necessary for us in order for us to prepare our Defence.

17 PRESIDING JUDGE FULFORD: That is absolutely clear. Thank you very much. On  
18 that issue, Ms. Kneuer, is there anything that you would wish to say?

19 MS. KNEUER: No. Thank you, your Honour.

20 PRESIDING JUDGE FULFORD: We are obviously going to have to reach an independent  
21 decision on this, but it would not therefore be the Prosecution's submission that a gap  
22 of six months would be unreasonable?

23 MS. KNEUER: That is correct, your Honour.

24 PRESIDING JUDGE FULFORD: Good. Thank you.

25 Now, on the issue of Defence funding and equality of arms, given what I hope

1 was a clear and I also hope was a helpful indication at the beginning, is there anything  
2 now, Mr. Liriss, that you would wish to say?

3 MR. LIRISS: (Interpretation) Your Honour, we don't need a closed session for  
4 that. My colleague is just going to add two small clarifications for you.

5 PRESIDING JUDGE FULFORD: Yes, please.

6 MR. KILOLO-MUSAMBA: (Interpretation) I would like to thank you, your Honour.  
7 I think that you have certainly been sufficiently exhaustive with regards to the issue  
8 of financing and funding of the Defence team. However, I would just like to -- because  
9 you did mention the possibility for Mr. Bemba to sign a letter of commitment and which  
10 would say that he would reimburse the funds passed over to him. I just want to draw your  
11 attention to the fact that he has already signed this letter since 2 September in fact,  
12 because in reality we have seen that you didn't have knowledge of the letter that the  
13 Deputy Registrar -- or the Deputy Registrar -- this is referenced DSS2009-289AP.

14 And in this -- well, I will read an extract from it. The Deputy Registrar writes:  
15 "In particular, it could be envisaged to consider it appropriate to advance the necessary  
16 funds to deal with the costs of your legal representation before the Court on the condition  
17 that you take the necessary measures and in particular that you ask the Chamber to -- for  
18 the seizure of one of your houses mentioned to be able to obtain the funds mentioned  
19 in this regard and that you also commit yourself explicitly in writing to reimburse to  
20 the Court the sums provided as soon as you have them -- as soon as you have sufficient  
21 funds in order to do so." So everything has already been done in this regard. We would  
22 just want to bring that to your attention.

23 Now, where it concerns the second point, if you would allow me, where it concerns  
24 the issue of the admissibility, in reality since 22 July 2009 we already addressed an  
25 application for disclosure to the Pre-Trial Chamber to disclose evidence of the Prosecutor

1 with regards to admissibility.

2 PRESIDING JUDGE FULFORD: Mr. Kilolo, forgive my rudeness in interrupting you.  
3 One of the rather difficult lessons that I have had to learn during the Lubanga trial  
4 is that the interpreters and stenographers are placed in an impossible position if counsel  
5 or the Judge speaks too quickly.

6 And although in normal circumstances I would praise you heartily for delivering  
7 your submissions at speed so we can get through them rapidly, in this Court I am afraid  
8 everything starts to break down if you follow that procedure. And you will have noticed  
9 that I tend to speak in a rather slow and deliberate way. Could you bear that in mind,  
10 please, because otherwise the ladies and gentlemen who sit in the boxes above us will  
11 go on strike and we won't be able to proceed further. But please continue.

12 MR. KILOLO-MUSAMBA: (Interpretation) Thank you, your Honour.

13 I was just mentioning an issue which seems to be of great importance to us.  
14 Now, it is matter of the issue of admissibility of this case before the International  
15 Criminal Court, and if we have to mention it today, the reason why is because in reality  
16 we have initiated before the Pre-Trial Chamber -- I think it was on 22 July 2009 -- an  
17 application for disclosure of the evidence of the Prosecutor, the evidence relating to  
18 the issue of admissibility from the perspective of complementarity and also the gravity  
19 of the case.

20 This application -- I will immediately give you the reference of it. That's  
21 ICC-01/05-01/458. And in this application, we inform the Pre-Trial Chamber of our intention  
22 to introduce an application to challenge the admissibility of the case. And this is done  
23 from the perspective of complementarity essentially. And why we have -- we are raising  
24 this question now before you is because on 17 September 2009 -- or 18 September 2009  
25 the Pre-Trial Chamber issued a decision.

1           And in this decision, it asked either to raise before the Presidency or before  
2 the Pre-Trial Chamber to raise this question, and this takes us to the Trial Chamber  
3 because we are before the Trial Chamber now to reintroduce, as we have done so, to introduce  
4 an application for the disclosure of this evidence with regards to admissibility so having  
5 obtained the evidence that we are waiting for to be able to challenge the admissibility  
6 of this case.

7           And the reason why we would like to give you these clarifications is because  
8 we have observed that this decision of 18 September 2009 which I have mentioned,  
9 ICC-01/05-01/08, does not seem to have been taken into account or it doesn't take into  
10 account the jurisprudence of the Court in the Katanga case which does provide that the  
11 issue or the exception of admissibility after the closing of the pre-trial phase can  
12 only be addressed under the ne bis in idem principle. But what we have initiated before  
13 the Pre-Trial Chamber has nothing to do with ne bis in idem principle.

14           We are mentioning the issue of complementarity with regards to the jurisdiction  
15 of National Central African and Congolese courts in this case. And this finally takes  
16 us to asking you the question with regards to what we are going to do. Are you going  
17 to decide to use the provisions in Article 64(4) and to refer this question to the Pre-Trial  
18 Chamber to have cognisance of it after the Prosecutor has disclosed the five precise  
19 items of evidence that we asked for, or are you going to quite simply consider that there  
20 is no reason to apply the jurisprudence from Katanga to this case or are you quite simply  
21 going to note that it is the case that at least we already have initiated this procedure  
22 during the pre-trial phase and, as such, there would be no contradiction in the Katanga  
23 case?

24           So Mr. President, those are the comments that we would like to provide you with.

25           PRESIDING JUDGE FULFORD: Very clear. Thank you very much. Ms. Kneuer, it seems

1 to me on a preliminary basis that we are clearly able to deal with the application for  
2 disclosure that has been made subject to any contrary submissions that you may have.  
3 There then arises the second question as to which Chamber, pre-trial or trial, should  
4 deal with the substantive application which will follow Mr. Kilolo's application for  
5 disclosure.

6           Given that there has been some jurisprudence from the Katanga Chamber on this  
7 issue, does the Prosecution see any difficulties in us dealing with that preliminary  
8 issue after disclosure; namely, whether we should be seized of it or should we send it  
9 back to the Pre-Trial Chamber for their determination?

10           MS. KNEUER: Your Honour, the Prosecution does not have objections that the  
11 Trial Chamber deals with this issue.

12           PRESIDING JUDGE FULFORD: Thank you.

13           Mr. Kilolo, would it be convenient then for you if we deal with disclosure first  
14 and then we ask you to put in short submissions thereafter on the subject of whether  
15 the Chamber that should deal with the substantive issue is the Trial Chamber or the Pre-Trial  
16 Chamber?

17           MR. LIRISS: (Interpretation) Your Honour, we don't have a choice. What is  
18 important to us is that your Chamber knows that this issue had been put at the time that  
19 the pre-trial Judge wasn't seized of it. Now, now it is before the - whether it is the  
20 Pre-Trial Chamber or if it is before the Trial Chamber, that is not of importance to  
21 us. So we don't need to make an application in that regard. Thank you.

22           PRESIDING JUDGE FULFORD: Right, thank you. Ms. Kneuer, we would nonetheless  
23 please ask for submissions from the Prosecution as to which Chamber in your submission  
24 should deal with this issue. We will set a timetable for those submissions not this afternoon  
25 but in due course once we are clear as to when the issue on admissibility - on disclosure

1 is going to be resolved because we should only turn to that once disclosure has been  
2 dealt with. But could you in any event prepare submissions on it and, if the Defence  
3 in due course wish to contribute to the debate, we will of course build in a timetable  
4 for them to put in submissions on the issue and on this, Ms. Massidda, you can join in.  
5 Yes, certainly, so we will include you in the timetable.

6 We need to deal with the issue of documents passing between the parties, or  
7 between the parties and the Registry, which are not being entered into the Court records  
8 system and which we, as a result, are not receiving notification. There have been a number  
9 of examples, one of which I think has just been given by Mr. Kilolo-Musamba in that the  
10 document of 2 September from the Registry, which was directed at reimbursement, unless  
11 I am wrong, is a document of which we would inevitably have been unaware because it was  
12 not filed with the Court.

13 Now, our view is that this is inappropriate. The Chamber has an undoubted interest  
14 in funding issues for this and any other accused, and documents of this kind should not  
15 be exchanged privately excluding the Chamber unless there is good reason.

16 The same applies I think to the August application by the Defence for there  
17 to be a reconsideration of funding and the decision of the Registrar, the most recent  
18 one in September, when funding was refused, the first copy which I received of that decision  
19 had not been entered into the Court's records system, and a decision of the Registrar  
20 refusing legal aid to an accused is inevitably a document that should be filed in the  
21 Court's records. So this practice which seems to be emerging of private exchanges of  
22 documents that should be filed is, please, to stop herewith and henceforth.

23 We now need to deal with a further issue and just give me a moment. The translations  
24 of the Prosecution's witness statements, which was referred to by the Prosecution in  
25 its submissions, do not appear to have been uploaded into Ringtail. If we are right about

1 that, there needs to be immediate rectification and in any event we are going to ask  
2 the Prosecutor by 4 p.m. on Friday to provide us with an up-to-date table which sets  
3 out the original witness statements one by one giving their respective ERN and EVD numbers  
4 together with the ERN and EVD numbers of the translations, so that the two can very quickly  
5 be identified.

6 Mr. Liriss, there is one last matter that I would ask your assistance on, please,  
7 and it is returning to your request that we reconsider, as it were, or review or make  
8 a separate decision, on the Single Judge's determination that ordinarily you are not  
9 entitled to translations before time starts to run.

10 From a practical point of view, we have got to deal with the immediate future.  
11 As of Friday of this week, documents will start to be filed by the Prosecution which  
12 you may need to respond to quickly. If we say that time doesn't start to run until there  
13 has been a translation, the whole process is likely to be very significantly delayed.  
14 We understand that the Single Judge in a decision which bears the number 307, although  
15 I am afraid I don't have the date, ordered that you should be provided with the services  
16 of an interpreter free of charge at all stages to help you with translations of documents.

17 For the time being, and until we have been able to resolve the issue and to  
18 provide you with a written decision, are you content to respond under the usual deadlines  
19 using the services of the interpreter so as to enable you to understand what for instance  
20 has been said by the Prosecution in the documents that they are going to file in the  
21 immediate future with the Court?

22 MR. LIRISS: (Interpretation) No objection, your Honour.

23 PRESIDING JUDGE FULFORD: That is extremely helpful and thank you very much  
24 indeed. I am just going to ask the legal adviser to the division as to whether there  
25 is anything that I have missed. No, thank you.

1           Now, any other points from anyone else? No. Well, this has been in our view  
2   an extremely productive and helpful status conference. We are very grateful to everyone  
3   for having come at relatively short notice to assist us this afternoon and this hearing  
4   is now at an end. Thank you all very much indeed for your attendance.  
5   (The hearing ends at 4:16 p.m.)