

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and Judge René

4 Blattmann

5 Situation: Democratic Republic of Congo - ICC-01/04-01/06

6 Case: Prosecutor v. Thomas Lubanga Dyilo

7 Open Session Hearing

8 Thursday, 17 September 2009

9 (The hearing starts at 10:00)

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

11 Please be seated.

12 PRESIDING JUDGE FULFORD: Good morning. And welcome back to

13 everyone after the summer break. I am going to move straightaway to the

14 subject of the autumn schedule and we will break this down into a number of

15 separate issues.

16 The first that I would ask for assistance on is what is to occur

17 depending on the decision of the Appeals Chamber as regards the request for

18 suspensive effect. Everybody will be aware that both the Prosecution and the

19 Defence have applied to the Appeals Chamber for suspensive effect of the

20 majority's decision as regards Regulation 55. There are, as it seems to me,

21 two clear and obvious options: (1) that it will be grant by the Appeals

22 Chamber and (2) that it will be refused. I think that is pretty

23 self-evident. If granted, that will mean that the Regulation 55 issue is put

24 on hold.

25 The question that then arises is whether or not we continue with the

1 case hearing evidence on the basis of the charges as originally framed.
2 Summarising perhaps some of the main issues, the advantage of that would be
3 that no time would be lost. The disadvantage would be that if the Appeals
4 Chamber upholds the majority view the Chamber may have to consider the extent
5 to which additional evidence needs to be given and including from witnesses
6 who have already testified.
7 If the application for suspensive effect is refused the question for
8 the parties and the participants is whether it is your separate or collective
9 wish for the Chamber to continue to hear evidence against the background that
10 the charges may be subject to change in the way that the majority has
11 indicated in its decision.
12 So, do we continue with the agenda as originally formulated, but
13 against that alternative background, namely, calling the two Chamber experts,
14 the three victims who are participating by way of giving evidence and then
15 moving to the Defence evidence?
16 And a final point on this is that the majority, at paragraph 34 of
17 the decision, indicated that at an appropriate stage of the proceedings the
18 Defence, Prosecution and victims' legal representatives are to be given the
19 opportunity to make oral or written submissions under Regulation 55(2) and
20 that the Chamber is going to articulate in due course the procedural steps for
21 that hearing. A question that may arise is to when that hearing should take
22 place and really a question as to whether there are any views at this stage on
23 that issue.
24 So, two options. If suspensive effect is granted, if suspensive
25 effect is refused and under both what you propose the Chamber should do from 6

1 October onwards? Mr. Sachdeva.

2 MR. SACHDEVA: Thank you, Mr. President. Good morning to you and
3 good morning to your Honours. The Prosecution's position at this stage is
4 that we would wish to continue as planned, in other words, under the first
5 option. However, with respect to the further pronouncements it may be that we
6 would wish to have further internal discussions in the office to come back on
7 any other details, but that would be the first position, to move forward as
8 planned.

9 PRESIDING JUDGE FULFORD: Am I right, Mr. Sachdeva in understanding
10 that that is your position if suspensive effect is granted? Well, I am going
11 to -- you need not answer it immediately now, but I am going to ask you to
12 have a rapid discussion with the other members of your team as to what your
13 position is if suspensive effect is refused, because we have got to make plans
14 now as to what is going to happen in October and most particularly whether
15 witnesses are going to be brought to The Hague. So we are going to need to
16 know before the end of this status conference as to whether or not if it is
17 refused you are going to be asking us to continue to hear evidence. So if you
18 want to take a little bit of time to chat with other -- to discuss this with
19 other members of your team you can.

20 MR. SACHDEVA: Yes, thank you very much, Mr. President.

21 PRESIDING JUDGE FULFORD: Certainly, thank you. Maître Mabilles?

22 MS. MABILLE: (Interpretation) Your Honour, we have given deep thought to
23 this situation, the situation as of today, and the position of the Defence is
24 that, under the two hypotheses, our position today is that whether the Appeals
25 Chamber grants suspensive effect or refuses to grant suspensive effect, this

1 is not going to change anything fundamentally for the Defence.
2 Our position is that, unfortunately, we cannot continue and I would
3 strive to explain and provide arguments for that position. I said
4 "unfortunately" because to say that we should again go into suspension would,
5 in our view, give rise to a difficult situation, because we have two issues
6 here; namely, the respect of the fundamental rights of the Defence and,
7 secondly, the excessive delay that is going to result from the current
8 position we are developing today. However, we have tried to look for another
9 solution; namely, the proposal stated in the dissenting opinion that was
10 given, which is either we continue as if the decision was not taken or,
11 alternatively, we try to apply immediately the notice under Regulation 55.
12 In any case, under the two options there are additional charges today which
13 may or may not be brought against the Defence, we do not know. However, the
14 fact remains that we are operating in a situation of legal uncertainty and
15 this makes the job of Defence counsel very difficult and I am going to give
16 you three examples here.
17 The first example is that in the list of the first witnesses which we are
18 going to call you have the three witnesses of the legal representatives.
19 The statements of these witnesses have been redacted, but we discovered that
20 these statements are incriminatory and we also noticed that this is evidence
21 which is going to support the hypothesis - the new charges, the alleged new
22 charges which are going to be brought against our client. Cross-examination is
23 a very serious matter for us as a Defence team. Cross-examination is not an
24 easy task. In what situation will we find ourselves? During cross-examination
25 I am not going to focus on known charges and hypothetical charges which the

1 Prosecution is planning to bring against our client. I don't think, I would
2 be worthy of my calling as a lawyer if I were to start or to prepare the
3 cross-examination without knowing all the charges which have officially been
4 brought against our client in the current situation and, to start with, I will
5 not be able to cross-examine the three witnesses who are victims; I will not
6 be able to cross-examine the amicus curiae, because the situation of charges
7 brought against our client is not clear enough for me to prepare the cross-
8 examination. In any case, I am going to call on a certain number of witnesses
9 to come and give evidence with respect to certain charges, but if the legal
10 characterisation of these charges is going to change it is not going to make
11 this task of the Defence counsel easy. And I would like to add that if the
12 Appeals Chamber upholds the decision on Regulation 55, then the first decision
13 that your Chamber has to take will be to call the witnesses again and most of
14 these witnesses are Prosecution witness. The prosecution case has to be heard
15 in its entirety before we start our defence case. Indeed, I really don't see -
16 and I am saying this with a lot of seriousness - in any case, today the
17 Defence is unable to say we should continue with this trial if we do not
18 clearly define the charges which are being brought against the accused. Those
19 are my observations on this point. I would like to inform the Chamber that we
20 are going to reflect on alternative solutions because we do not, for many
21 reasons, wish for another stay of proceedings, but the observations I have
22 made are based on our analysis of the situation as it prevails today.
23 And I would like to add a last point which is so obvious that it could well
24 go unstated. Can you imagine us calling the accused to give evidence on
25 charges which have not yet been defined, which have not yet been defined as of

1 the time he would start to provide or give his testimony? I don't think that
2 is possible. Those are my observations, your Honour, at this point in time.

3 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilie.

4 Putting it in a sentence or two, am I right then in understanding that the
5 Defence position, if there is suspensive effect, is that you would not be
6 happy to proceed or for the Chamber to proceed to hear any further evidence
7 whilst, as in your submission, the legal basis of the case is uncertain and,
8 moreover, that the Defence anticipate that there may be an application to
9 recall some of the Prosecution witnesses, and that if suspensive effect isn't
10 grant in fact you would wish for there to be an early Regulation 55 hearing so
11 that legal certainty can be achieved? Is that a fair summary, Maître Mabilie,
12 of your core position?

13 MS. MABILLE: (Interpretation) That is right, your Honour.

14 PRESIDING JUDGE FULFORD: Thank you very much.

15 MR. WALLEYN: (Interpretation) Your Honour, can you give us a
16 moment for us to discuss with each other? Thank you, your Honour. Our
17 apologies for taking that time. The legal representatives of victims would
18 like that the case should continue. On the one hand, our feeling is that we
19 should not discuss on the changing of the charges. We should rather talk
20 about the legal characterisation of the facts. Regulation 55 deals with the
21 characterisation of facts. And the facts have already been discussed over the
22 last six months during the evidence of Prosecution witnesses. We have no
23 intention of discussing facts other than those which have been discussed
24 already in this courtroom. The Defence has never been opposed to the fact that
25 questions should be put with respect to the issue of sexual slavery and

1 inhuman and degrading treatment, so we really don't see what changes here. For
2 us, we do not see why we cannot continue with the evidence as planned
3 regardless of any decision that may be taken by the Appeals Chamber.
4 Now, with respect to the hearing planned by the Chamber on Regulation 55, we
5 think it would be prudent for us to wait for the decision on the suspensive
6 effect which is going to be given by the Appeals Chamber. Even if suspensive
7 effect is not granted, it could be to the advantage of the Defence to
8 understand what direction we are heading to so that they can prepare and
9 orientate their defence case. Now, with respect to the evidence of victims
10 Maître Keta would like to add something because he is the representative of
11 the victims in question.

12 PRESIDING JUDGE FULFORD: Thank you, Mr. Walley. I am going to play Devil's
13 advocate just for a moment with one question: Isn't there arguably a
14 difference between having, say, sexual slavery as part of the evidence - part
15 of the background evidence, maybe an important part of the background
16 evidence, but part of the evidence - which has come in during the trial, that
17 on the one hand, and having sexual slavery as an element or an ingredient of a
18 charge which an accused faces? If it is just part of the evidence, an accused
19 may or may not deal with it either at all or in detail, but if it is in some
20 way directly linked to the charge he may feel that it is necessary
21 strategically to deal with it. Now, I am simply playing Devil's advocate, Mr.
22 Walley, and let it be clear I am not in any way revealing any position on my
23 part, but I would be interested in what you have to say about that.

24 MR. WALLEY: (Interpretation) I will say two things, your Honour.
25 On the one hand the possibility of the application of Regulation 55 is

1 provided for in the texts. Ms Bapita made this clear in her opening
2 statement. We already know that that possibility exists. We knew that from
3 day one. Indeed, we put questions to witnesses on several occasions,
4 questions which demonstrated the aspect of the enlistment of child soldiers
5 which could be characterised as circumstances, but I would call them
6 aggravating circumstances for the previous charges, or they could be
7 characterised otherwise. Now, with respect to the facts, I don't think that
8 changes much. Now, if the Defence decides to ignore this aspect of aggravating
9 circumstances - and I don't think that was the case - I would like to say that
10 Regulation 55 provides that in that case, after the warning given by the
11 Bench, certain witnesses can be recalled to examine these issues anew and I
12 think that the Defence could call its own witnesses to ask subsequent
13 questions after a decision has been taken, questions which they deem
14 necessary.

15 PRESIDING JUDGE FULFORD: Thank you, Mr. Walley. Yes, Mr. Keta.

16 MR. KETA: (Interpretation) Thank you, your Honour, distinguished
17 members of the Chamber. I am going to provide you with certain clarifications
18 on the future appearance in court of my three clients, I put in an
19 application to that effect because pursuant to Regulation 93 of the Rules of
20 Procedure and Evidence which is subject to Article 68 of the Rome Statute
21 these provisions give the Chamber the power to seek the views of victims on
22 all matters relating to all stages of the proceedings before the Court.
23 At this moment, we are conducting the trial phase. On 18 January 2008 the
24 Chamber issued a decision admitting or permitting a certain number of victims
25 to participate in the proceedings and I represent 47 of those victims.

1 However, when the Prosecutor presented his evidence together with the charges,
2 and having participated in the various hearings, I noticed that some of the
3 charges and some of the evidence provided by the Prosecutor were not, or did
4 not, cover a lot of what the victims had to undergo. The warrant of arrest
5 talks about the acts committed in Ituri. Ituri has five districts and there
6 are certain points which were not covered.

7 PRESIDING JUDGE FULFORD: I am going to interrupt you and I apologise for
8 doing so. At the moment, the Chamber is seeking specific assistance on what
9 we should do depending on the Appeals Chamber's decision on suspensive effect.
10 Now, is the submission of the victims if suspensive effect is ordered that
11 evidence should be called and including by the three victims, or not, and a
12 similar question if the Appeals Chamber makes a contrary decision? So could
13 you please focus specifically on those issues?

14 Mr. Keta, are you indicating you didn't hear what I just said? Mr. Walley, n,
15 could you indicate to Mr. Keta what it is I have just observed?

16 (Brief pause)

17 MR. KETA: (Interpretation) Well, to answer your question, your Honour, I
18 agree that my witnesses could be called to give evidence whether there is
19 suspensive effect granted or not, but I took the floor to react to what was
20 said by Maître Mabilie. I wish to say that there are additional charges. In
21 any case, they are not additional charges. We just simply wish to indicate
22 that there was forced enlistment in certain areas of the district. Thank you.

23 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Keta. Mr. Sachdeva?

24 MR. SACHDEVA: Thank you, Mr. President, for your indulgence. If
25 suspensive effect is not granted, we would want to continue as planned up

1 until such time there is a Regulation 55 hearing. That should be, in our
2 submission, held as soon as possible. Thank you.

3 PRESIDING JUDGE FULFORD: Thank you very much. Maître Mabilille, I think in
4 fairness you ought to be given the opportunity of making supplementary
5 submissions on this, if you wish?

6 MS. MABILLE: (Interpretation) Two points. Your Honour, you have just said
7 what I should have said in reaction to the observations made by my learned
8 colleague, which I find a bit strange from a legal standpoint. How can you
9 expect lawyers to prepare cross-examinations with respect to charges which
10 have not yet been clearly defined? I don't think this is a serious argument.
11 The second point I would like to make here is that in the Rome Statute
12 provision is made for crimes - for particular crimes. Sexual slavery is a
13 specific crime. Inhuman and degrading treatment is a specific crime.
14 The enlistment and enrolment of child soldiers is a specific crime.
15 We cannot say - I mean, we cannot mix up things here and so I would like that
16 we should be rigorous in our manner of discussing these points and to clearly
17 state that these are additional charges which have been brought against the
18 accused, because the decision issued by the Pre-Trial Chamber did not make
19 allowance for the fact that additional charges have to be brought against the
20 accused, especially at the end of the prosecution case. So the question that
21 arises here is whether we can continue with the trial when additional charges
22 could be brought against the accused. This is a situation of a legal
23 uncertainty and I don't think that such uncertainty can allow us to continue
24 with this trial. Those are my observations.

25 PRESIDING JUDGE FULFORD: Thank you all very much. These are obviously

1 extremely important issues and the Chamber is going to reflect on them and I
2 hope let you know in the near future as to what our intentions are,
3 depending on the Appeals Chamber's decision on suspensive effect.
4 Now the other matters in relation to the Autumn schedule which we will turn to
5 now are, of course, all dependent on our decision on this first main issue.
6 So that need not be repeated. It simply needs to be incorporated as part of
7 the background that what ultimately happens as regards the other issues will
8 depend on whether or not we continue with the case on 6 October, or whether
9 there is an adjournment for a resolution of these issues.

10 Turning to the Chamber's experts, I think there is probably little to
11 be said at this stage. Both experts are, as far as we are aware, available to
12 give evidence in October and I will just seek confirmation from the Registry
13 if they are in possession of that information as to whether or not we are
14 still in contact with the Chamber's experts and that their availability is as
15 originally planned?

16 MR. WALTENBURG: Your Honour, if I may on behalf of the Registry on
17 this one, we know for a fact that one Chamber expert is available that has
18 been confirmed to us, if I am not mistaken, as late as yesterday. For the
19 other expert, we have not yet formally reactivated the contact with that
20 person. In fact, we have been requested by Registry to put that on hold until
21 there is clarity whether the person would be required in early October or not.
22 So depending on your directions on the matter we could - yes, we could
23 straightaway reactivate the contacts with the person.

24 PRESIDING JUDGE FULFORD: Thank you very much. We will make sure we
25 address that issue then.

1 The next issue is Witness 15. Oh, Mr. Sachdeva, sorry.

2 MR. SACHDEVA: Sorry, Mr. President, just one question arising out
3 of the Chamber's experts. As with the other experts, the Prosecution may want
4 to meet with the expert prior to testimony and we just want to ensure that
5 that would be permissible.

6 PRESIDING JUDGE FULFORD: Unless Maître Mabilie objects, I am sure
7 that the same arrangements can apply. Mr. Walleyne?

8 MR. WALLEYN: Also the legal representatives would have this
9 opportunity.

10 PRESIDING JUDGE FULFORD: Certainly. Maître Mabilie?

11 MS. MABILLE: (Interpretation) Could you give us the date when we
12 could meet the experts, such that we can see if we would have the resources to
13 be able to send somebody to participate in this meeting?

14 PRESIDING JUDGE FULFORD: Helpful coordination then Mr. Sachdeva,
15 please, in relation to this as and when it arises.

16 MR. SACHDEVA: Absolutely, Mr. President.

17 PRESIDING JUDGE FULFORD: Thank you very much. We next wish to turn
18 to the position of the three participating victims who will be giving evidence
19 at some stage, and before I proceed further with this, Mr. Keta, can I have an
20 indication from you that you can now hear what I am saying?

21 MR. KETA: (Interpretation) I can hear you very well, your Honour,
22 because the other machine isn't working. I would like to thank you once
23 again, your Honour. Since the decision was taken concerning the victims --

24 PRESIDING JUDGE FULFORD: We will come to your submissions in a
25 moment. I just wanted to make sure you could hear me. That was the only

1 thing at this stage. Thank you very much.

2 MR. KETA: (Interpretation) Thank you very much.

3 PRESIDING JUDGE FULFORD: Now, on 26 June the Chamber granted the
4 application by the victims to give evidence. Proposals as to disclosure
5 issues, such as and including anonymity, were to be given to the Chamber, the
6 Defence and the Prosecution no later than 10 August.

7 On 10 August the legal representatives of these three victims
8 provided the investigative interviews of the three victims in redacted form
9 only, which excluded amongst other things their identities. For that,
10 document 2072 is relevant.

11 On 18 August, document 2084, the Defence filed an urgent request for
12 disclosure of the names of the victims and for disclosure of full signed
13 statements from them, together with any supporting material. That produced a
14 response from Mr. Keta on 20 August, document 2088.

15 In the meantime the Chamber was informed in an ex parte filing,
16 number 2077 dated 14 August - and I am going to be careful in relation to the
17 content of it because it was ex parte - that notwithstanding the engagement
18 and involvement of the Victims and Witnesses Unit, that one more of the three
19 victims had been moved on the initiative of their legal representatives.
20 Therefore, the VWU and the Chamber was informed of this event ex post facto.

21 The Chamber wishes to indicate in the clearest possible terms that,
22 given the role of the VWU, save in emergencies witnesses and protected victims
23 should not be moved without consultation with the VWU. Indeed on 2 September
24 the Chamber, via the legal advisor, in an e-mail asked the VWU to inform Mr.
25 Keta that there should be in future close liaison with the VWU prior to

1 location - to relocation being effected. Protective measures must be
2 coordinated to ensure their effectiveness and to avoid the needless waste of
3 time, money and resources. Unilateral decisions should not be taken unless it
4 is an emergency that cannot wait until the VWU has been consulted.

5 Now having emphasised that, as has already been communicated to the
6 particular legal representatives concerned, we now need to address whether or
7 not protective measures are now in place so as to mean that the identities of
8 these three participating victims can finally be provided to Maître Mabilille
9 and her team. On this we need the assistance, please, of the Victims and
10 Witnesses Unit.

11 MR. WALTENBURG: Mr. President, your Honours, I can confirm that
12 local protective measures are in place both in the three victims' current
13 location, as well as in the three victims' point of departure, their original
14 residence.

15 PRESIDING JUDGE FULFORD: Thank you. Mr. Keta, in those
16 circumstances, is there anything impeding the immediate transmission to the
17 Defence of the identities of those three victims?

18 MR. KETA: (Interpretation) For the moment, we are waiting for the
19 position of the unit of witnesses and victims when they start the IRS system -
20 the protection system - then we find no problem in disclosing the identity of
21 the victims to the Defence.

22 PRESIDING JUDGE FULFORD: Can formal notification be given today of
23 the protective measures that you have set up?

24 MR. WALTENBURG: Yes, your Honour, we will do that.

25 PRESIDING JUDGE FULFORD: Thank you. And we will expect, Mr. Keta,

1 that there will then be notice given to the Defence, the Prosecution
2 and the other participating victims forthwith once that communication has been
3 made to you. Is that acceptable?

4 MR. KETA: (Interpretation) That is acceptable. We will be in
5 contact with the VWU such that this be done.

6 PRESIDING JUDGE FULFORD: Thank you very much. Now, Maître Mabilie,
7 we next need to address the issue of how long the Defence seek, having been
8 provided with the identities of the victims.

9 Now just before you rise to deal with that, we appreciate that there
10 is an additional issue; namely, that you have been provided with a redacted
11 version of the investigative materials. And I need to tell you, because I
12 think you may be unaware of it and it's an issue I am going to turn to in a
13 moment, that the Defence - that the participating victims' representative has
14 made an ex parte application for some of the redactions to remain permanent.
15 That is an issue, as I say, that we will turn to in a moment.

16 But putting aside the fact that some of the underlying materials have
17 been redacted, if adequate disclosure is made how long will the Defence need
18 to prepare before the victims can be called, or will you only know that once
19 you know their names?

20 MS. MABILLE: (Interpretation) Yes. I propose, your Honour,
21 because we have envisaged, once we have the names of the victims and their
22 testimonies which have been unredacted, that we would then need a month
23 afterwards. The problem is - and the Chamber understands - that we haven't
24 been able to work on these investigations in our last mission, so we have to
25 be able to review how we are going to be able to work on this point.

1 I propose, if the Chamber agrees, to have an e-mail - with regards to
2 the timing I have the feeling that I could make progress with a one month
3 deadline, assuming that we have all the information. I think that's what we
4 have said. We just have to be able to see with regards to the mission that we
5 are carrying out at the moment, but I do think that this would be a reasonable
6 time frame in which to carry this out.

7 PRESIDING JUDGE FULFORD: That's very helpful. Is it, as far as the
8 Defence are concerned, absolutely necessary that the three victims are called
9 prior to the commencement of your case, or depending on other decisions would
10 you be prepared for their evidence to be intervened at some convenient stage
11 after the commencement of the Defence case?

12 MS. MABILLE: (Interpretation) Your Honour, the victims should
13 give testimony before we start our defence.

14 PRESIDING JUDGE FULFORD: On the subject of signed statements from
15 the participating victims, I hope you will forgive me, Maître Mabilille, if I
16 highlight the fact that that request that is made in relation to participating
17 victims who are going to give evidence doesn't appear to be a mirror image of
18 the Defence proposals as regards Defence witnesses, in that I anticipate that
19 the Chamber and the participating victims and the Prosecution will only
20 receive summaries of the proposed evidence rather than signed witness
21 statements in advance.

22 Can I ask firstly whether my understanding is right and, secondly,
23 whether there is a justification for having a difference in approach between
24 participating victims on the one hand and Defence witnesses on the other?

25 MS. MABILLE: (Interpretation) Absolutely, your Honour, and I am

1 ready immediately to give you our justifications - our grounds. The
2 legal representative of victims have the chance or the opportunity of having
3 teams, they've an investigation budget and it will not be outside the wisdom
4 of the Chamber to be able to see that the testimonies of the three victims -
5 because at the start of the testimony we can see how much time the legal
6 representatives spent on interviewing these victims. We have been able to see
7 that they spent four to five days doing this.

8 Now today the Defence - and furthermore we are going to come back to
9 this point later - is in a situation, and this is something I want to say very
10 clearly, in which we find we are with a meeting between three and four hours
11 and so this is more or less the time that we have for each witness. So how
12 can you take a written statement in three to four hours when we have about
13 half an hour of administrative work which is linked to coming here?

14 We really have worked on our list of witnesses and the Chamber knows
15 that we have four, we have been in the field almost the whole summer and part
16 of our team are still there and, despite all our efforts, we cannot do better
17 than we are doing at the moment. So really we are not in a position - an
18 equal position - we don't have the means in terms of time or financial means,
19 because the other constraint that we have is that we can't go sufficiently to
20 the field and, as a result, our constraints are enormous.

21 I would add to that we have extrapolated with regards to your
22 decision that you said that the Defence had to disclose firstly the names and
23 the addresses of witnesses and we have - on our part we have decided to give a
24 summary. But I would add to that - and this is important to say - we have had
25 discussions with the Offices of the Prosecutor with regards to the summaries.

1 This is our understanding that we have heard the witnesses and we
2 have gone into the essential points with regards to what they are going to
3 give testimony on. The summary is not a true representation of what the
4 witness has said. It is - or we hope that it is of course, but it is the
5 product of the work which we have carried out and of our perceptions of the
6 matter.

7 Now, I think that I have responded in a precise way. We do not have
8 as a Defence the capacity to carry out statements which are signed by our own
9 witnesses because, if we do that, we will have to postpone the trial given the
10 Office of the Prosecutor has heard certain witnesses for three weeks and the
11 legal representatives for their statements they spent three weeks on that.
12 Well, we really don't have any other possibility of moving forward. So we
13 feel that we don't - we are not in an equal - we are not on an equal footing
14 in this regard.

15 PRESIDING JUDGE FULFORD: That's very helpful, Maître Mabilie, and I
16 think it is right to say that the disclosure that you have provided goes
17 beyond that which we required of you in our decision of 20 March 2008,
18 document 1235, because you in fact had only been required after the
19 presentation of the Prosecution evidence to provide the name, address and date
20 of birth of any witness who you are intending to call. So you have, in fact,
21 gone beyond that.

22 It looks as though Mr. Sachdeva is going to tell me I have forgotten
23 something. Yes, Mr. Sachdeva.

24 MR. SACHDEVA: No, Mr. President. In fact, my learned friend is
25 correct about the order 1235. However, in our submission - and in fact we are

1 currently working on a filing in this regard - that order was
2 commensurate with the position of the Prosecution disclosure at that time; in
3 other words on 20 March 2008, roughly two months before the trial was supposed
4 to commence. Therefore, in our submission, the decision did take into account
5 that the Prosecution had not disclosed at that time it's full list of
6 witnesses and, therefore, the order was in our submission somewhat
7 circumscribed.

8 We would submit that the position is much clearer now. The Defence
9 have all the evidence in front of them and, for the benefit of efficient
10 proceedings in the Defence case, we would ask for signed statements if
11 possible, but if not certainly more information on the summaries.

12 PRESIDING JUDGE FULFORD: Fine. But this is going to be done in
13 writing, Mr. Sachdeva, asking us to take our decision slightly further
14 forward, or rather a lot further forward. We will wait to hear from you in
15 that regards. Thank you very much.

16 Mr. Keta, there are - there is a specific question that I have,
17 please, of you. Has there been any kind of notification to the Defence, or to
18 the Prosecution, of your ex parte filing 2077 of 14 August in which you seek
19 some permanent redactions? If there hasn't been notification at all, are you
20 proposing to put the Defence and the Prosecution on notice so that they can
21 deal with the matter at least in principal? That's - I said a question and
22 there are two questions. That's the first question.

23 The second question is whether or not you have consulted with the
24 individuals or the organisations whose names you seek to be redacted
25 permanently, because it may be important for us to know what their independent

1 attitude is towards the disclosure of their names? We would wish to
2 have very precise assistance, either orally or it may be easier to do it by
3 way of a filing, in relation to whether each of those individuals or
4 organisations have been asked to express their view on disclosure at least to
5 the Defence of their identities?

6 So two matters there Mr. Keta, please, for your assistance.

7 MR. KETA: (Interpretation) Thank you, your Honour. With regards
8 to your first question as to whether my application 2077 was notified, I would
9 say no. It was ex parte just to the Chamber, but at an opportune moment we
10 could notify that to the Defence and the Prosecution.

11 But I want to go back to the issue of redactions - permanent
12 redactions - which already goes into the second issue that you mentioned.
13 Certainly I did consult the individuals and organisations concerned and a
14 mention is made of that in fact in the application and these organisations and
15 individuals insist that we keep the redactions because they are still working
16 in the field with the other victims who have been admitted to the proceedings.

17 So my concern in this regard is - well I accept that we can notify
18 this application, but we have to keep these permanent redactions.

19 PRESIDING JUDGE FULFORD: Mr. Keta, you will understand that
20 redactions is potentially a very important issue and to the maximum extent
21 possible it should be dealt with inter partes, rather than by way of a private
22 discussion with the Judges, and so our order is that you must re-file that
23 application confidentially by 4 p.m. tomorrow so that the Defence are in a
24 position to deal with it.

25 Anything else that anyone else wishes to say on this issue? Good.

1 MR. WALLEYN: Sorry, your Honour, just on a very practical note. We
2 would be in a position to start submitting application for passports for the
3 three victims the moment that there is a decision on when they will be
4 required to appear here in The Hague. So of course we await guidance -
5 further guidance - from the Chamber on that.

6 PRESIDING JUDGE FULFORD: Well this really takes us slightly earlier
7 than I had meant, but no problem with that, to the issue of passports not
8 being issued by the Ministry of Foreign Affairs in the Democratic Republic of
9 the Congo. Do you need to wait for a passport application until timing has
10 finally been resolved? Surely the more safer step would be to apply for
11 passports immediately, wouldn't it, for these three given that we have already
12 decided that they will be allowed to give evidence?

13 MR. WALTENBURG: Yes. The current passport application procedure
14 requires the persons to move physically to another location and so there are
15 some logistics involved, but if the general indication would be, yes, that the
16 three victims would be required sooner or later, then the spirit of the
17 understanding would be that then we would go ahead in consultation of course
18 with the legal representatives to make the further preparations.

19 PRESIDING JUDGE FULFORD: Well, Mr. Waltenburg, we would undoubtedly
20 encourage that. I mean given that there are real problems, or there appear to
21 be real problems over securing passports in the DRC, the sooner that this
22 process is initiated the better. And that applies not just to the three
23 participating victims, but to all other witnesses who are going to be coming
24 or may be coming from the DRC. The sooner the applications are made, the
25 better.

1 Maître Mabilille, turning to Defence evidence, although there are at the moment
2 still a number of unknown factors which would undoubtedly - or may - influence
3 your decisions, particularly in relation to whether or not the accused himself
4 is to give evidence, once we know when evidence is going to recommence it is
5 obviously going to be hugely important for the Victims and Witnesses Unit, for
6 the Prosecution for their preparation and for the Chamber to know the
7 anticipated order of witnesses and their individual likely length, because we
8 do not wish to move witnesses to The Hague to have them waiting unnecessarily.

9 So I am most certainly not expecting an answer from you now, but
10 really putting you on notice that in due course that there will be something
11 of a pressing request from the Chamber for some additional information in that
12 area.

13 MS. MABILLE: (Interpretation) Yes, I'm a bit embarrassed because
14 the problem we mentioned initially is of great concern to the Defence because,
15 once again, we have prepared our list of witnesses in accordance with the
16 charges as they were set out by the Pre-Trial Chamber and sent. We prepared
17 our arguments. So we will have to reassess the situation and all these
18 issues. Looking at them all together, it's really very difficult today to
19 truly say anything on that issue.

20 PRESIDING JUDGE FULFORD: Can we turn next then to the issue of
21 contact with witnesses. This is on the agenda because of a email sent by Mr.
22 Desalliers last week. The essence of the point is whether or not it's
23 appropriate for the Prosecution to meet with one or more of the Defence
24 witnesses. The Defence, as we understand it, oppose this suggestion on the
25 basis certainly that there should be no contact without express consent having

1 been given by counsel for the accused. It's right to observe that
2 following a discussion between the Prosecution and the Defence on this issue,
3 the Prosecution wholly correctly refrained from making any contact until the
4 matter has been resolved.

5 On 4 June of 2008, in document 1372, we indicated at paragraphs 11
6 and 14 that the overarching consideration is whether or not the witness him or
7 herself gives consent to contact on the part of the other party. If consent
8 was not forthcoming, or if for other reasons the issue was to be pursued, then
9 the Chamber was to be alerted so that there could be a hearing. Maître
10 Mabilille, we'd be grateful for your submissions on this and particularly if you
11 could help us as to whether or not, in your view, it's fair for the decision
12 of 4 June to apply equally to the Defence as it does to the Prosecution, or
13 whether you're suggesting that there should be a separate regime for contact
14 with Defence witnesses.

15 MS. MABILLE: (Interpretation) Yes. We intend to tell the Chamber
16 that the practice that we've just had has led us to consider that -- we are
17 not in the same situation as the Office of the Prosecutor, and I will try to
18 provide the Chamber with the four arguments that lead me to state, and we ask
19 you to rule that the Prosecutor will not be able to make contact with our
20 witnesses.

21 The arguments that I will be setting out, well, the first one has
22 already been mentioned. We were -- went beyond our obligations. We gave the
23 Prosecution summaries, and they say now these summaries are still not enough
24 and they would like to meet with our witnesses. Now, the first question we
25 have is what is the objective of meeting with our witnesses, even before they

1 appear before this Chamber? Is it to help the witness make sure that
2 his testimony is a true, faithful reflection of reality? Or is it to prepare
3 cross-examination? What is the objective of meeting with our witnesses even
4 before they come to testify?

5 I would add that in our view the objective is not to hide our
6 witnesses or hide what they wish to say. The Prosecution knows that. Our
7 objective is to say, and I said this earlier, we have had three or four hours
8 with witnesses, and it is difficult to testify before this Court. It is even
9 more difficult when a person has to testify about a family member. And we
10 believe that the Prosecution will meet -- meeting with our witnesses before --
11 well, it may not be their intention to intimidate them or discourage them, and
12 I know it is difficult, but they will experience it as intimidating, and I can
13 only mention the incident we had last week.

14 Our list was provided and one of our witnesses immediately had a call
15 and the witness said that he had been harassed by the Office of the
16 Prosecution and it was said that the calls did not come from the Prosecution's
17 office and apparently the calls came from another unit within the Court. But
18 the witness himself -- you see, there was this coincidence. He was on the
19 list and then he received the call and so he was very much destabilised and he
20 called us to say: Well, I got this call, I am worried. Why are they calling
21 me? I won't say anything more about the incident, but perhaps I will at a
22 later time.

23 But to our mind, the major risk is that these meetings could truly
24 destabilise our witnesses. We don't entirely understand the aim of such
25 meetings, and all these witnesses are people that the Prosecution could have

1 met with during their prosecutorial investigation if they had really
2 done so. We have pulled no witness out of our hat. These people were
3 mentioned in hearings by people who have already appeared. So there are no
4 surprise witnesses. The witnesses are linked to ones we have already heard
5 from, and the Prosecution could have, and should have, got into contact with
6 them.

7 What can be done regarding these investigations that were not carried
8 out, and the other kind of witness our witnesses, and we did this work, we
9 verified the evidence and they are mentioned many times. These witnesses are
10 known to - by the Office of the Prosecution and there is no surprises -- there
11 are no surprises here. I would add that even if your decision, your Honour -
12 your Honours - is that we find a process to meet with the witnesses, the
13 Defence never met with the witnesses of the Prosecution, and I must say - and
14 the Chamber knows this - that the only time the Defence rose to say can we
15 meet with the witness was when the Prosecutor himself had taken the witness
16 off his list.

17 That was the only time that we asked the Prosecutor, and we did this
18 publicly, we asked for that authorisation to meet with the witness. So
19 regarding all these arguments, well, I will add one more argument. And I
20 think this is an extremely important one. Once again, I touch upon our
21 financial problems and if the Prosecution were to meet with our witnesses,
22 they are all in the RDC, and I don't imagine them -- I can't imagine them
23 meeting with the witnesses without us being present, so that would mean a
24 number of major trips to meet with our own witnesses with the Prosecutor.

25 So, quite frankly, we have neither the human resources nor the

1 financial resources, unless the Registrar were to provide us with
2 such resources, but for the time being it is utterly impossible for us to
3 proceed in that manner. I do hope that I have convinced you. The Prosecutor
4 had all kinds of means to go about his investigation. He had four or
5 five years. We have only been involved for a year-and-a-half. So I think it
6 would be very important for the Prosecution -- I don't think the Prosecution
7 should meet with our witnesses.

8 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

9 MR. SACHDEVA: Thank you Mr. President. Just for the record, my
10 learned friend alluded to a contact being made with one of their witnesses and
11 it was not from the Prosecution.

12 PRESIDING JUDGE FULFORD: Do you know who it could have been, Mr.
13 Sachdeva? Do you have any information as to who from the Court would have
14 independently of the Defence contacted a Defence witness?

15 MR. SACHDEVA: I have no direct information, confirmed information,
16 Mr. President.

17 PRESIDING JUDGE FULFORD: All right. Maître Mabilille.

18 MS. MABILLE: (Interpretation) Pardon me. I discussed with my
19 colleague and I know it's not from the Office of the Prosecutor. Now, in the
20 public session I do not wish to speak of it but I will provide additional
21 information later. Pardon me. I in no way did I wish -- perhaps there was a
22 problem with translation but I did say that you had confirmed that it was not
23 you. I said that it had led to a great deal of anguish on the witness's part
24 and the witness thought it was the Office of the Prosecutor calling. It was
25 not. But it did cause a great deal of anguish. That is what I was talking

1 about, your Honour.

2 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

3 MR. SACHDEVA: Thank you, Mr. President. Mr. President, in our
4 submission the order is very clear and the issues that my learned friend
5 raised were indeed contemplated when the order was rendered and that is the
6 Prosecution and Defence can, through the provisions set out in the order,
7 contact the witnesses of the other party. Now, it's correct that my learned
8 friend did not meet or request to meet with our witnesses until they had
9 testified. However, the order does not preclude -- did not preclude the
10 Defence from requesting that contact prior to the witnesses testifying or
11 indeed during the trial. And if that request had been forthcoming then we
12 would have employed the terms of the order and determined whether we would
13 have made a strategic objection to the contact. But as long as the witness
14 consents, and that is the overarching principle as your Honours have ruled,
15 then there should be no preclusion from meeting with the witness as long as it
16 is organised by the victims and witness unit.

17 In our submission, we cannot anticipate the witnesses the Defence are
18 going to call. Precisely also the summaries are not so thorough, and we do
19 not want to be questioning Defence witnesses, in a sense meandering through
20 various topics to cast a net on what issues are to be focused on and therefore
21 the purpose of our interviews would be to meet with the witnesses, to discuss
22 some of the assertions, to seek further clarifications, and Mr. President, I
23 can go into discrete examples if should your Honours desire.

24 One of them, of course, is Defence Witness 16. And this witness had
25 indeed, the Prosecution had wanted to meet this witness in relation to its

1 ongoing investigation concerning the allegations that our Witness 15
2 had made. Of course once we realised that the witness was being called by the
3 Defence we ceased all our contact with that witness. However, we would very
4 much like to interview this witness as soon as possible so that we can
5 conclude our investigation on Witness 15's allegations and obviously before
6 Witness 15 comes to testify but of course it may go beyond that subject matter
7 in the interview with that witness. Secondly, there is a witness that the
8 Defence are calling who will at least, as far as a summary says, will testify
9 about the demobilisation efforts the accused has made, and again there is no
10 indication as to time period. The Prosecution will be interested to know the
11 character of those demobilisation efforts, how often were they made, how they
12 were made, and in our submission eliciting that information prior to the
13 witness testifying would enable the Prosecution to focus on its
14 cross-examination in court. And there are other examples I can proceed to
15 give. The Defence are calling two persons acquainted with our witness,
16 Prosecution Witness 10, and again similar issues have arisen with respect to
17 various time periods, the extent of communication and contact with our witness
18 and, in our submission, seeking those clarifications prior to the witness
19 testifying again would focus our questioning in court. And therefore, in sum,
20 we submit that the principle of contacting witnesses being called by the other
21 party has already been ruled upon.

22 If the Defence indeed wanted to make a distinction between the
23 Prosecution and the Defence, then, in our respectful submission, appeal could
24 have been filed. It was not. The Prosecution would have had no objection to
25 the Defence seeking contact with our witnesses prior to their testimony, in

1 principle. And our interviews with their witnesses, of course, the
2 Defence are wholly entitled to be present, and in that respect any appearance
3 of intimidation can be minimised by the Defence being present would enable the
4 Court to administer the Defence case in a much more efficient manner and keep
5 the witnesses on the stand for much less time. Those would be our
6 submissions, Mr. President.

7 PRESIDING JUDGE FULFORD: Very clear. Thank you very much.

8 Maître Mabilie. Anything else?

9 MS. MABILLE: (Interpretation) In my view, I may be wrong to
10 consider the work of the Office of the Prosecutor in that manner, but once you
11 have the name and the address of the witness giving testimony on a number of
12 matters - I'm speaking of a number of my own witnesses - these indications
13 allow you to carry out the investigation and verify a number of points. When
14 we bring in a school principal and he says that the report cards are indeed
15 report cards, you don't have to actually see the principal, and you have to
16 check the documents to make sure that they are the proper documents. So we
17 have to meet with the people to have the investigation, and the identity
18 allows the Office of the Prosecution to do any additional investigation they
19 require.

20 PRESIDING JUDGE FULFORD: Thank you very much indeed.

21 Witness 15, Mr. Sachdeva, is it your intention to call Witness 15?

22 MR. SACHDEVA: Mr. President, as I recall earlier submissions, our
23 intention is to not call Witness 15 as a Prosecution witness. We would be
24 making submissions or we would like to either treat the witness as hostile and
25 indeed, using the Anglo-Saxon term, cross-examine the witness.

1 PRESIDING JUDGE FULFORD: You agree though, I think, that Witness 15
2 should reappear to give evidence before the Chamber; is that right?

3 MR. SACHDEVA: Indeed, and we have functioned under that assumption
4 that Witness 15 will appear. It just needs the manner of questioning to be
5 resolved.

6 PRESIDING JUDGE FULFORD: So I can understand it, you would expect
7 Witness 15 to come back into the witness box but then what would happen would
8 effectively be cross-examination by both the Prosecution and the Defence?

9 MR. SACHDEVA: Indeed, and we would only add that we would like
10 Witness 15 to come after we have been able to conclude our investigations into
11 his allegations.

12 PRESIDING JUDGE FULFORD: Have you put in any submissions as to
13 treating witnesses as hostile witnesses, et cetera, Mr. Sachdeva?

14 MR. SACHDEVA: We have not, Mr. President. We will do so.

15 PRESIDING JUDGE FULFORD: How long do you want for your hostile
16 submissions?

17 MR. SACHDEVA: One week, Mr. President.

18 PRESIDING JUDGE FULFORD: Certainly. A week to respond, Maître
19 Mabille, or is that too short? Would you require longer?

20 MS. MABILLE: (Interpretation) No, a week after the writings of the
21 Prosecution, your Honour.

22 PRESIDING JUDGE FULFORD: Thank you very much.

23 We turn next to the issue of consistency of redactions, and this is
24 really to bring the parties and the participants up to date and to make one or
25 two indications. An issue has arisen as to the consistency of redactions

1 between this Chamber and Trial Chamber II. It is not inevitable that
2 the same decisions have to be taken in the Lubanga and Katanga trials as
3 regards redactions, but one would expect there to be a clear and a good reason
4 should this occur. The extent of the inconsistencies in approach and the
5 lack, on occasion, of sustainable reasons for the differences have led us to
6 the view that the Prosecution needs to review the entirety of the redactions
7 they have requested in this case, those that we have accepted, to ensure that
8 the original proposed justifications were reliable and that the measures then
9 implemented are still necessary. We are concerned, therefore, that some
10 redactions may have been sought which are no longer necessary.

11 This is an extremely important issue, and it is unhelpful that on
12 occasion different Prosecution teams have been taking divergent approaches to
13 redactions, seemingly - and I emphasise that word - without good reason. As a
14 subsidiary issue, there has, on occasion, been a failure to inform the other
15 Chamber when a decision is made in the Lubanga or the Katanga case about
16 measures that were ordered by the latter Chamber as regards redactions. And
17 if redactions are lifted in the Katanga trial, there will need to be
18 identified reasons for not lifting the same redactions in the Lubanga trial
19 which will need to be brought in written form to the attention of this
20 Chamber.

21 All of that said, recent history seems to reveal that there is now greater
22 consistency emerging between the Prosecution teams, and we encourage them to
23 make sure that that good work continues.

24 Now, Mr. Sachdeva, as I said, this is really just to bring everyone
25 up to date. Is there anything else you would wish to say on this issue? You

1 are not obliged to do so.

2 MR. SACHDEVA: No, Mr. President, thank you.

3 PRESIDING JUDGE FULFORD: Maître Mabilille?

4 MS. MABILLE: (Interpretation) Just one little point, your Honour.

5 We prepared, at your request, and I think it was the date of filing for that
6 particular problem. Are we dispensed from providing these filings since you
7 just asked the Prosecutor... They're ready. We can send them off, but I
8 don't know whether this is really necessary.

9 PRESIDING JUDGE FULFORD: If they're ready, Maître Mabilille, there
10 can be no harm, I think.

11 MS. MABILLE: (Interpretation) I will do that, your Honour.

12 PRESIDING JUDGE FULFORD: Is there anything else that we need to
13 know or which the parties and the participants need to know about the
14 difficulties as regards passports in the Democratic Republic of Congo?

15 MR. WALTENBURG: Excuse me, your Honour, could you please repeat the
16 question?

17 PRESIDING JUDGE FULFORD: Let me expand on it slightly. I was being
18 perhaps a little bit elliptical. We were provided a few weeks ago with
19 notification from the Registry that the Ministry of Foreign Affairs had
20 stopped issuing passports, apparently because of a corruption case within the
21 ministry. And at the time that we were told this, it was indicated to the
22 Chamber that there are no indications as to when this difficulty is going to
23 be resolved. Now, clearly, this potentially has huge consequences for the
24 future of the case because unless I misunderstand the position, if witnesses
25 don't have passports, they can't leave the DRC to come to The Hague to give

1 evidence. So the request is whether there is any more up-to-date information
2 about this, and if there's no up-to-date information about that, whether there
3 are any contingency plans in place that will circumvent the problem if it
4 persists.

5 MR. WALTEBURG: Thank you, Mr. President, your Honours. The latest
6 information that we have, and I must stress the information that we have is
7 from our cooperation with the authorities on the technical operational level,
8 is that the passport situation seems to have been unblocked, that there's now
9 a new procedure in place. The very honest answer I must give you is that we
10 don't know whether the new procedure works until we've tried it; in other
11 words, I will only be able to give you an indication with some confidence as
12 to whether we are in a position to obtain the passports once we actually have
13 the passports in our hands. And that's also why it was very helpful to get
14 the indication from you just earlier that we should move ahead because that, I
15 think, will mean that in the coming weeks we will know -- we will know for
16 sure whether the new procedure works. As to whether there are contingency
17 plans in place, yes, there are. I've consulted with my colleagues in the
18 Registry and I understand that there are -- there are initiatives ready. If
19 we by next week feel that we're not having success with obtaining passports,
20 senior Registry management will approach the Congolese authorities on the
21 matter.

22 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Waltenburg.

23 I think we need to be more emphatic about this. This problem has, by
24 itself, the potential for seriously delaying this trial, and we would wish to
25 emphasise that we expect the Registry to take absolutely every necessary step

1 to unblock the issuing of passports as regards those who are going to
2 be appearing in this trial, and if it is impossible to unblock the issuing of
3 passports, to investigate whether there are alternative travel documents that
4 can be issued which can secure the result that we need. And if this requires
5 an urgent visit by senior Registry officials to the DRC to discuss this matter
6 with the relevant individuals in the Ministry of Foreign Affairs, that in our
7 view is something that should happen sooner rather than later. It would be
8 disastrous if the trial were to be delayed simply because this hadn't been
9 addressed speedily. It needs to be addressed immediately.

10 Mr. Sachdeva, when are you likely to have completed your
11 investigations as regards intermediary 316?

12 MR. SACHDEVA: Mr. President, that depends whether we would be
13 afforded the right to interview Defence Witness 16, since that interview is
14 crucial to our investigations. But it is proceeding, I might say.

15 PRESIDING JUDGE FULFORD: Once you have an answer to that question,
16 how long thereafter?

17 MR. SACHDEVA: We would hope by the middle to the third week of
18 October.

19 PRESIDING JUDGE FULFORD: Thank you. On 31 August, the Registry
20 filed a request in relation to the review of transcripts. That is
21 document 2100. By way of history, on 18 June 2009, document 1974, the Chamber
22 ordered the Registry to review the entirety of the witnesses' evidence thus
23 far given in this case in order to ensure the accuracy of each relevant
24 transcript against the audio recording, as well as the consistency of the
25 English and the French transcripts. That work was to be completed at the

1 latest by the end of August of this year. On 31 August, the Registry
2 requested an additional eight weeks to complete this work.

3 The first really self-evident point that we make is that a request
4 for an extension of a deadline should not be made on the day that the deadline
5 expires. The result of doing that is that the deadline is inevitably breached
6 and the Chamber is effectively presented with a fait accompli. If a problem
7 is anticipated, sufficient notice should be given to enable the parties and
8 the participants to put in submissions and to give the Chamber time to reach a
9 decision. Obviously, if something unexpected occurs, shorter notice or no
10 notice may exceptionally be necessary. So a finger is wagged in the direction
11 of the Registry in this regard.

12 That said, given the clear and extensive reasons provided in the
13 filing, does anybody in fact have any submissions to make on the additional
14 eight weeks that is requested? No. Silence means there is no objection and,
15 therefore, for the reasons extensively set out in the request it is granted.

16 Finally, for the public part of this status conference, there's an ex
17 parte to follow, Mr. Sachdeva, I have one very precise question for you of
18 which I have given you no notice at all and so take your time to gather your
19 thoughts if you need to.

20 On 16 September of this year you sent an e-mail to Mr. Desalliers,
21 which indicated in terms that Witness 297 has no objection to being contacted
22 by the Defence. It would be very helpful to know whether that was based on
23 some distant contact with Witness 297, or whether it was based on recent
24 communications directly with the witness in which he or she said that there
25 was no objection to there being communication by the Defence. And a

1 subsidiary point is whether - I cannot recall whether 297 is represented, but
2 if he's represented or she's represented. Not. Right, I'm told by Ms.
3 Massidda it's not a question. Right, so one question. What's the answer,
4 please?

5 MR. SACHDEVA: Mr. President, the answer is that we have indeed had
6 recent discussions with the witness, if I recall correctly on 27 August of
7 this year, and the indication is that he has no objection indeed to being
8 contacted by the Defence. As to what takes place thereafter, we don't know.
9 We only would like to ensure that all contact is conducted via the Victims and
10 Witnesses Unit and ultimately, in terms of any other issues related to
11 protection and other issues, VWU would have to make that call. But, yes,
12 indeed it is correct that the witness has not made any objection to being
13 contacted by the Defence and we have recent understanding from that.

14 PRESIDING JUDGE FULFORD: Was that by telephone or face to face, Mr.
15 Sachdeva?

16 MR. SACHDEVA: Telephone.

17 PRESIDING JUDGE FULFORD: I wondered whether there was something
18 else you were about to be told, but no.

19 MR. SACHDEVA: No, Mr. President.

20 PRESIDING JUDGE FULFORD: Thank you very much indeed.

21 Maître Mabilie, on that issue, although I'm not going to ask you to put
22 questions to Mr. Sachdeva directly across the floor of the Court, but on that
23 subject is there any more information that you would wish me to ask of Mr.
24 Sachdeva in relation to anything that's been said recently by witness - by
25 this witness?

1 MS. MABILLE: (Interpretation) Your Honour, we have discussed this
2 problem with Mr. Sachdeva. I asked him the same questions; that is the
3 question you asked him I had already put that question to him because I tried
4 to understand how this consent was given. I have no other questions to ask.
5 Mr. Sachdeva told me on 25 August that there was no objection and I
6 reformulated my question in writing to send it to you because I was wondering
7 how that consent was given. That's it.

8 PRESIDING JUDGE FULFORD: Thank you very much. Any other public
9 issues on the part of anybody? Yes, Mr. Keta. Just before you start, Mr.
10 Keta, the French transcript has frozen. Maître Mabilille, do you mind just
11 carrying on notwithstanding?

12 MS. MABILLE: (Interpretation) That's no problem. So long as the
13 French transcript catches up with the English transcript later on, there's no
14 problem with that.

15 PRESIDING JUDGE FULFORD: Sorry to interrupt you, Mr. Keta. Please
16 continue.

17 MR. KETA: (Interpretation) I would like to return to the problem
18 of the relocation of victims. You said that they can be relocated only in
19 case of emergency. With respect to my clients now, what really happened, it
20 was not counsel that asked --

21 PRESIDING JUDGE FULFORD: I have not said that they can only be
22 relocated in a emergency. What I have said is that they should not be
23 relocated without consultations with the Victims and Witness Unit except in an
24 emergency. So to reiterate, witnesses and participating victims, when the
25 Victims and Witness Unit has been engaged as is the case here, should always

1 be consulted before relocation unless there is a emergency and, if
2 there's an emergency, it may be necessary to relocate them before there is
3 consultation with the Victims and Witness Unit.

4 Now, I hope that's clear.

5 MR. KETA: (Interpretation) I would like to explain the problem
6 which I experienced personally. The resource person who was in contact with
7 the victims is that person who informed counsel, so there is no contact
8 between the resource person who is on the field with the victim - there's no
9 contact between him and the Victims and Witnesses Unit. Even I, the counsel,
10 received information only later on.

11 So I would like to ask the Chamber this question. Since there was no
12 contact between the resource person who assesses the risk on the field, no
13 contact between him and the Victim and Witnesses Unit, what attitude should we
14 adopt with respect to the Victim and Witnesses Unit? That is my question,
15 your Honour.

16 PRESIDING JUDGE FULFORD: Well, Mr. Keta, there clearly needs to be
17 coordination. The Victims and Witnesses Unit is engaged to assist with the
18 protection of victims and witnesses and, if anyone is to suggest that there
19 should be relocation outside of the Victim and Witnesses Unit, be it a
20 resource person, counsel or anyone else, there needs to be consultation which
21 includes the victim and witness, counsel and the Victims and Witness Unit.

22 I'm not in an extemporary version now going to try to create some
23 kind of extensive formula that can always be applied, but in general terms
24 there needs to be consultation to make sure that sensible decisions are taken
25 that do not result in the waste of time, money and resources. That was the

1 only point that we were seeking to make because, as I understand it,
2 the Victims and Witnesses Unit were only informed of the relocation after it
3 had taken place. We wish, if we can, to ensure that that doesn't happen
4 again. But thank you for the intervention.

5 Anything else from anyone else? Mr. Walley.

6 MR. WALLEYN: (Interpretation) Thank you, your Honour. There is
7 one other point which is on our agenda, that is item number 6, and I think we
8 are going to discuss it in open session. It relates to the Defence list of
9 witnesses and the relevant summaries of these witnesses.

10 I have learnt that that list and the summaries have already been
11 disclosed to the OTP, but they have not been disclosed to the legal
12 representatives for the victims. I know that there is no order which is
13 binding on the Defence to do that right up to three days prior to the
14 recommencement of hearings.

15 In any case, we have an obligation to prepare the - our questioning,
16 because for each witness we would like to get one week advance notice if we
17 have to prepare questions for such witnesses. For us to be able to do that,
18 we will have to know what evidence that witness is going to give and we will
19 have to know whether there are witnesses whose testimony is going to be
20 relevant to us. We hear that some of them may have had certain contact with
21 some of the victims we represent, or to witnesses who are going to come and
22 give evidence.

23 PRESIDING JUDGE FULFORD: I think the request is limited to
24 one week's notice of the summary for the relevant witness, Maître Mabil, so
25 I don't think - well you have been translated as saying "One week's notice",

1 Mr. Walley. n.

2 MR. WALLEYN: (Interpretation) The deadline of one week, it's the
3 deadline which is binding on us to provide an application if we have to
4 question the witness.

5 PRESIDING JUDGE FULFORD: All right. I think therefore a bolder
6 request is made, Maître Mabilie, that the entire list at least as a matter of
7 courtesy is provided now. Is there a difficulty with that?

8 MS. MABILLE: (Interpretation) We have reflected on that problem,
9 as you must have imagined. First of all, our list is not complete as of now.
10 Secondly we would like to have additional time to reflect on this matter and
11 my proposal, which I think is going to be pleasing to the Chamber, is that we
12 should propose a solution to the legal representatives. We have not yet
13 completed a reflection on this matter and so I cannot make that proposal now.
14 However, I would like to have additional time for us to reflect on the matter.

15 Since our list is not yet complete and there are a certain number of
16 information items that may be of interest to the legal representatives, I
17 would like to propose that you allow us time to complete our list and then I
18 will make a proposal to the legal representatives, that is if the Bench is in
19 agreement, and if the legal representatives do not agree then also I would
20 like to submit a matter to the Chamber.

21 PRESIDING JUDGE FULFORD: I'll have to discuss this in a moment with
22 my colleagues, but if we're sympathetic we'll need a time frame for this,
23 Maître Mabilie. It can't be left open ended. If we were to say that the list
24 should have been completed and conversations completed by the end of next
25 week, would that be sufficient?

1 MS. MABILLE: (Interpretation) It would not be sufficient, your
2 Honour. There is a team which is currently working on the ground. That team
3 is going to return and personally I'm going to have to leave to go to the
4 Congo. Consequently, we hope - and this is what we told the Prosecutor. We
5 hope that our list should be complete by 15 October, not earlier than that.

6 PRESIDING JUDGE FULFORD: Would it be possible to have the
7 conversation, as it were in principle with the victims in advance, so that
8 your approach can be communicated to them so they can indicate whether or not
9 they agree with the approach with the fine-tuning as to the exact detail to be
10 sorted out later? Would that by the end of next week?

11 MS. MABILLE: (Interpretation) I will try to do that. I'm a bit
12 embarrassed to say yes because at the moment I am alone. And we have to
13 reinterview a Prosecution witness, so that has taken up some of my time. In
14 any case, I will do my level best to initiate discussion with my colleague
15 Paolina, with much pleasure of course.

16 PRESIDING JUDGE FULFORD: Mr. Walley, would you be prepared in the
17 first instance to see whether you can resolve this by friendly discussion, to
18 use your best endeavours with Maître Mabilille to resolve this, if possible, by
19 4:00 p.m. on Friday of next week. If you have failed to resolve this, could
20 we please have competing submissions in writing on the issue from both sides
21 by 4:00 p.m. on the following Friday? So seven days to resolve this
22 amicably. Failing that, seven days to put in written submissions on both
23 sides.

24 MR. WALLEYN: That's fine, Mr. President, for us.

25 PRESIDING JUDGE FULFORD: The very final matter is this: An issue

1 is outstanding as regards the forms which the Victims and Witnesses
2 Unit needs to complete as regards those witnesses who are coming to The Hague,
3 and particularly this relates to Defence witnesses coming to The Hague to give
4 evidence. Once the ex parte hearing has completed, can there please be
5 conversations immediately between the Victims and Witnesses Unit and the
6 Defence to ensure that sufficient information is being provided to the Victims
7 and Witnesses Unit as to the details of the witnesses to enable in due course
8 them to be brought in the most convenient way to The Hague? Maitre Mabilille,
9 we were informed in a email of 14 September that there may be an issue as to
10 whether or not there was sufficient information. I'm not asking you to
11 respond now, simply to have a discussion with the Victims and Witnesses Unit
12 at some convenient stage today and then for the Victims and Witnesses Unit to
13 let us know, one way or the other, whether or not sufficient information is
14 being provided.

15 MS. MABILLE: (Interpretation) Just to give some clarification to
16 the Chamber, I held a working session with the Victims and Witnesses Unit on
17 the 14th. I don't know whether the list went to the Chamber prior to our
18 discussion because after that we looked at all the documents. In any case, I
19 wish to inform the Chamber that we are currently working on it.

20 PRESIDING JUDGE FULFORD: No need for a response now, but could
21 there be sensible discussions to make sure that this is working efficiently?

22 We want to thank you all very much for your attendance and your
23 assistance today. We will attempt to let the parties and participants know as
24 soon as we possibly can as to our decision as to what should happen on 6
25 October. Now, I now need to ask the Court Officer whether we can sit at 20

1 past 12 to deal with the ex parte hearing.

2 I'm extremely grateful to the interpreters and the stenographers for
3 having allowed us to sit with only a half an hour break at this stage. I do
4 not anticipate that that will be a long status conference. Mr. Waltenburg.

5 MR. WALTENBURG: I do apologise, your Honour, to come back to the
6 issue of passports but I think it is an important point to make since we are
7 in open court that our understanding is that the problems that we've
8 encountered with the issuing of passports is not at least solely attributable
9 to internal problems but it's a change of the passport procedure that has
10 taken place with the DRC authorities. I think it's an important point to make
11 since we are in public session and since we do not wish to in any way
12 compromise our good working relationship with the DRC authorities on the
13 matter.

14 PRESIDING JUDGE FULFORD: Well, it's important that that
15 clarification is made. I will emphasise, though, that I based my comments on
16 the email that I received of 25 August which I -- and I then reflected that
17 information in the opening observations I made on the point, but if in fact
18 this is a more complicated issue, and doesn't relate solely to problems within
19 the Ministry of Foreign Affairs, then it is good that that is stated publicly
20 on the record so there's no misunderstanding.

21 I was unaware that there were additional issues. Thank you for that
22 intervention. We will sit again just after 20 past 12:00, ex parte with the
23 Victims and Witnesses Unit and the Defence only present.

24 (The hearing ends at 11:52 a.m.)

CORRECTIONS REPORT

1
2 Pursuant to Decision ICC-01/04-01/06-2143, a part of this transcript (page 1
3 line 12 to page 11 line 3) has been revised and corrected.
4 Due to a large amount of corrections to be brought to the transcript,
5 these have been implemented directly into the transcript.
6 The corrections are only indicated on a document containing the relevant part
7 of the transcript registered, (Extract of ICC-01/04-01/06-T-210-ENG CT WT
8 (rev.dec.2143) 17-09-2009 1-16 SZ T (Track Changes)) containing track changes
9 attached as an annex to the relevant transcript under Trim.