

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and

4 Judge Christine Van den Wyngaert

5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/07

6 In the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

7 Hearing

8 Monday, 23 November 2009

9 (The hearing starts at 9.35 a.m.)

10 (Open session)

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

13 PRESIDING JUDGE COTTE: (Interpretation) The session has opened. Please be
14 seated. The Chamber notes that the accused are present, and it will give you some
15 information that given the constraints that there are with regards to time in this
16 Court, we only have one hour-and-three-quarters, which means we have to have left
17 this courtroom by 11.15, and so it has to be used for other purposes from 11.30
18 onwards.

19 Before going to the issue of interest to us today, the Chamber would like to
20 know if the Defence teams intend to file comments with regards to application 1631
21 of the Prosecutor, dated 12 November 2009, relating to the communication of
22 transcripts and telephone interviews by the Intermediary 316. And this is on 12
23 November, 1631, relating to the communication of the transcripts of telephone
24 interviews which have been exchanged with Intermediary 316.

25 Could you respond to us in that regard and we will take your answers into

1 account. If you would like to consult your colleagues on that, we will reply to
2 you during this hearing. I am turning to the -- yes, Counsel Kilenda?

3 Please, could you just remind me of it before we leave. It's important for
4 us to know if there are comments which the teams would like to note, then we will
5 expect them; if there are none then we can answer the application of the
6 Prosecutor. So that is why I asked this question.

7 I haven't asked the teams to introduce themselves. I think that we know each
8 other. As we haven't got much time I think that we have to use the time that we
9 have allocated to us as effectively as we can.

10 So we have an application from Mr Hooper from 19 November, and the hearing in
11 this morning has the objective of taking your observations and comments, in that
12 regard, on the part of Mr Ngudjolo and also of the other legal representatives of
13 victims here. If it proves to be necessary the Chamber will issue a decision
14 today. Our objective, which I think is an objective, a common objective, we could
15 say in this regard, is to start our debates tomorrow in a calm environment.

16 Are we all in agreement on this? And if necessary, the Chamber will
17 therefore issue a decision during the day, and our wish is to start our debates to
18 tomorrow in an atmosphere of total calm.

19 Now, in this application which is the subject of our hearing today, Mr Hooper
20 asked that the Prosecutor file, at the end of the trial, a new summary of charges
21 which is more precise than the one filed on 3 November 2009, number 1588. The
22 Defence of Germain Katanga states that the summary that the Chamber exceptionally
23 has asked the Office of the Prosecutor to produce on the basis of the decision
24 confirming the charges, and this was a request that was made in our decision of 21
25 October 2009, and that the Defence of Germain Katanga states that this document

1 still lacks clarity in several respects and, for David Hooper, this lack of
2 precision does give rise to certain concerns with regards to the nature of a fair
3 trial.

4 So, now, where it concerns your application -- and before giving the
5 participants leave to address the Court the Chamber would like, first of all, to
6 address certain comments for the immediate attention of the Defence team of Germain
7 Katanga.

8 In your application, you state -- well, you admit that this summary filed by
9 the Prosecutor does answer the request of the Chamber of 21 October 2009 as well as
10 that of the Defence which wished to have a document, a summary document which
11 reflected the confirmation decision, paragraph 4 of your application.

12 The Chamber would remind you that the terms used in the document of the
13 Prosecutor are not the terms of the Prosecutor but those of the Pre-Trial Chamber
14 and this, in accordance with the decision of 21 October 2009, which on this point
15 responded to the wishes made by both Defence teams. Any possible lack of precision
16 contained in the document, the Prosecutor -- is, therefore, that of the Pre-Trial
17 Chamber, as we have specifically demand -- asked the Prosecutor to take the exact
18 terms of the Pre-Trial Chamber. And furthermore, this is something noted by you in
19 paragraph 7 of your application.

20 In your view, the right of enjoying a fair -- the right to enjoy a fair trial
21 implies that the charges be sufficiently precise and, in your view, the accused has
22 a fundamental right to be adequately notified, and in this regard you consider that
23 the Prosecutor has a continued obligation to ensure notification which is as clear
24 as possible with regards to the charges against the accused.

25 On this point, the Chamber considers that it is important to recall the

1 specific nature of the Statute, the Statute of the International Criminal Court, in
2 particular with regard to the statutes of the international ad hoc tribunals.

3 Once again, we have to recall that it is the Pre-Trial Chamber that confirms
4 the charges and that defines them, in particular, on the basis of the document
5 containing the charges that the Prosecutor presented before the confirmation
6 hearing. It also has to be recalled that it is the same Pre-Trial Chamber that
7 confirms, if necessary, the charges for which it has concluded that there is
8 sufficient evidence, and it is the Pre-Trial Chamber that refers the person to the
9 Trial Chamber to be tried on the basis of the charges that have been confirmed.

10 In its decision of 21 October 2009, the Chamber recalled, as it felt it was
11 necessary and important to do so, that what was understood by the term "charge", it
12 stated that this was a legal characterisation, of course, but also it referred to
13 the facts that the Pre-Trial Chamber had kept with regards to support for the
14 confirmation of charges.

15 Once the charges have been confirmed by the Pre-Trial Chamber, the Prosecutor
16 presents its case before the Trial Chamber. It presents its evidence, but it is
17 not the time for it at this time to specify the charges. The Prosecutor presents
18 its case before the Trial Chamber. Once the charges have been confirmed by the
19 Pre-Trial Chamber, it presents its evidence but it doesn't specify the charges.
20 They have already been defined in the decision of the Pre-Trial Chamber, and those
21 -- that decision constitutes the framework of the trial.

22 The Chamber here refers to the distinction which is highly relevant that is
23 made between the charges and the evidence. Just to remind you that the charges are
24 definitively set by the Pre-Trial Chamber following the confirmation hearing and
25 that the evidence are brought by the Prosecutor to the trial within the framework

1 of an inter partes disclosure.

2 The Chamber had the feeling that all of this had been clearly stated and
3 clarified in its long decision of 21 October 2009, which has already been
4 mentioned, which had the objective in the terms of the status conference of 1
5 October 2009 to clarify what it deemed to be uncertain with regards to some of the
6 participants.

7 Now, before giving the participants the floor, the Chamber, Mr David Hooper,
8 would like to ask you the following questions: Do you consider that the decision
9 issued by the Pre-Trial Chamber is insufficiently precise with regards to the
10 rights of the accused with regards to notifying the charges? And if this is the
11 case -- if that is the case, if you agree with that, if you consider that the
12 decision issued by the Pre-Trial Chamber is not sufficiently precise with regards
13 to the rights of the accused, then why, why do you raise this issue at this stage
14 now, 72 hours before the opening of the substantive debates? Why are you raising
15 this lack of precision now, because the Chamber cannot -- or it can only remind you
16 that with regards to your appeal of the decision of the confirmation of the charges
17 wasn't with regards to the lack of precision of the charges that had been
18 confirmed, despite the fact that it's at this time that the charges were defined.

19 So, the appeal that you issued in the month of September 2008 didn't go into
20 the lack of precision with regards to the alleged imprecision in the confirmation
21 of charges.

22 Now, the Chamber would like to remind you that you have chosen - and I would
23 like to highlight the word "chosen" because the Chamber has given you the possible
24 room for manoeuvre, you have been able to advise your client to register a plea of
25 guilt with regards to the charges confirmed by the Pre-Trial Chamber during the

1 first status conference held on 27 November 2008, that is to say a year ago.
2 Within the framework of this long status phase which went for over one year, you
3 have asked for the filing of a document, a concise document summarising the
4 charges, but it's only in your filing 1509 of 6 October 2009 that you have
5 expressed the wish to have - and here I quote you - "where it is possible, more
6 precision." That's in paragraph 2 of your filing of 6 October 2009. 6 October
7 2009. Where it is possible, you have mentioned that you wish to have -- in the
8 document that you asked the Prosecutor for, that you would like to have more
9 precision in that document. And the Chamber has to remind you that when the
10 Defence investigations were undertaken within the framework of the different status
11 conferences, you never indicated that you found it impossible to conduct these
12 investigations due to the lack of precision in the confirmed charges confirmed by
13 the Pre-Trial Chamber.

14 You have mentioned difficulties with regards to time, with regards to
15 personnel, but it was never an issue of lack of precision in the charges that you
16 expressed in terms of the difficulties that you had to carry out your
17 investigation.

18 The Chamber wonders and asks you, did you review the new table that was filed
19 by the Prosecutor, a table that everyone wanted to be restructured, simplified, a
20 table that was filed upon order of the Chamber with specific -- a table that
21 complied with all the wishes of the various participants? The Prosecutor did table
22 this document recently and we do see some responses to the various questions that
23 you raised, as well as requests for more specific information, requests that you
24 made.

25 Allow me to reiterate. On order of the Chamber, the Prosecutor, at the

1 request of the Defence teams, particularly your team, filed a streamlined,
2 restructured table, and it was filed recently, and it would appear that this table
3 does include a number of responses to the various questions or issues that you
4 raised, as well as the requests for greater precision that you also made. So, I
5 think it's important for the Chamber, and we certainly do not want to create any
6 controversy. This is the trial of Mr Katanga and Mr Ngudjolo, and this is not a
7 trial of legal experts or intellectuals. We want this trial to be conducted under
8 the best possible conditions, but it would appear to me that this last-minute
9 appeal -- and so I will ask my question again, Mr Hooper.

10 Do you believe that the decision made by the Pre-Trial Chamber is specific
11 enough with regard to the rights of the accused to be notified of the charges
12 against him? And we would like you to answer this question, taking into account
13 the observations that I made after, that is to say, no appeal regarding the
14 imprecision of charges, the acceptance of a plea. And this was based on the
15 mechanism of the confirmation of charges, no -- and I am speaking of the French
16 translation here, mention was made of imprecisions once again, and also you made
17 reference to difficulties having -- doing an investigation.

18 The Pre-Trial Chamber, in the decision having to do with confirmation of
19 charges, made its decision and now the matter is before us. Please address the
20 Court.

21 MR O'SHEA: Good morning, your Honours. We are most grateful for this
22 introduction from you, Mr President, which clarifies your line of thought. And
23 everything that you have said is fully understandable from the point of view of
24 you, as Judges, on the Bench, and it is a point of view that we completely
25 understand and appreciate.

1 We are all judges and participants, in a sense, in a new and different
2 framework with this Court. We have had one case which has started and for which
3 there have been some developments. We know that there was a document which was
4 produced following the confirmation of charges in the Lubanga case as well, but
5 that is the only precedent that we have in this particular regime. So, we are all,
6 in a sense, in new waters, which to some extent explains the sequence of events in
7 relation to charges during the course of this pre-trial phase.

8 First of all, to respond to your imminent question, Mr President, which is
9 the question as to whether we say there is imprecision in the decision of the
10 Pre-Trial Chamber with respect to the charges, the answer to that question is, yes,
11 there is factual imprecision in the way the Pre-Trial Chamber expresses the charges
12 in its decision. In a sense, that goes without saying if we say that that is the
13 case for the document which has been produced by the Prosecution, because I would
14 also like to reiterate what your Honours have noted, which is that we do not
15 criticise the Prosecution in any way, actually, because we fully understand them as
16 much as we understand your Honours, that your Honours gave very specific directions
17 in the Court order that the terms used by the Prosecution must correspond to the
18 terms used by the Judges in the Pre-Trial Chamber. And it is understandable why
19 your Honours gave such a direction in the light of the arguments which preceded
20 your Honours' order.

21 When it was time for Mr Katanga to plead, may I say that there are different
22 levels of precision during a trial. There is undoubtedly in the document which the
23 Prosecution has now produced, and indeed the document which was produced before the
24 decision of the Pre-Trial Chamber, there is undoubtedly sufficient precision for Mr
25 Katanga to be able to plead guilty or not guilty.

1 For instance, as an example, the fact that the names of child soldiers have
2 not been identified in the charges does not prevent Mr Katanga from answering a
3 charge, "Did you use child soldiers?" and to respond, "No." So, in our view, the
4 level of precision that we are asking for now was not required for the purposes of
5 the plea. And indeed, in other tribunals, the accused does plead before motions of
6 a similar nature are often put in place.

7 Accepting the tenor and the content of your Honours' comments, we would like
8 to make the following observations: First of all, it is the Prosecution which
9 brings this case and not the Pre-Trial Chamber. And in terms of the rules which
10 are applicable to the charging document which is produced prior to the Pre-Trial
11 Chamber's decision, it is the Prosecution who must give sufficient notice of the
12 charges to the accused.

13 The job, in our submission, of the Pre-Trial Chamber is to confirm or deny
14 the charges, which is what the Pre-Trial Chamber did, in our understanding, whether
15 we are right or wrong about that. Now, the question arises, well, how can we raise
16 issues of imprecision now in those circumstances? Well, we are not requesting the
17 Prosecution to change -- to change the charges. The charges have been confirmed as
18 they have been confirmed, and there is no way around that. That is in the rules.

19 [] What we are asking is that in relation to specific factual assertions
20 which have been captured by the Pre-Trial Chamber, that the Prosecution give
21 further precision to those factual assertions which have been confirmed. That, in
22 our submission, is the job of the Prosecutor, not that of the Pre-Trial Chamber.
23 If we were to place that task in the hands of the Pre-Trial Chamber it would
24 complicate the proceedings, in our submission.

25 If one was to go down the route of going to the Pre-Trial Chamber after the

1 confirmation decision, then one would could come full circle and have to go back to
2 the Prosecution in any event.

3 It has always been our expectation that the Prosecution would produce a
4 document following the Pre-Trial Chamber decision. We know that the rules and
5 articles of the Statute don't specifically provide for it but, in our submission,
6 it is normal that not everything is specifically provided for in the rules, because
7 these difficulties sometimes surface through the trials and through the experience
8 of the Judges, which is a normal process, as your Honours are aware.

9 And your Honours will note that the decision on the confirmation of charges
10 was on 26 September 2008 and that on 12 March 2009 the Defence requested a new
11 amended document containing the charges. It is not our job as the Defence to draft
12 Prosecution documents. It is not our job to act as the reminder of the
13 Prosecution, save insofar as it becomes necessary, and it became necessary for us
14 on 12 March 2008.

15 We were not criticised for that stance at that time by this Chamber, and the
16 following day the Chamber made an order for a table of incriminating evidence.
17 That was 13 March.

18 We indicated to this Chamber that in our view we would like to reserve our
19 position a little while before considering whether the table of incriminating
20 evidence would do the job, as it were. And after consideration of this very large
21 document, we came to the conclusion that, really, what we have always wanted, which
22 was a document which your Honours have described as a summary document, and we have
23 no difficulty with that appellation, we realised that, actually, that document was
24 still necessary.

25 Because it is the Prosecution who is putting the case to the accused, it

1 always rests in the Prosecution to put notice of the facts properly. Until we
2 received that document, it was not our position to, as it were, raise the question
3 of imprecision of that document. We could have, perhaps, raised the fact that, in
4 our view, there were certain matters in the Pre-Trial Chamber which could be
5 clarified, but we didn't know, as I am sure your Honours didn't know, that this
6 issue of the charges would prolong itself as it has.

7 Your Honours will see that on 27 May 2009, the table of incriminating
8 evidence was filed by the Prosecution. Your Honours will see that there was a
9 renewed application from the Defence on 17 July 2009 with respect to the summary
10 document after mature consideration of the issues. Your Honours will see that we
11 gave observations on the issue which we had raised, and that the Chamber had
12 obviously been giving consideration to the matter in a careful manner; it's clear.
13 And so on 6 October we gave further observations on the invitation of the Chamber.
14 And then your Honours issued a decision on 21 October 2009 finally putting in place
15 a mechanism to give effect to the concerns of the accused, and we are very grateful
16 for that.

17 And we also understand why it had to be done on 21 October. It was not a
18 matter which you, as the Judges, could give swift consideration. You, like us,
19 your Honours like us, was in the position of this new legal regime without specific
20 precision as to what we were asking for, except save in the general context of
21 Article 67, the rights of the accused.

22 And of course, it is quite right for your Honours to take whatever measures
23 are necessary to ensure a fair trial, even if it's not expressly provided for in
24 the Statute.

25 So, these delays, if I may boldly say, are, in a sense, no one's fault. We

1 as lawyers like to issue blame, and we certainly were not issuing blame at the
2 Prosecution in the motion we filed the other day. We were certainly not issuing
3 blame on the Judges, and we feel that we have an explanation from our side, insofar
4 as we have contributed to delays as they were but, in a sense, justified delays
5 because of the nature of the issue.

6 So, on 28 October, that is when the document comes out from the Prosecution.
7 Your Honours will be aware that between 28 October and the date when we filed this
8 document, our motion or our observations, it's been a wild period in terms of
9 motions. We have been trying to spend time with the accused, prepare
10 cross-examination, while everything else has been going on. We then a few days ago
11 received a document from the Registry which kind of blew us out of the water, which
12 is a matter which we will discuss at another time.

13 But it's that period, short or long as it is, between 21 October and today,
14 has been an overbearing period for this team, and probably for you the Judges as
15 well. So all I can say is, if there is a sin on our part, it is a small sin,
16 because we have done our best, and we have maintained a consistent attitude towards
17 this charging document.

18 We are not asking for these changes to be -- sorry, these charges to be
19 changed; we are simply asking for the Prosecutor to provide certain precisions.
20 And may I say, although it would be our prerogative as Defence counsel to seek an
21 adjournment in this trial on issues like this, this is not going to be our stance.
22 I think it's important that your Honours know that.

23 We are not going to suddenly say, "Oh, we can't -- I'm sorry, we can't kick
24 off tomorrow." That is not our intention. There may be, you know, issues in
25 relation to Witness 28 that we would have to consider, but in terms of the trial

1 starting and progressing, we are not seeking an adjournment because it is as much
2 in the interest of the accused as in the interest of all the parties in this case
3 that we proceed, but we say that the right to a fair trial never ends.

4 If, if we have done something wrong in the way we have understood these
5 provisions, then so be it, but the right to a fair trial never ends. If there are
6 certain things that the accused must know then, in our submission, you your
7 Honours, should facilitate that knowledge on the part of the accused to facilitate
8 a fair trial.

9 Thank you, your Honours.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you for the explanations you
11 have just provided us with. Before I ask the Prosecutor to address the Court, on
12 behalf of Court I would just like to return to a number of remarks that you made.

13 Like you, we are well aware that this Court is a young one, and we are well
14 aware that we are the first group of people together to enforce this new Statute
15 and enforce the new Rules of Procedure and Evidence.

16 I would say focus is needed. We need to focus on the document that the
17 Pre-Trial Chamber I asked of the Prosecution after the decision to confirm charges,
18 and after the decision of 27 November last, you refer to that document and all the
19 discussions after the plea, all the discussions between Mr Hooper and myself, we
20 met for the first time, had to do specifically with that matter.

21 And I think I will turn to -- I turn towards Mr Macdonald, and he said that
22 in his opinion the tabling by the Prosecution of a new document after the
23 confirmation of charges decision was not an obligation set out by any Statute. The
24 Pre-Trial Chamber had to make an assessment, an evaluation of the matter, and in
25 turn we have to assess the initiative that was required.

1 This Chamber was of the view, and still is of the view, that -- and this is
2 the very heart of our decision, that that matter was within the jurisdiction of the
3 Pre-Trial Chamber and they focussed on 61(7) and that really is the key provision;
4 61(7)(a).

5 The Pre-Trial Chamber confirms the charges for which there was sufficient
6 evidence and commits the person to a Trial Chamber to be tried on the charges that
7 were confirmed. Now, perhaps the charges that were confirmed did not appear to be
8 sufficiently specific, and you were right to say that the right to a fair trial or
9 to ensure a fair trial is a difficult one, but we always must strive to reach this
10 goal.

11 Perhaps this is something that may be evoked by various teams at the right
12 time. No doubt it is necessary to have an effort to specify and clarify things
13 better. And perhaps this is what Mr Macdonald will be speaking to us about in a
14 few moments. Will he be able to establish links between questions you ask and the
15 new table that he has prepared?

16 So, that development, or this progress that is being made with regard to the
17 Statutes, which is part of this new Court, within the framework of the first
18 trials, this is a path that we are travelling together. We are trying to do our
19 best and, really, the only reference point that we have is the legal statutes that
20 govern us all. And they are not necessarily always extremely precise. And that is
21 why our task is rather difficult and we must always remember that we must ensure
22 the best possible balance between protection of victims, respecting the rights of
23 witnesses, ensuring that the accused people's rights are respected. And you may
24 have the impression that some things have not been dealt with, but I would say that
25 we are all travelling the same path; we are trying to ensure the best possible

1 administration of justice.

2 And in response to some of your observations, I would like to remind you that
3 if you had thought at one particular point during the preparations, or at the very
4 beginning of the preparations for the trial that it was necessary to get greater
5 clarity, may I remind you that you have the opportunity to ask the Chamber to
6 implement 64(4) which authorises the Chamber to ask the Pre-Trial Chamber to
7 provide additional information. And I am quoting from memory, but I will -- the
8 Pre-Trial -- to ensure effective operations and fair operations may ask the
9 Pre-Trial Chamber to provide greater information, and this can be considered. That
10 could have been considered a year ago or eight months ago, and this is something
11 that you did not use.

12 Similarly, I think you will recall that we had a number of discussions early
13 in 2009. You thought and we thought, too, that perhaps the trial could begin in
14 June. It was perhaps wishful thinking, but we thought it was possible at that
15 time, and there was no strong signals from you before June saying, "Well, listen,
16 the charges are too hazy." We postponed the trial until 24 October, September, and
17 we thought the trial would get underway. And later in August, there was still no
18 strong signal saying: No, 24 September. But, no, no, no, the charges are too
19 imprecise.

20 In the constructive discussion that we have been trying to have together I
21 think -- but we are somewhat surprised by this allegation of imprecision coming so
22 late. We have heard and understood what you are saying.

23 Now, sir, you have reviewed the application from the Katanga Defence team,
24 and you have just heard the additional observations made a few moments ago, and
25 they have allowed us to look at the context and the work, the preparations done by

1 the Defence team, and you have heard the preliminary observations from the Bench.
2 We would now like to hear your opinion before we turn to Mr Kilenda and other
3 colleagues. You now have the floor.

4 MR MACDONALD: (Interpretation) Good morning, President, your Honours.
5 Before giving my colleague, Florence Darques Lane, the floor, the Prosecution would
6 just like to take one minute in light of the comments that you have made and also
7 following the comments made by the Defence for Mr Katanga. Just one minute we
8 would like to have.

9 PRESIDING JUDGE COTTE: (Interpretation) You don't want us to suspend?

10 MR MACDONALD: (Interpretation) No, we can all stay in the courtroom.

11 PRESIDING JUDGE COTTE: (Interpretation) Okay. We will give you two
12 minutes.

13 (Brief pause)

14 MR O'SHEA: Mr President. Perhaps I could use this time just to indicate to
15 your Honours, your Honours mentioned a filing 1631 and it might be an opportune
16 moment to give your Honours appropriate information from our side. It appears that
17 we haven't received this filing. If we have, it has bemused the entire team. But
18 none of us have actually been able to "constaté" as you say in French, that we
19 actually have this filing, that we have received this filing. And we have just
20 checked and we can't find it.

21 PRESIDING JUDGE COTTE: (Interpretation) 1631?

22 MR KILENDA: (Interpretation) We have not received this application either.

23 PRESIDING JUDGE COTTE: (Interpretation) I am continuing to reflect with
24 regards to the table, et cetera. Yes, it is the preliminary issue. So, I am
25 concerned by this. Yes.

1 MR MACDONALD: With your permission ...

2 PRESIDING JUDGE COTTE: (Interpretation) Apparently, it is normal that you
3 haven't received it, and the Chamber would like to apologise to the extent that you
4 weren't the initial addressee of that decision. Yes, it's an application of the
5 Prosecutor. I don't know the exact title, but I think it was for the Office of the
6 Prosecutor and it's up to the Office of the Prosecutor to communicate that to you.
7 So, the intervention that I made right at the start of the hearing, therefore,
8 perhaps wasn't irrelevant, but it could give rise to certain questions on the part
9 of Mr Hooper and Mr Kilenda. The Chamber would ask you -- would kindly apologise.

10 MR O'SHEA: Thank you very much, Your Honour. That's an indication of how
11 much is going on.

12 MR MACDONALD: (Interpretation) With your permission on this point,
13 Mr President, we turn to the Chamber if -- at the end of this hearing where it
14 concerns the reclassification of this, because I am myself surprised that the
15 document was only destined for the Chamber, certainly its annexes, but I don't
16 think that the filing -- or the content which accompanied the request for redaction
17 should remain confidential.

18 PRESIDING JUDGE COTTE: (Interpretation) So, Ms Darques Lane, you have the
19 floor.

20 MS DARQUES LANE: (Interpretation) Thank you, your Honour, Judges. The
21 comments that we would like to make today will also go into -- go and fall in line
22 with the comments made by the Chamber. Certainly, the Prosecution considers in its
23 filings 1631 that the Defence leaves it to be understood that the summary of the
24 charges which reflects the confirmation decision does not satisfy the requirements
25 of a fair trial of Article 67(1)(a).

1 The Defence, the Katanga Defence, has itself recognised that this summary
2 was, indeed, a reflection of this decision. It stated that in its filings and also
3 during the hearing of 2 November.

4 So, as the Prosecution has said previously, the application of the Defence is
5 without foundation, it would seem, and coming just before the trial it would seem
6 that, with all the consideration and sympathy that we have for our colleagues in
7 the Defence, what we would like to say is that the Prosecution has not only
8 fulfilled its obligations with regards to the content of the document containing
9 the charges and its presentation of the list of evidence, but furthermore it has
10 also submitted two tables which show in detail the presentation of its case, and
11 that was done on the orders of the Chamber, and it also presented a summary of
12 charges, which was also confirmed by the Pre-Trial Chamber. And it has also
13 presented the topics on which the witnesses shall testify. So, the Prosecution
14 considers that the accused was -- has been perfectly informed of the nature of the
15 case and the scope of the charges brought against that person.

16 We would like to recall certain filings in this regard. In its decision 648
17 of 25 June 2008, the Pre-Trial Chamber wrote about the so-called lack of precisions
18 in the filing 753 of the -- and this was stated that the Pre-Trial Chamber had
19 considered that the document notifying the charges of 12 June, as well as the list
20 of evidence, did satisfy the requirements set out under Article 61 and 67, Rule
21 1213 and Regulation 52. In its decision the Pre-Trial Chamber had recalled that
22 the document notifying the charges should be read in light of the list of evidence.
23 Furthermore, in its decision it has highlighted the specificity of our very
24 different proceedings, very different as they are to those of the ad hoc tribunals.

25 The Katanga Defence has asked in its application that the Chamber orders the

1 Prosecution to present -- and this is in its filing 954, a single straightforward
2 document which accurately reflects the decision of the Pre-Trial Chamber confirming
3 charges while not confirming other charges. And that is in paragraph 6 of the
4 application 954.

5 Now, in this same filing, the Katanga Defence does recognise that in the case
6 of a contradiction between the notifying document and the decision confirming the
7 charges, that the decision would have precedence. On 13 March, as you mentioned
8 just now, the Chamber considered that a well-structured table could replace the
9 notification -- the amended notification document. As stated by the Chamber, the
10 Prosecution, on 27 May, filed a table which included all the evidence and presented
11 the case of the Prosecution. As we all know, this table is quite long.

12 In its filing 306, the -- or 310, the Defence stated -- I'm sorry, your
13 Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, I am sorry to
15 interrupt you, but we do not have a lot of time. It is important, obviously, for
16 you to be able to react to the remarks and to the motion of the defence for Mr
17 Katanga. But I think that it is even more important not to be reactive, but to be
18 constructive and to be able to say to this Defence team where and how it can
19 possibly find an answer to the questions that it asks, where and how it can -- if
20 that is possible, as it says itself, where possible, how and where it can find the
21 clarifications that it is asking for.

22 I think that this is the most important factor at the immediate time. Now,
23 are you able to adjust your remarks to make them slightly more constructive with
24 regards to the expectations? Is that possible?

25 MS DARQUES LANE: (Interpretation) Certainly, that's possible. I will now

1 interrupt my presentation to go to the very heart of the matter, that is, namely,
2 paragraph -- if you will just give me some time to look at my notes. Paragraph 19
3 to paragraph 36.

4 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead.

5 MS DARQUES LANE: I will try to be very brief. First of all, it was
6 mentioned that we presented lots of different documents, namely, the arrest
7 warrant, the decision on the arrest warrant; then there was the table; the document
8 notifying the charges; and the decision confirming the charges. And we consider
9 that all of these documents together would provide the answers to the Defence of Mr
10 Katanga. It could answer the questions in paragraphs 19 to 36.

11 So, if the Chamber so wishes, we could take that paragraph by paragraph. But
12 we do have a general remark to make in this regard, and that is that paragraphs 19
13 to 36 of the Defence motion ultimately go into paragraphs of the confirmation
14 decision. We have done the work, we have checked this. Either the information is
15 in the confirmation decision or the Pre-Trial Chamber has not considered it
16 necessary to give such information. And there I would refer to paragraph 32 of the
17 application -- or the motion of Germain Katanga.

18 However, either -- so if we refer to the paragraphs, the information can be
19 found in the footnotes. For example, Counsel O'Shea spoke about the identity of
20 child soldiers. In my opinion -- well, it is not even in my opinion, I think it is
21 paragraph 31. I will take 31(a) and (b) of the motion of the Defence. I'm sorry.

22 So, in this paragraph 31(a), the Defence asks for greater specificity with
23 regards to paragraphs 16 and 38 of the document containing a summary of the
24 charges. And paragraph 16 is based on paragraph 386 of the decision confirming the
25 charges, which does not give more information. On the other hand, where it

1 concerns paragraph 38 of the summary of the charges, this paragraph is based on
2 paragraph 253, 254, 256 of the decision confirming the charges. And we would
3 invite the Defence to look at the footnotes of these paragraphs which mention a
4 number of child soldiers, the identity of which is known. If I take paragraph 260,
5 if you look at the footnote 344, 345, 346, we have a reference to the statements of
6 child soldiers.

7 So, your Honour, the Prosecution can go step by step through it and answer
8 each of the questions, but it isn't perhaps the moment to do so, given the time
9 constraints that there are.

10 PRESIDING JUDGE COTTE: (Interpretation) No, but what is important for the
11 Chamber is to know if you are able to confirm that in most of the document, or in
12 all of the document, the questions that -- the questions that the Defence of
13 Germain Katanga asks, that there is a possible answer to them, either in the
14 decision confirming the charges itself or in the table, the restructured and
15 simplified table that you have filed. You, therefore, have seemed to have examined
16 the motion for clarifications.

17 Is it possible to have -- find the answers to all these questions, yes or no?

18 MS DARQUES LANE: (Interpretation) Mostly, yes.

19 PRESIDING JUDGE COTTE: (Interpretation) Very good. The Chamber would like
20 to thank you. I think that we should continue, giving these time constraints.

21 Counsel Kilenda, what is the position of the Defence team of Mathieu Ngudjolo
22 with regards to this question, which we do not underestimate at all because it
23 occurs frequently in the debate?

24 MR KILENDA: (Interpretation) Thank you, your Honour. The Defence of Mathieu
25 Ngudjolo would not say that it's a delaying tactic with regards to the application

1 made by Mr Hooper. We think that it is the delaying and non-delaying aspect which
2 makes jurisprudence, and the Judges have fixed this with regards to the issues that
3 arise. And I think that Mr Hooper has raised certain questions which help us move
4 onwards. And as you have said yourself, they really do give life and body to the
5 Statute and the different governing texts of the International Criminal Court.

6 Law is a science which proceeds through interpretation, and this is very true
7 between you. You know the practice of dissenting opinions, which means that even
8 amongst yourselves, you are not always in agreement with regards to the same issue.
9 I think this is the beauty of law.

10 This means that we can be here. The factual imprecisions with regards to the
11 time mentioned by Mr Hooper are imprecisions which are real. They are real, but
12 you should recall that the Defence team of Mr Ngudjolo has already replied to you
13 during the status conference the studies -- the summaries that were produced by the
14 Prosecutor did reflect the decision confirming the charges.

15 These imprecisions are exactly to be found in the decision confirming the
16 charges. We -- at the time, it would have been better to appeal -- or ask for
17 leave to appeal and, at that time, the Appeals Chamber, if authorisation had been
18 given, the Appeals Chamber could have ruled in this regard.

19 Now, on the other hand, with regards to these imprecisions with regards to
20 the time frames and the facts, they remain. Now, the -- we could refer to this and
21 we could ask your Chamber to rule on this once and for all.

22 Now, I think that the hearing, when the substantive debate which you have set
23 for tomorrow, this will start without we being opposed to it. Furthermore, the
24 Katanga team has said they didn't want to delay the trial. And we consider that
25 these imprecisions with regards to the time frame can be subject to discussions

1 within the framework of the trial. Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel Kilenda.

3 Legal representatives of victims, I would -- please, could you take the floor
4 in the order which you wish. There isn't a particular hierarchy between you.

5 MR FIDEL: (Interpretation) Thank you for giving me the floor. I would
6 firstly like to express to the Chamber that the team of legal representatives of
7 victims has analysed Mr Hooper's motion, and we have come to pretty much the same
8 conclusion as the Chamber, and I would also join -- well, I am very pleased to hear
9 from the mouth of my esteemed colleague, Mr Kilenda, that he also -- that I would
10 also like to take up the same comments.

11 I don't want to repeat what was already said in this regard, but I would like
12 to say that where we are concerned, obviously, we have raised certain objections.
13 The first is with regards to the -- what was asked for by the Defence team of Mr
14 Katanga.

15 On the one hand, when Mr Katanga's Defence team recognised that the decision
16 of confirmation of charges is the only document that is authoritative, and that the
17 summary of charges can only be an exact reflection of this decision, but then on
18 the other hand the team asks for more specific information taking into account the
19 document of confirmation of charges, the summary of the charges. We think that
20 indirectly they are asking for an amendment of the decision of confirmation of
21 charges.

22 And the team of Mr Katanga would have done better to have made an appeal of
23 the decision confirming the charges. When we look at paragraph 2, where we speak
24 of the Ituri region and a village, then later on, paragraph 48, they ask that the
25 word "others" be struck out. I think that we are now dealing with the very

1 substance of the charges that were found in the document confirming the charges.

2 As the Presiding Judge has recalled, the trial phase defined by charges as
3 were confirmed in the ruling of the Pre-Trial Chamber. Thus, the items of evidence
4 is within a framework, within the limits of that ruling and, furthermore, we would
5 remind you of Article 74 which says that rulings of the Chamber cannot go beyond
6 the facts and circumstances set out in the charges and amendments made thereto.

7 The observations found in the application from Mr Hooper have to do with
8 various ambiguities, changes or deletions or additional information regarding the
9 dates and the locations and the identities. That is the second objection we would
10 like to raise.

11 When it was decided before the ITPY and the ITPR that when we are dealing
12 with major crimes, often we are dealing with imprecise matters, but this
13 imprecision is due to the very nature of the crimes. Thus, in this case, asking
14 the Prosecution to provide more specific information about dates, locations and
15 identities of people who may have seen their houses go up in flames within the
16 context of war, I think that the jurisprudence of the ad hoc tribunals recognises
17 that in such circumstances one can admit of imprecise information because their
18 imprecision is very much in keeping with the charges filed against the accused.

19 In short, those are my remarks, my contribution to today's discussion. Thank
20 you very much.

21 PRESIDING JUDGE COTTE: (Interpretation) We thank you. Mr Gilissen, would
22 you now like to address the Court?

23 MR GILISSEN: (Interpretation) Yes, your Honour. No doubt, in a way I think
24 we have -- what I may be saying now has already been dealt with, but all the same I
25 must point out that with regard to the problem that we are dealing with today, we

1 see the difficulty and the complex nature of these proceedings. We have to set
2 aside our national procedures, our ways of doing things, and we must consider other
3 procedures followed by the ad hoc tribunals, for instance.

4 I don't really want to paraphrase your remarks, but no doubt it should be
5 pointed out that in paragraph 4, on page 411, the last words are of great
6 importance which may serve as a point of reference. In other words, the Defence is
7 using this summary of charges as a reference point and I would remind my learned
8 friends that it is the only reference point. The confirmation of charges of 2008,
9 the decision made by the Pre-Trial Chamber, that is our reference point.

10 The Defence is attempting, your Honours, is -- well, we find ourselves
11 dealing with the practice of common law and we find ourselves referring to statutes
12 and practices of the ICTY and the ICTR. We do not have such a thing as an
13 indictment. The States wanted the concept of indictment to be replaced by a ruling
14 of the Court. The mise en accusation. And the document stemming from this, the
15 Prosecution proposes, and the Court through the Pre-Trial Chamber, disposes; that
16 is, the facts for the Pre-Trial and the Trial Chambers.

17 Court documents set out the charges and those are the parameters. We are in
18 a sui generis system, and I could have said ad hoc, but that would lead to a
19 misunderstanding. We really don't have the concept of an indictment, and the
20 Defence said it should be noted that it is the Prosecutor who formulates the
21 charges against the accused.

22 No. No longer at this stage in the proceedings; that would be before the
23 Pre-Trial Chamber. And asking for more specific information today or details
24 regarding -- or additional information, that is the right of the Defence but, your
25 Honour, ladies and gentlemen, when we consider Article 67 of the Statute - and just

1 to Article 67 - we are dealing with a contradictory -- a contradiction here.

2 I don't want to repeat your expression when you spoke of a disembodied legal
3 expert, but at this particular stage, the Defence knows and has known for a long
4 thing what it's all about, and has agreed that the proceedings should really
5 revolve around one particular point, a reference point, the decision regarding
6 confirmation of charges. There was no appeal of that ruling.

7 And so today, within the presentation of items of evidence, that is when --
8 and I would put myself in the shoes of my learned friend with the English or common
9 law legal system. Now, this is what the States Parties wanted. They wanted a
10 procedure. They did not want an indictment; they wanted charges. And then
11 evidence would be adduced. And then it would emerge whether or not the evidence
12 proved beyond reasonable doubt, all reasonable doubt.

13 So, there you have it, your Honour. I really wanted to specify those points.
14 Thank you very much.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Gilissen.
16 Before we suspend for a few moments, before we resume, Prosecution, insofar as we
17 interrupted you a few moments ago and you did not have all the time you would have
18 liked to have had to provide additional information step-by-step, the Chamber would
19 like to know how much time you would need to provide the Katanga Defence team with
20 the additional information that you could provide -- that you could have provided
21 orally a few moments ago. No doubt, you are not able to provide exhaustive answers
22 to each question, but if you can answer a relatively high number of questions, I
23 think the Katanga Defence team would appreciate that.

24 So how much time would you need to send answers to the Katanga Defence team?
25 You have said that the additional information can be provided at various points.

1 In writing.

2 MR MACDONALD: (Interpretation) In writing? As we said earlier, we can
3 provide that information, but if we look beyond that, all the questions asked by
4 the Defence are either within the items of evidence or in all the documentation
5 that was disclosed or provided to the Chamber. All the questions are there. We
6 cannot interpret what the Chamber meant and add when they spoke -- when we speak of
7 several hundred people dying, of course we are talking about the events of 9
8 September 2004. When we talk about 4 March, we all know we are talking about the
9 attack. And how can one ask what Mandro are you talking about? Yes, we can answer
10 those questions, but all the answers are to be found in the footnotes of the
11 document of confirmation of charges or within the table.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Macdonald.
13 I note that you speak with a great deal of energy. We have taken note of that.
14 And we really do not want to begin the trial before it is to begin. That would not
15 be a very good way of doing things. We just wish to ask you whether the questions
16 that are found at the end of the application, and from the Defence, these
17 questions: Are there answers either in the confirmation of charges document within
18 the main party or in the footnotes or within the table that was reformulated and
19 provided?

20 A few moments ago you reminded us that we have had to work at a certain
21 speed, a certain rate of speed. I will turn now to Mr O'Shea. And I apologise,
22 because I always seem to be speaking of Mr Hooper, but I think you realise that
23 when I say Mr Hooper, I am really speaking to the entire team, because I do realise
24 that you work as a team.

25 Now, I do see you, and I would now like to ask you, once again, the Chamber

1 did not say the word "dilatoire", or speak of delaying tactics. We do not want any
2 remarks to be misunderstood. But we did understand the spirit underlying your
3 request for additional information. We were merely surprised that these last
4 requests came in so late.

5 I hope that that point, which is an important one, is taken during this
6 public hearing. So, the die has been cast. Now, you are not asking for an appeal.
7 And tomorrow, the trial which the accused have been waiting for, for a long time,
8 will well -- will certainly begin with the schedule that we have set, that will
9 lead to a rather long suspension, and then resumption late in January.

10 The Chamber would like to make sure before we suspend that tomorrow there
11 will not be any objections from you to Mr Katanga being asked to say whether he is
12 pleading guilty or not guilty. He has already done so once. And this Chamber, you
13 will remember, was awaiting an initial plead during the initial status meeting. I
14 said that we thought that if by some chance one of the two accused intended to
15 plead guilty to all charges, or to some charges, the physiognomy, so to speak, of
16 the Pre-Trial phase would be quite different.

17 Now, that was a year ago, and I think it was clear that the day the trial
18 opened a new plea would be made. Now, tomorrow, will Mr Katanga agree to this
19 opportunity, and this is just an opportunity, of pleading guilty or not guilty?

20 MR O'SHEA: Thank you, Mr President. I can say quite categorically that our
21 observations will not in any way affect tomorrow's procedure, and that Mr Katanga
22 will make the appropriate plea. The precisions which we have asked for do not
23 affect his position. They may affect our ability to deal with his matter as best
24 as we may, but it will not affect his position and his approach tomorrow.

25 May I have permission to very briefly incapsulate our position with reference

1 to what's been said by the other parties?

2 PRESIDING JUDGE COTTE: (Interpretation) We have until 11.30. Now, do you
3 think you could summarise this in five minutes? Is that possible? We will suspend
4 for five -- we will suspend for a few moments and then resume. So we will use the
5 last 15 minutes.

6 MR O'SHEA: I am most grateful, your Honour. What struck me and -- what
7 struck me while I was listening to the Prosecution is, in fact, how well they know
8 their case. They know their case much better than Mr Katanga, which is quite
9 normal. They also know their case much better than the Pre-Trial Chamber or your
10 Honours, which is quite normal.

11 And the question which your Honours should, in my submission, ask yourselves
12 is: What prejudice would be caused by responding positively to our request as late
13 as it may be, if we are not asking for a remise du procès?

14 The suggestion that we, as Defence counsel, should go through the table of
15 incriminating evidence, as useful as it is, and the decision of the Pre-Trial
16 Chamber, as useful as it is, and decipher and to some extent speculate as to the
17 exact parameters of the charges, as opposed to the evidence, is a little unfair, if
18 I may say so, your Honours.

19 I took the example of my learned friend when she referred to paragraph 254,
20 and I saw that there was a reference to a footnote. And now I looked at the
21 footnote, and I saw a list of witnesses. Quite frankly, that didn't help me. That
22 didn't help me to understand who exactly are the child soldiers that the
23 Prosecution say Mr Katanga used. We understand that certain witnesses that the
24 Prosecution intend to call are among their number. In some cases, maybe not.

25 With regard to the legal premise of our position, I promise you we are not

1 harping on the common law or sticking to the procedure of previous ad hoc
2 tribunals. We are relying on Article 67, which is the predominant rule. And we
3 submit that that Article does require us to know the case against us, to the extent
4 possible.

5 You know, there may be questions that the Prosecution cannot answer, and that
6 is understandable. But if one goes to Regulation 52, Regulation 52 encapsulates
7 the position in other ad hoc tribunals by requiring factual specificity and in
8 relation to the document containing the charges, not the decision of the Pre-Trial
9 Chamber, the document containing the charges which the Pre-Trial Chamber relies
10 upon. Why? Because it is the Prosecution's obligation.

11 If we had adopted the procedure which, Mr President, you suggest of relying
12 on Article 64, or one of the representatives referred to this as well, that we
13 should go back to the Pre-Trial Chamber, in our estimation that would be the more
14 complicated route.

15 Mr President, you have indicated that we are all acting in good faith to try
16 to move this trial forward as expeditiously as possible. Please consider the
17 implications of referring it back to the Pre-Trial Chamber. Can that be done
18 without the involvement of the Prosecution? No, it cannot. So, by cutting out the
19 Pre-Trial Chamber and asking the Prosecution to act in good faith and give us the
20 information we need, we are inviting expedition of the process.

21 In our submission - and this is really important - in our submission the
22 crucial question for your Honours is have the questions that we asked, have the
23 questions of specificity that we asked, are they reasonable or unreasonable? If
24 they are reasonable, what prejudice is caused by providing this information to us
25 through the Prosecution?

1 And the last points I would make is this: I would invite your Honours to
2 consider the consequences of us not being given this specificity in terms of how
3 this trial proceeds. There may be matters that come up during this trial, and it's
4 quite understandable why the Prosecution takes the position that they do. There
5 may be matters that arise which are, in essence, to us new. But the Prosecution
6 can say, oh, but the -- the Defence has notice. Look at our document containing
7 the summary of the charges. It doesn't specify - I will use the example of the
8 child soldiers, since we have been using it all this time - it doesn't specify what
9 child soldiers are involved, so what's wrong with mentioning another child soldier?
10 Then your Honours will be faced with the position of, well, have the Defence been
11 given notice? Well, according to the documents summarising the charges, they have.

12 Now, let's look at the other two documents, the document of 1,165 pages and
13 the other document of 308 pages, and let's consider to what extent the Defence has
14 proper notice of this child soldier. We fear that this -- that the trial we face
15 today or tomorrow or the 24th may be a very different trial to the one that we face
16 in three or four months from now, if anything is left unclear. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel O'Shea.

18 We are now going to suspend for five minutes, and we will come back for five
19 minutes, such that this courtroom can be cleared.

20 MR MACDONALD: (Interpretation) Very briefly, this isn't to go back to the
21 subject, but just to go back to 1631, and if you could reflect in the -- reflect on
22 the following proposition, it would seem to be that there seems to be an error when
23 we submitted this filing. It should be confidential, but accessible to the Defence
24 teams. So, we would ask that it be re-classified as confidential ex parte
25 accessible to the Office of the Prosecutor and the Defence teams, so the filings.

1 But the annexes are currently confidential ex parte.

2 The Chamber will note in paragraph 16 and 19 of this filing that we propose
3 immediately that these annexes be re-classified as confidential, available to the
4 Defence teams, as they contain an immediate application for redactions as proposed
5 or asked for by the Prosecution.

6 So, while waiting for this, given the practice that we have developed to
7 accelerate disclosure, without presuming any decision on the part of the Chamber,
8 the Defence can already have access to the transcript of the interview of the
9 Intermediary 316 with the redactions of the -- redactions to the identity of 183.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you. This session is
11 suspended.

12 (Recess taken at 11:07 a.m.)

13 (Upon resuming at 11:19 a.m.)

14 THE COURT USHER: All rise.

15 PRESIDING JUDGE COTTE: (Interpretation) The accused are with us; they are
16 present in the courtroom. So the session has now started.

17 The Chamber will, therefore, issue an oral decision with regards to the
18 application of the Defence team of Mr Katanga. It will issue this at the beginning
19 of the ex parte hearing which we will have at 2 o'clock with this same Defence team
20 of Germain Katanga, and this decision will also be reclassified such that each of
21 the participants in this hearing can be acquainted with it as soon as possible,
22 although they won't be able to do so in real time. So, we have to be back here at
23 2.00, and then we will issue our oral decision.

24 The Chamber would also like to indicate to you that the plea which the --
25 pleas which the accused would be asked to make tomorrow, this is a possibility, and

1 they are reminded that during our status conference of 27 September 2008, there
2 were long exchanges between the counsel of the accused and the Chamber with regards
3 to whether they had been able to become acquainted with, to have explanations.
4 That's something that will be gone into tomorrow. We are not going to go on that,
5 because for one year the Defence team have met the Defence -- have met the accused,
6 but we would just like to say that these pleas will be made with a view to a
7 document which will compile the charges, a document which is mentioned in 573 to
8 580 of the confirmation decision. So, this is something that we have -- this will
9 be our point of reference.

10 This part of the decision is important to the extent that when we read this
11 part, the Chamber understands that the confirmation of charges which it is seized
12 of is related to acts that took place in Bogoro on 24 February 2003. This gives a
13 clarification with regards to the time and the place which you wish to have.

14 We have to free this courtroom. The Chamber regrets that it's not able to
15 respond to a request from Caroline Buisman, who is a member of the Germain Katanga
16 team, who wished to have a discussion on the decision issued on Friday relating to
17 Rule 140. We can't go into details with this. On the other hand, we can at least
18 -- to answer one of your questions, this document is not simply a guideline, it is
19 really giving instructions on the part of the President of the Chamber in
20 consultation with the members of the Chamber. So, therefore, we are talking about
21 guidelines, and "directions" is what is being stated in the English version, you
22 can see when you read paragraph 10 of the decision.

23 And reading paragraph 13 and the annex which is annexed to it, that there is
24 a place for flexibility. I don't have the exact adjective here. In paragraph 10
25 of the framework decision on page 5, you have the word which I cannot pronounce

1 correctly in English. I shall ask Madam Van den Wyngaert to do that, this word.

2 JUDGE VAN DEN WYNGAERT: "Roughly."

3 PRESIDING JUDGE COTTE: (Interpretation) "Roughly" is the word that is used.

4 And in paragraph 13, you have a sentence which I will ask my colleague to read.

5 JUDGE VAN DEN WYNGAERT: "The Chamber may at any time vary the time limits
6 which are put in place by the present directions."

7 PRESIDING JUDGE COTTE: (Interpretation) So, these are the two answers that
8 we can give you in the immediate -- at the immediate time.

9 Now, we absolutely have to free the courtroom now, so the session is closed.

10 COURT USHER: All rise.

11 PRESIDING JUDGE COTTE: (Interpretation) Sorry. Can you wait one minute?
12 The Prosecutor, please sit down.

13 MR MACDONALD: (Microphone not activated).

14 PRESIDING JUDGE COTTE: (Interpretation) One minute and a half, you have.

15 MR MACDONALD: (Interpretation) We can perhaps come back tomorrow and just
16 have time to discuss this. It's -- it's important that the person who is
17 responsible for the investigations has to testify. We've asked for a presentation
18 of one hour. The Prosecution would like to ask for the permission to help the
19 Chamber, that they have a structure for this presentation which will -- well, taken
20 into account, we feel that there is a need for an aide memoire or a plan of three
21 pages, which I could provide the Chamber with and I could provide the parties with,
22 such that the witness or the person who is responsible for the investigations, that
23 they can have a paper with key words. It's not trying to guide the answers and it
24 is not about having a document and reading it, but just having different points on
25 that document.

1 PRESIDING JUDGE COTTE: (Interpretation) Yes. Could you provide us with
2 that document during the day, such that we can certainly reply to you on that, so
3 the testimony is only coming on Wednesday.

4 MR MACDONALD: (Interpretation) I will provide everyone with a copy of that.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Thank you. The session
6 is adjourned.

7 THE COURT USHER: All rise.

8 (The hearing ends at 11:26 a.m.)