

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and Judge
4 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 Trial Hearing
8 Wednesday, 25 November 2009
9 (The hearing starts at 9.34 a.m.)
10 (Open session)

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

12 PRESIDING JUDGE COTTE: (Interpretation) The Court is now in session. Please
13 be seated. To the Court notes that the accused are present in the courtroom. Court officer,
14 please, can you call the case which we are hearing today.

15 THE COURT OFFICER: (Interpretation) Situation in the Democratic Republic of
16 Congo. Case of the Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, number
17 ICC-01/04-01/07.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, court officer.
19 Before going into the first -- before calling the first witness, the Court would like
20 to give you a few clarifications with regards to the issue of the registering of evidence
21 or tendering evidence into the case record. With regards to the evidence and the manner
22 in which, the way in which it is identified, the Chamber would first of all like to state
23 that the party which wishes to submit evidence into the case record during a hearing
24 has to mention its ERN number and indicate to the court officer its level of confidentiality.

25 Once the evidence has been presented, it will be put into the case record either

1 as EVD for "evidence" or as MFI, which means "marked for identification" with a view
2 to establishing if the evidence should be given an EVD number or an MFI number. Put in
3 other words, if the evidence should be immediately admitted into the record as evidence,
4 or if it should be subject to an indication just meaning that it has been presented to
5 a witness, the Chamber suggests that it inspires itself from the system which the Trial
6 Chamber I put into place in the Lubanga case.

7 This system which the Chamber intends to adopt, or from which it intends to
8 inspire itself can, perhaps, be defined as follows: When evidence is presented by the
9 party which leads the examination-in-chief, and first of all that will be the Office
10 of the Prosecutor, it will be admitted into the case record as evidence and it will be
11 given an EVD number, unless the opposite party raises an objection.

12 As far as possible, such an objection should be raised by the parties at the
13 time that the list of documents which it envisages producing is communicated. And this
14 is in accordance with paragraph 103 of the directives adopted on 20 November 2009; that
15 is to say, three days before the testimony concerned.

16 The party that raises an objection at this stage will notify the Chamber and
17 the parties by e-mail in the shortest possible time frame indicating the grounds for
18 the objection. So if an objection is raised, the Chamber will rule with regards to the
19 status of the evidence, either from the Bench or after a short court suspension or after
20 the hearing. So from the Bench, after a court suspension or after the hearing, and in
21 the final case the status of the evidence will be determined later.

22 However, when evidence is used and presented by the adverse party in its
23 cross-examination, and that would therefore be the Defence, this evidence would then
24 have an MFI number. The Defence could, however, ask the Chamber to admit one or other
25 of these evidentiary items to the record as evidence and in this case, if the Chamber

1 gives its authorisation, the evidence will have an EVD number attributed to it.

2 So the guidelines that I have now given and read to you, these will be mentioned
3 in the transcript of this hearing and if it is necessary for one of the participants
4 to obtain additional clarifications in this regard, this is possible to do at the start
5 of the hearing tomorrow, having re-read what has just been said.

6 Thank you for your attention.

7 Court officer, I am now going to ask you to bring the first witnesses in and
8 to bring a closed session in.

9 (Closed session at 9.40 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Open session at 9.44 a.m.)

4 THE COURT OFFICER: (Interpretation) Your Honour, we are now in public session.

5 PRESIDING JUDGE COTTE: (Interpretation) The Court is waiting for it to be fully
6 public before starting, and we are, therefore, going to ask the witness to give the solemn
7 undertaking. But before starting your testimony, you have to take the solemn undertaking
8 to tell the truth, and this is a solemn undertaking that has to be made. I am going to
9 read it slowly so that you can understand the importance of it: "And I declare solemnly
10 that I will tell the truth, all the truth, nothing but the truth."

11 Has the witness understood the formula of the solemn undertaking?

12 THE WITNESS: I understand, your Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) You commit yourself to say the truth,
14 all the truth and nothing but the truth?

15 THE WITNESS: Yes, I do, your Honour.

16 PRESIDING JUDGE COTTE: (Interpretation) The Court will, therefore, ask the
17 witness to listen very attentively. You have just said that you will tell the truth.
18 If, during your testimony or in responding to the questions which are put to you, you
19 do not say the truth, you can then be prosecuted before the Court for false testimony.
20 And if this is demonstrated, you could be subject to conviction. Have you understood
21 that fully?

22 THE WITNESS: I understand, your Honour.

23 PRESIDING JUDGE COTTE: (Interpretation) The Court takes note that it has been
24 satisfied under Article 69(1) of the Statute and Rule 66 of the Rules of Procedure and
25 Evidence in paragraphs -- its paragraphs 1 and 3. With regards to a more practical matter

1 now, the Court would like to ask the witness to speak slowly, to speak loudly, and also
2 it is important, and the witness knows this, that the words can be well understood by
3 the interpreters and, as such, by the Court and by all the participants. We are in agreement
4 on this, I hope.

5 THE WITNESS: Of course, your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) In its decision 1603 of February, the
7 Court -- of 5 November, the Court mentioned its wish to start the beginning of the substantive
8 debate of the trial, that the person leading the investigations of the Office of the
9 Prosecutor appear with a view to making it possible to reveal the conditions under which
10 the investigation took place relating to the events which occurred in Bogoro on 24 February
11 2003, as well as the difficulties that the investigators have encountered, with a view
12 to making it possible to go into the different testimonies, Prosecution testimonies,
13 and making it possible to describe the methods that were used to also investigate exonerating
14 evidence under the Statute, as well as the review procedure for evidence which was taken
15 during the investigation with a view to identifying what evidence was potentially
16 exonerating, with a view, also, to making it possible to provide any other information
17 that the witness who is leading the investigations would consider useful for the proper
18 information of the Court and the participants before it starts to examine other witnesses.

19 Now, the witness has, therefore, an hour as envisaged to be able to present,
20 as the witness so wishes, the conditions under which this investigation took place, the
21 difficulties that were encountered, the satisfaction, perhaps, that there was as well.
22 So, in short, to give the Court and the participants the possibility to really understand,
23 to really fully seize the way in which the investigations took place which have currently
24 led to a trial of Mathieu Ngudjolo and Germain Katanga. It's not just about having some
25 aspects, but really understanding the methods, the way in which the work was carried

1 out. It is extremely important for the Court at the start of its very existence - its
2 very existence - important for a Court when it tries a particular case, which is our
3 case today.

4 So, you, therefore, have the floor. The Chamber will also provide, allow some
5 time for questions which might be somewhat longer than it mentioned in the decision of
6 5 November 2009. As this decision indicated, the Prosecutor, if he so wishes, and the
7 counsel of the Defence teams can also put questions to you in a time frame of 30 minutes.
8 And of course, if the legal representatives of victims also wish to ask certain questions
9 or to obtain clarifications from the witness, then they can make a request to the Chamber,
10 who will decide on the matter.

11 The witness now has the floor to provide general overview of her testimony.
12 We are now listening to you.

13 THE WITNESS: Thank you very much, your Honour. My objective is to comply with
14 this order to give an overview of the evidence collection procedures in this investigation.
15 I will attempt to give as much information as possible in the course of a public session,
16 but should any of the questions in particular go into sensitive issues in relation to
17 witness protection or details of OTP operations on the field or specific issues related
18 to our cooperation partners, then I will request permission from your Honours to use
19 the possibility of a closed session.

20 In preparing my presentation, I have consulted with my colleagues in the OTP,
21 in particular, my colleagues in the so-called joint team, as well as other staff. I will
22 structure my presentation into three parts. Firstly, I will talk about the conditions
23 under which the investigation was conducted and the specific challenges and difficulties
24 that the Prosecution faced. I will secondly go into the modalities, how statements are
25 taken in the Office of the Prosecutor. And finally, I will discuss the identification

1 and the investigation and review of potentially exonerating evidence.

2 I will now start with the conditions under which this investigation was conducted.
3 This investigation started approximately in May 2006. That is when the so-called joint
4 team was put together. The joint team is a concept in which the OTP conducts its
5 investigations. It means that investigators, prosecutors and cooperation staff, we all
6 work together from the very beginning of an investigation.

7 The leadership of the joint team is comprised of the investigation team leader,
8 a senior trial lawyer and an international cooperation adviser. I will slow down.

9 Decisions in the joint team are taken jointly.

10 Now, the majority of the evidence that was collected in the course of this
11 investigation was done by the investigation staff, with assistance of Prosecution staff
12 on certain missions. This investigation has also involved a constant monitoring of the
13 security situation in the Eastern DRC, in the operational areas where we work. This has
14 meant constructing constant analyses of the security situation and their impact on our
15 operations.

16 We have created guidelines and operational instructions for the field work.
17 We have also had, and still have, operational field staff in the DRC. These are OTP staff
18 members who assist us in conducting missions, especially the logistical parts, as well
19 as witness management. We also have received support from the United Nations and its
20 peacekeeping component, mainly in the logistical side of the missions.

21 I will now get into the specific challenges that we have faced and I will group
22 them in four thematic groupings. The first component --

23 PRESIDING JUDGE COTTE: (Interpretation) Take your time. Take your time. You
24 are speaking quickly, and we want to really properly understand everything you are saying,
25 so don't be afraid to speak slowly. The Court thanks you.

1 THE WITNESS: Thank you. I will bear that in mind.

2 I will first discuss the security situation and witness protection issues which
3 have been challenging in the course of this investigation. Throughout the course of this
4 investigation, there has been a constant volatility in the security situation in Eastern
5 DRC. This has had an effect on our missions, the access to the areas where we have wanted
6 to operate, and it has had an impact on witness management and finding witnesses.

7 A major source for --

8 MR HOOPER: Sorry to interrupt, but I understand the public gallery are not
9 receiving this evidence.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.

11 Madam Courtroom Officer.

12 JUDGE DIARRA: (Interpretation) Ma'am, you are being translated into French
13 for the Francophones, and we are taking note of everything you say. If you look at the
14 monitor in front of you, you will have an idea of the speed at which you can speak. Thank
15 you.

16 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks Mr Hooper for his
17 remarks. We will suspend for five minutes so that the technical staff can fix the problem
18 in the public galleries, because this is, indeed, a public or open session. The Court
19 apologises to the witness. It is never pleasant to be interrupted.

20 All the participants know that technical problems will crop up, and it's all
21 part of this Court being a young one, and I think the participants also realise that
22 our technicians do all they can to simplify our work.

23 (Pause in proceedings)

24 PRESIDING JUDGE COTTE: (Interpretation) Apparently, the public can now hear
25 what's being said in the courtroom. I see people from the public galleries waving to

1 indicate that they can hear. Once again, the witness has the floor.

2 THE WITNESS: I will start again from the security effects of security situation
3 on our missions. Like I mentioned, the security situation has affected the conduct of
4 missions, the access to certain areas where we would like to operate, as well as simply
5 finding witnesses and managing them after interviews.

6 A large part of this insecurity is due to the presence of active militia groups
7 still in the operational areas. Our witnesses have also been subjected to clear threats
8 in the course of this investigation. On the one hand, the feeling of threat that a witness
9 has is subjective. A witness or a source can feel that he or she will be treated as a
10 traitor in his or her own community, and they can fear reprisals. But, on the other hand,
11 some of the threats have been very real. They have been objective. There has been clear
12 intimidation of our witnesses on the field and there has been a foreseeable risk of also
13 physical harm.

14 Witnesses also reside in areas where there are still active militias, and some
15 of them still have affiliations to the FNI/FRPI. Witnesses who have decided to move away
16 from Eastern DRC, even they have felt the presence of former militias and felt intimidated
17 of their presence, mainly because of their integration into the national army.

18 Security measures that are available to our witnesses are limited. The OTP
19 simply is limited in its ability to protect witnesses. Despite all the best practices
20 that we employ in all dealings with our witnesses and despite the long discussions that
21 we have with witnesses in providing them with information and advice on how to stay safe
22 and to protect themselves, this is quite simply often not enough.

23 In addition to witnesses, also the OTP staff has faced threats on the field.
24 The OTP works for a large part in a conflict area, which has its dangers. However, there
25 are also other risks and threats present on the field. Some of them are health risks.

1 Missions to the field, they have been cancelled or they have been aborted while already
2 on the field because of health risks including malaria, but even cholera or even ebola
3 in certain operational areas where the missions have been operating.

4 OTP investigators are also relatively identifiable on the field. The OTP does
5 not conduct secret missions to the field and, despite us trying to keep a low profile
6 on the field, it is still very likely that we are identified and this can be detrimental
7 to our witnesses.

8 I will now get into the second major theme of challenges that we have faced,
9 which is logistical issues on the field. OTP operates in a conflict area, to a large
10 extent. This means that existing infrastructure is limited, or lacking, and it also means
11 that records like government archives or other public information just simply is not
12 readily available.

13 There is also a lack or a limited amount of safe and suitable interview locations.
14 The OTP tries to find interview locations that suit the security profile of the witness.
15 In the small communities that we work, this is always not possible. They are not in plenty.
16 There is also a limited amount of accommodation available for witnesses when they come
17 and meet with us. And, finally, the operational areas where we have worked, they are
18 simply very far from The Hague. This has always and will have a certain delay on all
19 activities.

20 A third major challenge or theme of challenges for us has been witness management.
21 We are very much geographically distant from our witnesses. This has a clear effect on
22 the regularity of the contact that we have with witnesses. Some witnesses simply reside
23 in rural areas where access is very difficult to establish, some witnesses have gone
24 without access to the OTP for long times and some have even been cut off completely.

25 Finally, a fourth major area in the stream of challenges the OTP has faced has

1 been interviewing vulnerable witnesses. Victims of crimes are the heart of this case
2 and, despite the fact that the OTP tries to take all possible precautionary measures
3 to provide assistance for victims who might have severe trauma about what they have
4 experienced, there is always the possibility of re-traumatisation through the interview
5 process. This often requires follow-up counselling, which is not readily available.

6 Victims of sexual violence are a case in point. These kinds of victims, they
7 often not only fear being branded in their own societies, but they also fear retaliation
8 from their perpetrators or groups close to them. In this type of environment, it has
9 been enormously challenging to find victims who have been willing to speak to a prosecutorial
10 office. The victims in this case who eventually have decided to speak to us and to testify
11 in this trial, they clearly need to be commended for their courage to do so.

12 This brings me to the second part of my presentation, which is or deals with
13 the modalities of statement taking. The OTP aims at taking its statements in two phases.
14 The first part is referred to as the screening interview. This is a short meeting that
15 the OTP has with the witness mainly for preparatory purposes. In the course of this screening
16 interview, or screening meeting, we collect only a limited amount of facts to be able
17 to know or to make a decision as to whether the person has information that could be
18 of use for the investigation. We also try and test the reliability of the person in this
19 first meeting; to the extent possible, of course.

20 In this meeting we collect information which, first of all, relates to the security
21 situation of the individual. Our aim is to create a security profile of the person to
22 be able to understand the specifics of the situation of the witness should there be a
23 security event that would affect the person. We also try and gauge whether the individual
24 might have committed a crime under the Statute. This is because it also affects the
25 preparation and the logistics required for a full interview.

1 We also assess whether the person should require a meeting with a psychologist
2 before a full interview, or whether there is a need to have the witness go through a
3 so-called psychosocial assessment before a full interview. We look also into practical
4 matters, like whether a support person would be required for an interview, if the witness
5 would have any specific preferences over the gender of the investigator and also other
6 practical matters like possible interview locations.

7 In short, the screening interview really is a short meeting with a potential
8 witness which has a preparatory function. Once the decision is made to fully interview
9 the person, a team is put together and the team will do the substantive preparation for
10 the full interview which happens at another point in time.

11 The full interview usually takes place on a different mission, or a different
12 point in time. If the person is a victim of crime, the very first thing that takes place
13 is the so-called psychosocial assessment. This is a meeting with the psychologist that
14 travels with the investigators to the field and has a meeting with the person to assess
15 whether the person could go through a full interview. If in the assessment of the
16 psychologist this is possible, then only will the investigators continue with the interview
17 session.

18 Before we go into any substantive questioning, there are a set of procedural
19 issues that we deal with the witness that we explain in full. If the assessment is that
20 the person should be treated under Article 55(2), these rights are given to the person
21 in the very beginning. In this case the interview is also audio or video recorded, unless
22 the person objects to the audio or video in which case we do a written statement.

23 All witnesses are also explained what the Court is and what is the reason for
24 the meeting with the investigators. We talk about what it means to be a witness and what
25 is the process of giving a witness statement. We explain the voluntariness of the whole

1 process. If the victim -- if the witness is a victim of crime, then we also explain what
2 it means under the Statute. We, however, do not hand over any forms or assist in filling
3 in any forms. That is not our role.

4 In addition to explaining what it means to be a witness and what the process
5 of the statement taking is, we make sure that the witness understands also what disclosure
6 means; that what does it mean that his or her identity will be known at some point. We
7 also explain anything -- any procedural issues related to Article 93, or the possibility
8 that the Court might decide to transmit the statement to a State Party.

9 The aim of explaining all these procedural rights to the witness in full is
10 to assist the person to make an informed decision. This is also why we discuss in length
11 the security of the person before going into any substantive questioning. We want to
12 make sure that the person clearly understands what he or she is getting into. It has
13 also happened that, after being explained the procedures and the possible protective
14 measures, that the witness - or the potential witness - has in fact declined from going
15 any further in the questioning.

16 Questioning of a witness happens through the assistance of an interview outline.
17 This is part of the preparation that the investigators have done for the interview session,
18 and it is meant as a guide for the investigators in going through all the relevant areas
19 of the case hypotheses that they want to speak to with the witness.

20 The outline is not an exhaustive list of questions. It is a guide and, quite
21 often, there are other themes that spring out from it as a result of that questioning.
22 This is really the whole objective of the questioning process. We try, or we aim, at
23 creating an environment where the witness feels that he or she can tell the truth.

24 We also question regularly the origin of the information that the witness gives
25 to us. We question, or we ask questions like, "How do you know? How have you learnt

1 this? Why are you saying this?" This is recorded to the best of our ability through
2 the witness statements. This means that we might also record hearsay information, provided
3 that it is clearly marked as being such.

4 Information that the witness gives is recorded in a witness statement template.
5 This is an electronic document that the other investigator works upon while the other
6 investigator is doing the questioning, so we aim at producing an electronic version of
7 the witness statement from the very beginning.

8 The language that is used in the witness statement is either one of the official
9 working languages of the Court, but the terminology and the words used in that statement
10 try to follow as clearly as possible the original words of the witness and the original
11 expressions used by the person. This is sometimes very difficult, especially because
12 quite often we work through interpreters. Interpreters who are official interpreters
13 for the OTP are instructed also to use language that is as close to the way in which
14 the witness is speaking. The information in the witness statement, while it is being
15 recorded, is then grouped into thematic components for easy understanding and fluency
16 in the content of the statement. This does not mean changing the facts that the witness
17 is giving, it is to make the statement flow in a way that it is easy to understand.

18 Any documents that we might show to the witness are annexed to the witness statement.
19 They are also referenced in the body of the text. Witnesses sometimes give us material
20 in the course of an interview. This can range from different kinds of documents, to sketches
21 and drawings. All these documents and this material is referenced in the witness statement
22 and annexed to the statement.

23 To the extent possible we try and collect original documents, and we try to
24 establish the chain of custody of those documents; the origin where they came from; the
25 relevance of any material that the witness offers us is also first assessed before accepting

1 them.

2 Once the witness statement is finished, all information is in there and all
3 the questioning has been done, it is read back to the witness. This means that the statement
4 is read through line-by-line to the witness to check for the accuracy of the information.
5 The witness can make any changes or corrections at this part, but the main objective,
6 again, is to produce a product that the witness, who is the owner of the information,
7 is happy with the content.

8 Once the read-back has been finished, the statement is printed out and it is
9 signed. All persons present in the room during the interview session sign the document
10 and they initial all pages. To the extent possible, the OTP aims to finalise its statements
11 in one interview session that can take place over several days. This is always not possible
12 because of logistical considerations, because of sudden security issues, but the aim
13 is to bring back a signed witness statement.

14 Once the interview team is back in the headquarters, the statement is registered
15 into our Ringtail system. After that, the team discusses the content of the statement
16 with the joint team and the information is processed into internal working product of
17 the office.

18 The witness is also monitored after the interview session. This is done usually
19 by our field staff who see to it for several weeks after the interview that the interview
20 session has not created any security risks for the witness.

21 This brings me to the third part of my presentation, which deals with the
22 identification, the investigation and review --

23 PRESIDING JUDGE COTTE: (Interpretation) The Court simply wanted to tell the
24 witness that if you wish to stop for a moment and take a drink of water, well, you have
25 understood; that is before the presentation of part 3. That is, if you wish to take the

1 time to catch your breath, that is possible. And then you resume whenever you wish.

2 THE WITNESS: Thank you. I will get into the third part of my presentation now.
3 I will speak about three specific areas in the -- in relation to the potentially exonerating
4 evidence. The first one is identification of potentially exonerating themes; the second
5 one is the investigation into such themes and facts; and the third one is the review
6 process of exonerating evidence.

7 On identification: The first point in time when it is possible for the OTP
8 to identify potentially exonerating themes is when there is a first provisional case
9 hypothesis. This is usually at the time when the joint team is put together and tasked
10 to investigate the crimes in a certain area. The provisional case hypothesis provides
11 the first entry point into the critical thinking as to what could be potentially exonerating
12 in this investigation. It means looking at the elements in that hypothesis which at that
13 point can be very vague, but it allows analytical thinking as to what could be potentially
14 exonerating against that hypothesis.

15 The office also looks at collected information and evidence in its possession
16 and tries to verify its hypothesis and the potential themes of exoneration. It also looks
17 in the course of the investigation at any statements the Defence might make in trying
18 to identify these themes.

19 In sum, the identification of these themes, it is a proactive approach. It
20 is not a process where we simply follow up something. We try and aim to critically look
21 at the evidence that we collect, and our case hypothesis to try and identify what could
22 be potentially exonerating and what we need to investigate.

23 This leads me to the investigation of such themes. Investigation into the
24 potentially exonerating facts and themes is an inseparable part of the rest of the
25 investigation process. The office does not employ specific investigators to do this or

1 nor does it conduct this investigation at a certain point in time. It is done at the
2 same time as with all the rest of the investigative activities in an investigation.

3 It is also a continuous process. We are under the obligation to investigate
4 potentially exonerating evidence even today. There are several ways that we conduct this
5 investigation. The main point to understand is that the potentially exonerating themes,
6 facts, they are incorporated into all investigative activity. This refers to the
7 inseparability of the investigation into exonerating themes.

8 We discussed the themes of exoneration in the preparation of all our activities.
9 We make sure it is part of the execution of all our activities, mainly and most visibly
10 in the preparation for witness interviews and interview outlines. We also discuss them
11 in the debriefings of these missions and witness interviews, and we make sure that when
12 processing the information the potentially exonerating facts are taken into consideration.

13 We might also employ our analysts to look into specific themes of exoneration
14 and give us advice on how to investigate and where we should be looking for. We question
15 the credibility of information that we receive and we try and corroborate it with multiple
16 sources. We test the reliability of the sources that we use, and we don't take information
17 for granted. We check the origin to the extent possible we can to make sure we understand
18 the nature of it.

19 This brings me to the final part, which is that review of potentially exonerating
20 evidence. Review of all evidence in the possession of the OTP has been done by the OTP
21 staff and through the use of the Ringtail system. This has meant, first of all, that
22 the OTP has put quite some effort in creating a consistent methodology and the creation
23 of guidelines and instructions for people who are doing the review.

24 These guidelines have dealt both with technical as well as substantive issues.
25 They have dealt with simply the use of Ringtail and how to attach metadata and other

1 more technical issues, but also they have gone into the substantive matters of ensuring
2 that all staff involved in the review process understand what the potentially exonerating
3 themes have been in the investigation and how they should be marked as such.

4 The review of evidence has done -- has been done in a few steps. Firstly, the
5 evidence that was collected in the course of this investigation, which has its own collection
6 within situation DRC, that collection was reviewed in full, individually one-by-one.
7 Secondly, the collection that has had a big impact on this case has been the Lubanga
8 collection. This collection was reviewed in a series of steps. Firstly, a set of key
9 words was put together to conduct searches in this collection. These key words were drafted
10 by our analysts jointly with the team, as well as with the advice of our expert unit
11 in knowledge management.

12 The documents in the Lubanga collection that were responsive to these key words
13 were then reviewed individually. The Lubanga collection also includes a significant amount
14 of material that is not responsive to key words. This includes material like photographs,
15 videos, handwritten material. All these so-called unsearchable documents were reviewed
16 in full individually.

17 And finally, all the witness statements that were collected in the course of
18 that Lubanga investigation were reviewed individually.

19 The review in the Ringtail system of all related material to this case was done
20 with the assistance of metadata. Now, this is information that is attached in the database
21 to each single piece of evidence. The metadata has certain categories; there are different
22 types of metadata that was attached and one part, one category in this metadata, dealt
23 with potentially exonerating themes. Eventually, the OTP staff reviewed for this case
24 over 16,000 pieces of evidence. This is over 85,000 pages. All this evidence, all these
25 pieces of individual pieces of evidence, will have markings in their metadata regarding

1 the presence, or not, of potentially exonerating facts and what they are.

2 This brings me to the end of my presentation.

3 PRESIDING JUDGE COTTE: (Interpretation) Please excuse me. I thought
4 that -- "this takes me to the end of my presentation," and I thought it was a clue that
5 you were going to announce a conclusion, whereas, in fact, you were saying that you had,
6 in fact, concluded. So, that is the situation. Okay.

7 The Court would like to thank the witness. It would also like to ask a certain
8 number of questions to the witness which are of a very different nature. Some of them
9 go into the first part of the presentation of the witness, while others concern the facts
10 more directly related to this case, and the third concerns the investigative methods.

11 So, I think we still have some time before the first break in the hearing, so
12 we therefore are going to ask some questions related to the conditions and the difficulties
13 of the investigation. So, some of these matters might -- you might think that they speak
14 for themselves, some of these questions, but they might seem obvious to you but, again,
15 the word "obvious" is maybe different in English, but "to evident" in French. But anyway,
16 these things are important to us, they are quite interesting to us, and perhaps the Defence
17 counsel or legal victims -- legal representatives of victims also find them interesting.

18 Anyway, could you tell us if the investigators who work with you received specific
19 training to investigate in the political and social context of the DRC?

20 THE WITNESS: Yes. We aim at giving regular training to our investigators
21 regarding the cultural and political aspects of these situations where we work.

22 PRESIDING JUDGE COTTE: (Interpretation) I guessed, in listening to what you
23 said relating to the selection of the screening and then the selection for an examination,
24 but I just wanted to have this point made precise and then just to, for further precision,
25 what documentary sources or documents has your investigative team used to prepare and

1 to carry out its field investigation? Has it used NGO reports? Has it used academic
2 articles? Has it used, for example, analysis perhaps covered in the general press, or
3 in the specialised press? International press? Congolese press? Could you give us some
4 clarifications in this regard and also with regard to the contextual environment in which
5 your investigators have been working?

6 THE WITNESS: Quite often, the information that we have from potential witnesses
7 is very scant. We try and collect as much information in advance before the screening
8 meeting takes place, and this could include things like -- or sources like NGO reports,
9 academic reports, media reports, but also information from other witnesses. But
10 unfortunately, quite often before we meet a witness, we don't necessarily have a clear
11 understanding as to what the person's base of knowledge eventually is. In commenting
12 on the contextual environment, these are the mentioned -- the mentioned sources are some
13 of the main -- main documents that we look at when trying to understand the contextual
14 environment in where we work.

15 We also might call in experts to give us briefings or lectures of the context
16 in which we operate.

17 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you.

18 A question of a totally different kind now. During your investigations, have
19 you had the opportunity to question the witch doctors, so-called *féticheur* who are mentioned
20 by the witnesses? It seems important for the Court to have clarification in this regard.

21 THE WITNESS: No, your Honour, we have not interviewed the so-called witch doctors
22 or the *féticheurs* which have been mentioned in the context of this investigation. We
23 have, however, interviewed sources who have been knowledgeable about the role of these
24 individuals in the communities.

25 PRESIDING JUDGE COTTE: (Interpretation) Could you give a clarification to the

1 Court as to why you have not considered it necessary to question these witch doctors,
 2 to the extent that a certain number of witnesses do make reference to these witch doctors?
 3 And that takes us back to the previous question, that there are, certainly in the context
 4 of the DRC and in this region in particular, there is a particular role that is played
 5 by these witch doctors or *féticheurs*.

6 THE WITNESS: In light of the evidence that we collected from various sources
 7 and the various themes that we explored with these witnesses in relation to this aspect
 8 of the *féticheurs*, we did not see that as essential in the course of this investigation
 9 to seek out these persons and interview them specifically. Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) The Court reminds you that we do not
 11 in any way wish to put the witness in a difficult spot. We are just trying to get the
 12 most information possible about the ways that the investigations are conducted and the
 13 context that the investigators dealt with, a context that indirectly is the context that
 14 we must be familiar with to really properly understand all elements of the case.

15 If the witness doesn't mind, we will now move to a series of questions that
 16 are much more specific to the facts, and perhaps you could provide that additional information
 17 we are looking for.

18 The first question is as follows: When did you first have access to the crime
 19 scene; in other words, the village of Bogoro or the locality of Bogoro?

20 THE WITNESS: If I remember correctly, and from the documentation that has been
 21 made available to me from the time before I came to this case, I believe that was at
 22 the beginning around February/March of 2007. That is when the first so-called
 23 reconnaissance mission was conducted to the village of Bogoro.

24 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you. Another
 25 question, a specific one: When we read various exhibits for this case, and when we read

1 the decision of Confirmation of Charges, mention is made of approximately 200 victims,
2 people who were murdered or willfully killed. How did you arrive at that figure of 200
3 victims, approximately 200 victims? Did you do -- did you find bodies? Did you examine
4 the site of killings?

5 THE WITNESS: The numbers that we are giving, they are based on information
6 that are given by our witnesses who were present at the site during or soon after the
7 attack and who were involved in counting the civilian casualties of the attack. The numbers,
8 of course, are very vague. We do not have access to exact figures. We did not count
9 any bodies or we were not present at the time when the attack happened. We are -- if
10 I may continue, we are also basing it on external information done by different organisations
11 that were present soon after. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Judge Van den Wyngaert.

13 JUDGE VAN DEN WYNGAERT: (Microphone not activated) ... distinguish between
14 the civilian or non-civilian nature of the victims?

15 THE WITNESS: I am afraid I didn't hear the full question.

16 JUDGE VAN DEN WYNGAERT: (Interpretation) Well, the 200 victims allegedly are
17 bodies of civilians. Could you tell us more about how this conclusion was reached, on
18 what factual basis?

19 THE WITNESS: Yes. The numbers are collected from civilian individuals, also
20 in or from the village itself. So, we have used witness sources who were able to make
21 that distinction. Of course, we have not been making those lists, we are relying on
22 information that is given to us by people who were civilians themselves and could distinguish
23 civilians from the fighters present. Thank you.

24 JUDGE VAN DEN WYNGAERT: But there were also casualties amongst the fighters,
25 or non-civilian victims?

1 THE WITNESS: Yes. Absolutely.

2 JUDGE VAN DEN WYNGAERT: Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Another question before we suspend.
4 When you began your investigation, were you able, did you try to determine on a
5 victim-by-victim basis how each victim was killed? More specifically, did you try to
6 find out and were you able to determine whether the victims had been, for the most part,
7 shot, whether their skulls had been bashed in, whether they had been stabbed with machetes,
8 what tools were used to kill them? This is the specific information that the Court would
9 like to hear from you.

10 THE WITNESS: Yes. This is something that was explored in detail with our crime
11 base or eyewitnesses to the crimes. It was discussed in length with people who had seen
12 the bodies after the attack and who participated in the burying of the bodies in the
13 days following the attack. All these questions were explored about the possible mode
14 of death in terms of whether there had been the use of firearms or machetes and what
15 types of wounds the dead had on their bodies, to the extent, of course, that the
16 survival -- survivors could. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) The Court will not ask any more
18 questions for the time being because we have to suspend at 11.00, and it is nearly 11.00
19 a.m. Thus, the hearing suspends and we will resume at 11.30 a.m. The Court thanks the
20 witness. And thus, this hearing is now suspended.

21 Madam Courtroom Officer, before the witness leaves the courtroom, could you
22 please order private session? The Court thanks you.

23 (Closed session at 10.59 a.m.)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 11.33 a.m.)

19 THE COURT OFFICER: We are in open session.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer. We
21 are back in public session and we can proceed with our work.

22 The Court told the witness that the series of questions being put to her related
23 to the facts. Now, here is the next question: Did you try -- and if you did try, were
24 you able to establish the identities of the victims? If you did not try and if you were
25 not able to do so, what are the reasons why you did not try and what are the reasons

1 why you were not able to identify those victims? Because it is usually crucial to have
2 identities, whether it is the victims of murders or homicide and, later on, victims of
3 rape, sexual slavery and destruction of property.

4 Did you understand my question, because I am quite aware of the efforts made
5 by the interpreters, but the Court wishes to be sure that each question is well understood
6 by the witness.

7 THE WITNESS: Yes, I have, your Honour. I will break it down into a few parts.
8 The investigation did not attempt to identify the dead who were -- who died in the attack
9 in Bogoro. We did not match them forensically to, for example, existing relatives. The
10 main reason for this was that, by the time we had access to the crime scene, it was simply
11 a long time from the commission of the crime.

12 With regards to other victims, like victims of sexual violence, in that case
13 of course the witnesses and the people we have spoken to, yes, of course, we have identified
14 them to the best of our abilities. Yes. Regarding other victims, I believe the question
15 was relating to destruction of property. The witnesses whom we have spoken to who are
16 from the village of Bogoro, yes, of course, we have identified those who have lost property
17 and been subjected to loss of their property and livelihood, yes.

18 Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Madam Judge Diarra, you want to ask
20 a question.

21 JUDGE DIARRA: (Interpretation) Madam Witness, in your presentation you talked
22 about relevant issues. You discussed those so-called relevant issues with the witnesses.
23 I am a bit confused by that word "relevant." Relevant to what you were expecting as the
24 result or outcome of your investigation, or how was it relevant? Can you give me examples
25 of non-relevant issues raised by the witnesses that you were able to set aside, that

1 would give me an idea of what you really mean by relevant? Thank you. That is if you
2 fully understood my question.

3 THE WITNESS: Yes, your Honour. I apologise if the word "relevant" caused
4 confusion. What I was referring to was that, in the course of an interview session, the
5 questions that we ask witnesses, they relate to our case hypothesis so, broadly, the
6 themes that are the subject of this investigation, we go through them, whether they are
7 incriminatory or exonerating. The aim is really to bring the truth to the fore and to
8 encourage the witness to explore the facts and the knowledge that he or she knows to
9 the best extent possible, but it doesn't mean that we would go through some preconceived
10 plan of what we want to hear. It is about exploring everything that is -- relates to
11 the crimes that we are investigating. Thank you.

12 JUDGE DIARRA: (Interpretation) Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Now, regarding the identification of
14 the victims, the Court has understood that the lack of identification or the difficulties
15 with identification are due to the late arrival, mostly that is the late arrival to the
16 site of the crime.

17 Now, still regarding the facts, we have one last question for you on this aspect:
18 How did the investigation team ascertain that the people you considered as victims were
19 indeed victims of the acts perpetrated on 24 February 2003? How were you able to determine
20 that the people you listed as victims were actually victims of those events of 24 February
21 2003? I repeated that question to enable you to fully understand it.

22 THE WITNESS: When we spoke to victims of crimes that we believed were from
23 the village of Bogoro, we asked a series of questions to ascertain that it actually was
24 the attack that we were investigating. There has been previous attacks on the village
25 and this is something that the investigators had to acutely keep in mind and to make

1 sure that the witness was in fact talking about the attack under investigation and not
2 some previous attack or a completely different village.

3 So, a series of questions was posed to the witnesses in this regard and this
4 information was also corroborated, to the extent possible, with other sources who might,
5 for example, have known the witness. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Let us revisit something
7 that you said a short while ago, and that the Court listened to with keen interest, and
8 this concerns the screening and then the decision to proceed to the stage of taking the
9 statement itself. Would it be possible for you to tell us how many witnesses effectively
10 gave a full statement, that is in relation to the witnesses originally approached to
11 participate? You have told us that after the psychosocial procedures implemented some
12 witnesses would decide not to give their statements.

13 Now, is it possible for you to give us a proportional idea; that is were there
14 many potential witnesses who finally did not wish to give you statements?

15 THE WITNESS: In order to give exact numbers which are at our disposal, I would
16 have to go back and check them and get back to you, but if I am looking at all the sources
17 that we have met in the course of this investigation, I would say that we would have
18 a mission with probably five, six screenings and from those we would -- really, it depends
19 a lot on the quality and the willingness of the people to be interviewed, so it is very
20 difficult to give a rough estimate as to how many screenings versus full interviews,
21 but certainly it has happened that the recommendation of the psychologist has been not
22 to continue.

23 I can remember from the off the top of my head at least one case recently where
24 this has happened with a very young child, but also witnesses have declined to speak
25 to us after having heard the full explanations of the procedural issues related to giving

1 witness testimony. That certainly has happened, and very recently, and in several occasions.
2 Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) We are the ones to thank you. Now,
4 let us move on to some questions in the area of the investigation methodology. In the
5 third part of your presentation, you explained that at the time -- in fact, what I am
6 saying is that the Court, when it comes to this trial stage, the Court pays attention
7 to Article 54(4)(a) of the Statute which is crucial and which compels the OTP to certain
8 obligations regarding incriminating or exculpatory evidence.

9 My question is in two parts: I am going to ask you slowly in two parts which
10 complement each other. For us to better understand as the leader of or, rather, head
11 of investigations, can you indicate to us what your precise position is in the organisation
12 chart of the Office of the Prosecutor so that we should better understand your position
13 and the margin of manoeuvre that you have when you are in the field and when, for example,
14 you have to take certain urgent decisions.

15 Now, the second part of my question is as follows: What is the relationship
16 between the head of investigations that you are and the Prosecution teams? What links
17 do you have; that is on a strictly operational level with the officer of jurisdiction
18 complementarity and cooperation? A short while ago you told us about joint teams and
19 the Court would like to understand how the members of that joint team, who come from
20 three different services of the Office of the Prosecutor, coordinate their efforts,
21 particularly given that when you are in the field you might have to take an urgent decision
22 to carry out investigations which might be incriminating or exculpatory, because those
23 two have to be done under Article 54(1)(a). The question was long, but the Court would
24 like to know did you understand us?

25 You have the floor.

1 THE WITNESS: Yes, thank you. I will start from the first part, which deals
2 with my organisational position in the Office of the Prosecutor. My role and my function
3 is investigations team leader, which means that I am the head of a group of investigators
4 assigned to this case.

5 The joint team consists, like I mentioned before, of staff from three different
6 divisions. This does not mean that we are subordinated to each other; we are working
7 equally side by side with each other the whole duration of this investigation.

8 What this means in practice when, for example, urgent decisions need to be taken
9 on the field is that we have a direct link to each other, that is the leadership of the
10 joint team. When missions are on the field we are, if you like, we are on the call to
11 be able to solve issues and problems that arise and which might be in the competence
12 of not me but, for example, the senior trial lawyer, or the cooperation adviser.

13 That is in short how the joint team works. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) So in other terms you have a wide room
15 for manoeuvre when you are in the field carrying out your investigations?

16 THE WITNESS: I don't have a sovereign responsibility or room to manoeuvre when
17 I am on the field. We need to coordinate with each other when activities happen. It
18 is -- what is important to understand, that all decisions are made jointly with the three
19 parts of the joint team. This is meant to ensure a coherent approach to the investigation
20 and also to anticipate any possible problems that might come up later on.

21 On a day-to-day level in the organisation of the work, it means that we all
22 have our certain competencies, but we coordinate what we do. We have regular meetings
23 with the whole joint team to understand what has been collected, what it means, and what
24 still needs to be done. Also from the potentially exonerating themes in that investigation,
25 it is a constant sharing of information between the three divisions. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Just before giving the floor to Judge
 2 Van den Wyngaert, just to better understand what's been said, the Court should understand
 3 that this concern of consultation within this joint team makes it possible for you, in
 4 a practically systematic way, to have consensual decisions or to arrive at consensual
 5 decisions or sometimes are there disagreements with regards to the way in reacting and,
 6 if there are disagreements, who ultimately decides what to do in such a case?

7 THE WITNESS: Yes, of course there are disagreements as well in the joint team,
 8 but that is also one of the objectives of the joint team to bring out the disagreements
 9 and the differences in view, as early on as possible, to avoid any escalation.

10 From an organisational point of view, should there be an insurmountable
 11 disagreement, the decision will go to our senior management who will decide. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank the
 13 witness. Judge Van den Wyngaert?

14 JUDGE VAN DEN WYNGAERT: Actually my question was of the same league as what
 15 the Presiding Judge has just asked you. Let me perhaps be more concrete. Has it happened
 16 or could it happen that one team would want to go and investigate a potentially exonerating
 17 witness, and that another team would have different views about that witness and the
 18 very fact of having a statement from that witness, would that occur in practice, or is
 19 this something that you don't have experienced?

20 THE WITNESS: Groups of investigators don't make such decisions on the field.
 21 The decisions on whom to interview, they need to be discussed with the leadership of
 22 the joint team. So, of course, the whole joint team and its members meet regularly to
 23 discuss the way forward and potential sources and in the course of that discussion there
 24 can be disagreements and differences in view but, ultimately, it is the joint team that
 25 decides whom to interview and which sources to exploit. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) So, the Court has understood that the
 2 concern - and this is a very legitimate concern that there is - is to come to consensus,
 3 but if this consensus isn't achieved where there is persistent disagreement, you indicate
 4 that the decision is taken by your hierarchical superiors. And who are those hierarchical
 5 superiors you are referring to in this regard?

6 THE WITNESS: This would -- our senior management refers to the Prosecutor and
 7 the heads of all the three divisions. They are the so-called executive committee. Thank
 8 you.

9 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks the witness. We are
 10 now going to go back, in a more precise way, to the investigations - exonerating
 11 investigations - without any error on my part, I hope, because the President of this
 12 Chamber sometimes has certain difficulties in orally taking the interpretation and visually
 13 looking at the transcript as well to be able to understand absolutely everything that
 14 you are saying to us. So, unless I have made an error in this case, the committee -- the
 15 joint team rather, defines the issues, the exonerating issues. What we would like to
 16 know is if these exonerating issues or topics are defined as such distinctly and what
 17 are these exonerating issues with regards to what you are going to investigate? Or, with
 18 regards to these exonerating issues, are they defined with regards to a reaction to an
 19 incriminating theme or a prosecution theme?

20 So, just as a scenario, is it done as an opposite to a prosecution issue or
 21 an incriminating issue? When you come to having an exonerating issue, is that done separately?
 22 When it comes to defining how you are going to make them or when you reflect on it, are
 23 they done totally separately or are they necessarily defined in opposition to an
 24 incriminating issue?

25 I see that you have understood. We are listening to you.

1 THE WITNESS: Yes, the definition of the themes of exoneration is that it is
2 a continual process where, on the one hand, we will look at the case hypothesis in the
3 investigation phase or the case -- potential case theory and, on the other hand, we will
4 look at the evidence that we collect and see if there are anything else that we should
5 be looking at critically from the point of view of exonerating facts. So, it is not a
6 process where we define a hypothesis and then, in opposition to that hypothesis, define
7 the themes. That is part of it in a way, but it is augmented and it is amended with the
8 evidence that comes in and is collected, so it is a continuous evaluation process, if
9 that explains how the themes are defined. Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) So if the exonerating issues or themes
11 are not defined once and for all at the start of the investigation but that evolves over
12 time and it can be changed in accordance with the developments in the case, and this
13 is something that is discussed within this joint team, this joint investigation team;
14 is that right?

15 So, just another question that I wanted to raise with regards to the exonerating
16 investigations. When an issue - an exonerating issue or theme of exoneration - is made
17 from the start, is there a development in the investigations? What is the degree of
18 investigation which leads to exoneration? Because you can define a theme, that is one
19 thing, but then how do you have investigations with regards to this theme? Do you -- are
20 you determined, are you as incisive in conducting your exoneration investigations as
21 you are in your incriminating investigations? And when you try and make concrete a theme
22 of exoneration and to bring it to life, to give it expression to manifest itself in the
23 proceedings, what are the positive, concrete acts that are taken and able to make this
24 concrete, to make concrete a theme of exoneration? How do you achieve that?

25 THE WITNESS: To break down your question into a few component parts, yes, the

1 themes of exoneration, they do evolve over time. They are not set in stone from the very
2 beginning. The very first hypothesis is just the starting point.

3 Regarding the investigation, like I mentioned before, the investigation into
4 these themes, it is -- in many respects, it is inseparable from the rest of the investigation.
5 For example, a witness interview, in a witness statement there might be a section which
6 deals specifically with certain exonerating themes, but most often the statements are
7 a flow of facts and themes that we are investigating which can be both: They can be
8 incriminating as well as exonerating. And also, sources usually, if not always, provide
9 both incriminating and exonerating information. It is difficult to make a clear distinction
10 that something is an exonerating investigation. But in terms of how we investigate, we
11 do -- for example, in the interview outlines that investigators provide, we incorporate
12 questions from the exonerating themes, in detail, into that interview outline to ensure
13 that all this information is elicited in an appropriate way. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you.
15 Just to make an additional clarification in this regard, perhaps because the Court myself
16 might not have sufficiently understood this, essentially -- is it essentially you, or
17 is it the joint team that analyses the results of your investigation in order to determine
18 what is incriminating and exonerating? You have said to us that everything evolves, it
19 develops, when you are in the field and that these developments happen, and when they
20 do systematically, do you go back to the joint team to analyse what is incriminating,
21 what is exonerating, and to decide if you are going to investigate further exonerating
22 evidence? Or do you have the possibility to take initiatives in this regard?

23 THE WITNESS: The decisions are made by the joint team. If there should be an
24 issue, for example, in the course of an interview on the field, we regularly -- or the
25 investigators regularly consult back to the headquarters should they need advice, and

1 in that situation it is either myself or the senior trial lawyer that will give that
2 advice, but the main issue is that the whole joint team leadership needs to understand
3 what has been collected and how does that impact on the investigation. Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) We would like to thank you.

5 JUDGE VAN DEN WYNGAERT: Follow up on that question and answer. If in an interview
6 with the witness you come across information about exonerating themes which would
7 potentially point in the directions of other witnesses that are not on your list yet,
8 would you then try and find these other witnesses to pursue these exonerating themes?
9 Or would you just restrict yourself to registering what this witness that you are now
10 interviewing is saying?

11 A second question which is a bit apart from this or a more general question,
12 could you give a more general description of the role of this team on cooperation? Because
13 this is something that I think is very different from what we have in national jurisdiction,
14 so just to inform the Court, could you tell us what exactly their contribution is to
15 your investigation effort? Thank you.

16 THE WITNESS: To answer your first question, yes, absolutely we do try and identify
17 and locate any new witnesses or sources which could provide new information or evidence
18 on potentially exonerating themes.

19 On the second question, the staff from the cooperation division, they are in
20 charge mainly when it comes to an investigation to deal with state parties. I will give
21 an example. If there are witnesses who are members or civil servants of a country, we
22 need to request for the permission to interview such individuals, so the cooperation
23 division would assist in making this happen. They would also liaise with international
24 organisations like the United Nations and try and discuss any possible restrictions there
25 might be on the documentation that we have received from such organisations. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) A question that you may find surprising,
 2 but we would like to ask it of you: Was it thought of that, once or twice -- was it thought
 3 that you would listen to a witness twice, once for incriminating material, and once you
 4 realised that he had exculpatory material, have you thought of having a second statement
 5 taken for exculpatory material? Was that ever thought of? Was that ever considered as
 6 a work method? While hearing a witness, that is supposed to be an incrimi -- a witness
 7 supposed to be providing incriminatory material, have you ever thought of this possibility
 8 of having a second session, taking a second statement for exculpatory material?

9 THE WITNESS: We have gone back to a few of our witnesses and conducted
 10 re-interviews and, in the course of the re-interviews, there has been questions specifically
 11 posed on the potentially exonerating issues that we want to understand better, but of
 12 course, like I mentioned before, it is difficult to divide witnesses into incriminating
 13 and exonerating information. In all interview sessions there will be both elements always
 14 present, or usually is. But, yes, we have gone back to witnesses to specifically check
 15 on information that we have received from elsewhere or we have realised that we need
 16 to understand it better. Yes, thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) A few moments ago you spoke of the
 18 role of the states. Within the framework of this particular case, we are not talking
 19 about purely theoretical assumptions. In this particular case were you hindered from,
 20 or obstructed from hearing a witness after a state intervening?

21 THE WITNESS: To my knowledge, no, that has not happened. Of course, there has
 22 been logical delays and practical issues, but, no, not to my knowledge.

23 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you. For the time
 24 being, we have two final questions for you. As the person responsible for investigations,
 25 do you have direct contact with any particular Defence team on your initiative or at

1 the initiative of one of the Defence teams? I will try to be more specific. Has the
 2 Defence had an opportunity or reason to ask you to do investigations on points that they
 3 thought were exculpatory material? Did they ever contact you and say, "Well, there may
 4 be something to look into here, because no doubt there are some exculpatory materials
 5 that concern us"? Have you had any such contacts and, if so, did you do the investigations
 6 that were requested, or desired, by those Defence teams? And that is still within the
 7 framework of 54(1)(a).

8 THE WITNESS: Personally, I have not had any contact of that kind with the Defence
 9 teams but we have published, or made clear, the potentially exonerating themes to both
 10 Defence teams, I believe around April last year, but we have not received any feedback
 11 on that. But, of course, if the Defence teams would have any concerns or would like to
 12 raise any issues with us, we would of course follow up on that. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) And just for the Court's information,
 14 in reality, you have not had any such contact?

15 MR MACDONALD: (Interpretation) On that point I must intervene, because I must
 16 refer the Chamber to a filing that was submitted to the Chamber. I don't have the exact
 17 reference number, but it was in 2008. In 2008, last year. This is 2009. Last year,
 18 April 2008, we not -- not before this Chamber; I am sorry, the PTC. In our filing 456 - and
 19 the exact date escapes me - we provided this Chamber -- rather, to your predecessors,
 20 the themes for which we were investigating both exculpatory and those items coming under
 21 77. Mr Ngudjolo was transferred to this Court in February 2008 and so, two months later,
 22 these themes were mentioned to the two teams, an express application was -- pardon me,
 23 an express request was made in the courtroom and we asked the Defence team to provide
 24 additional themes if we needed to look into our databases and provide any kind of information.
 25 Consequently, they were informed, your Honour, and once again I think you will recall

1 that, at the first status conference, we spoke again of this matter; and once again,
2 the same offer was made and the offer has *never been taken up.

3 PRESIDING JUDGE COTTE: (Interpretation) Well, there you have it. You wanted
4 to make that --

5 MR MACDONALD: (Interpretation) I apologise, but I will give one example.

6 PRESIDING JUDGE COTTE: (Interpretation) I would suggest that we finish with
7 our questioning of the witness, at least for the time being, and then you will have an
8 opportunity to ask your questions of this witness.

9 And the last question that the Court would like to ask is as follows. Could
10 the witness specify how the objectivity and the credibility of intermediaries are assessed,
11 the intermediaries that are used to conduct investigations, because the Court thinks
12 that in the field you have an obligation - and it's quite a normal thing - to have relay
13 people, so to speak, to have intermediaries that allow you to find exactly the right
14 person and identify a particular witness. Could you tell us how you assess the objectivity
15 and credibility of these intermediaries? I think it is an important question.

16 THE WITNESS: Thank you. We try and ascertain the reliability of intermediaries
17 that we use to the best possible extent that we can. For this, we use information that
18 we can gather about these individuals or we use other witnesses or other sources to corroborate
19 what that intermediary might represent. That is a background check that we do prior to
20 meeting with the individual.

21 Of course, like with all sources, the information can be sometimes very limited,
22 but when meeting for the first time with an intermediary, we don't immediately task them.
23 We try and have a meeting with the person to better understand his or her motives and
24 his background.

25 Also, something that we have been especially recently quite diligent with is

1 that we have -- before doing a proper tasking of the person, we have -- might have asked
2 him to do something quite simple which is not related to witnesses. So we test them before
3 we employ them in any activity that deals especially with our witnesses.

4 So we try and assess the reliability to the best of our ability, but of course
5 with the limitations that we have on the field in terms of distance -- or geographic
6 distance to the people and the limited amount of public archives or records where we
7 could go, this is sometimes difficult. And the process of assessing the reliability,
8 it should be a continuous process with all the tasking that we do. Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) We thank you. As far as I am concerned
10 and for the time being, I don't have any additional questions. Judge Diarra, would you
11 like to ask a question?

12 JUDGE DIARRA: (Interpretation) No, thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Judge Van den Wyngaert?

14 JUDGE VAN DEN WYNGAERT: (Interpretation) No, your Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) For the time being, the Court would
16 like to thank the witness for the witness -- the answers provided to a number of questions.
17 Some of the questions may have seemed obvious; others may have found them to be complex.
18 The Court would merely wish to remind parties that we have only one concern, which is
19 to better understand the conditions in which the investigations were conducted,
20 investigations that ultimately led to the presence of Mr Katanga and Mr Ngudjolo here
21 in the courtroom before us.

22 Now, I believe, sir, that we were going to allow you to go ahead with examination
23 of this witness. I think perhaps we should be attentive to one particular thing. Now,
24 it's not a matter of you providing legal arguments right now or asking the witness about
25 what she said or failed to say; it's rather more a question of giving you an opportunity

1 to provide -- to gain additional information regarding points that were touched upon
 2 or ask questions that the Court did not think of at all that would allow the witness
 3 to better bring out the activities that were part of the investigation, both of incriminating
 4 elements and exonerating elements.

5 MR MACDONALD: (Interpretation) Thank you, your Honour. Of course --

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, sir, for agreeing to the
 7 interruption. The Court would merely wish to remind all that in compliance with
 8 paragraph -- well, some paragraph, but actually in the decision of November regarding
 9 Rule 140, that questions asked at this particular moment must be neutral questions, but
 10 I am sure you are entirely aware of that, given your own professional experience. Pardon
 11 me for the interruption.

12 MR MACDONALD: (Interpretation) No. What I did want to mention, your Honour,
 13 is what you just pointed out. We share your concerns. And in light of the questions
 14 that I will be asking, well, these questions will be intended only to provide additional
 15 information for the benefit of the Chamber, and obviously to benefit our learned friends,
 16 both the legal representatives and the Defence teams. Indeed, we will be asking a number
 17 of open-ended questions. I am not here to try to get specific answers out of the witness
 18 by remote control.

19 QUESTIONED BY MR MACDONALD: (Interpretation)

20 Q. Now, to get back to the last point, ma'am, reference -- the Chamber made reference,
 21 and I interrupted and made reference to filing 458 and themes coming under Rule 77 or
 22 material that could be exonerating were disclosed to the Defence teams. And to follow
 23 up on this specific matter, when the Defence sends requests for information by email,
 24 do you receive a copy? Are you cc'd?

25 A. I am given a copy of that email; not necessarily directly from the Defence,

1 but through the joint team, yes.

2 Q. To your knowledge, when requests for specific information are made, how does
3 the OTP respond when there are specific requests for information, requests from the Defence
4 team sent by email?

5 A. The request is discussed in the joint team and, as a matter of process, then
6 usually the senior trial lawyer from the joint team would respond equally with email
7 to the Defence teams.

8 PRESIDING JUDGE COTTE: (Interpretation) I am interrupting you, sir, just to
9 ask you to respect our rule of the five-second pause, because the interpreters need that
10 time, or at least as -- often, I miss the beginning of your remarks, which is a problem
11 for everyone. So we must slow down, all of us. You now have the floor.

12 MR MACDONALD: (Interpretation) Thank you, your Honour. I think that during
13 the trial -- well, I have the impression that you may be reminding us of this rule, this
14 five-second rule, which of course is against our nature, all of us here in this courtroom.
15 I will return to the matter at hand and ask my question.

16 Q. In response to these requests from the Defence, requests for information having
17 to do with the evidence, how does the OTP respond to these requests, generally speaking?
18 We are not talking about specific cases but, generally speaking, how does the OTP respond?

19 A. Well, we take it up as our responsibility to answer the questions to the detail
20 that we can and, well, as a matter of process, then the answers are given either by email
21 or by telephone or whatever the medium is that is the best to use. Thank you.

22 Q. I would now like to turn -- well, go back to the beginning of your presentation.
23 When you talk about the conditions, the situation in Ituri, could you perhaps answer
24 a question that the Chamber asked when reference was made to the access to Bogoro the
25 first time. You said that was in February or perhaps March. I can confirm this point.

1 It is no secret. It was the end of February or the beginning of March 2007. I will reformulate
2 my question.

3 What steps had to be taken to actually get to Bogoro? Who had to be consulted,
4 and why? What was the safety situation at that time? If consultations were necessary,
5 why? I am asking several questions about the same matter, but it is with a view to providing
6 greater information to the Chamber. Why was it that -- why were those steps taken at
7 the end of February or the beginning of March 2007?

8 A. Like I mentioned before, throughout this investigation the security situation
9 around Bogoro has been very volatile. The OTP staff are under the United Nations security
10 protocols, which means that we do not have access to all the areas that we would like
11 to travel to. The roads and the access to Bogoro have been subject to these restrictions.
12 Sometimes the road is accessible, but there has been times when it has been cut off and
13 when -- and there have been times when specific convoys have been required in order to
14 move around in this area. It is not a simple logistical arrangement to reach the village.
15 It is time-consuming, also, because of the state or the quality of the roads in the region.
16 Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Do you have any further questions,
18 Mr Prosecutor?

19 MR MACDONALD: (Interpretation) One last point, Mr President.

20 Q. The Chamber -- well, in fact, I am asking my question whilst smiling, because
21 one may try to explain that grey notion that is the "joint team". You referred to that
22 and you specifically mentioned the joint team leadership that refers to the leaders of
23 that joint team. We also heard you mention the "joint team." Those were your actual
24 words in English.

25 To begin with, can you distinguish between the two? What is the precise meaning

1 of the first term and what is the meaning of the other?

2 I apologise, Mr President, because I stand up and then I sit down when the witness
3 is answering. I do not know what the Chamber prefers. Do I have to stay on my feet?

4 PRESIDING JUDGE COTTE: (Interpretation) You are giving us the opportunity to
5 clarify certain protocol issues. The Court feels that during our proceedings, it is
6 important for the participant taking the floor to stand up, and to stand up right up
7 until the end of his or her statement, but while the witness is answering, the Court
8 has no objection to the Prosecutor or to counsel sitting down as long as they stand up
9 again to ask the following question.

10 THE WITNESS: To answer the question, on the two terms of "joint team leadership"
11 and "joint team," the first one, the leadership, refers to the three individuals who
12 are from the different divisions and who represent the staff from their division who
13 are working on this investigation. So it would be the investigations team leader from
14 the investigations division, the senior trial lawyer from the Prosecution's division
15 and an international cooperation adviser from the cooperation division.

16 On the term of the "joint team," that refers to all the staff from the OTP who
17 have been assigned to work on this investigation. So, while the group of
18 investigation -- investigators who are part of my team is a smaller group, the joint
19 team is comprised of all the staff from all the three divisions. So, it is a larger team
20 that comes together and works on the investigation. Thank you.

21 MR MACDONALD: (Interpretation)

22 Q. Can you describe to this Chamber the process of the exchange of information
23 within the joint team itself? I am not talking about the leaders of the joint team but
24 the members. Can you explain to the Chamber how information is exchanged and the context
25 within which those exchanges take place, as well as the reasons why that procedure is

1 the way it is?

2 A. In practice, this joint team has been one big team despite the staff coming
3 from three divisions. Regarding the process of information exchange, there has been regular
4 meetings with the whole team on a weekly basis. We exchange information in our internal
5 email system with the whole joint team as opposed to simply within our own divisions.
6 It is -- although we are from different divisions, we are still one team who work together
7 for the benefit of this investigation and the exchange of information reflects this approach
8 that there are no artificial divisions, if you like, between the divisions. Of course
9 we all have our own competencies in what we do in the joint team, but it does not affect
10 the flow of information within the team. This is -- of course I can only speak to this
11 particular joint team where we work. Thank you.

12 Q. In the same vein and without being leading, the Chamber wanted to know whether
13 investigators could propose or suggest elements for the investigation within the team,
14 that is also about the relationship between the team leaders. How is this exchange of
15 information that could be proposed by the investigators seen by their respective bosses?

16 A. It is seen as extremely essential for the development of the case and the
17 investigation. Investigators are usually the individuals who are very intimately aware
18 of the facts that have been collected and they are usually in a very good position to
19 suggest new lines of inquiry or themes that are coming out from the collected evidence,
20 so it is very important to get those views from the investigators and this is one of
21 the reasons why the exchange of information among the whole joint team is so important.
22 Thank you.

23 MR MACDONALD: (Interpretation) One last question, Mr President, and I will
24 take my seat and either the legal representatives or my learned colleagues will take
25 the floor.

1 Q. The Chamber asked a question who in -- was the intermediary, the arbitrator,
2 in case of disagreements between members of the team or the leaders, the team leadership.
3 To your knowledge, how many cases of disagreement were there that the executive committee
4 had to arbitrate on?

5 A. I have to admit I cannot remember any such substantive disagreements within
6 this joint team that would have been taken up to the executive committee. At least now
7 off the top of my head nothing comes to mind. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness, and thank you
9 Mr Prosecutor for the questions that you asked the witness. It is now 12.45. Does any
10 one of the legal representatives of the victims wish to put any questions to the witness,
11 or have they been enlightened enough regarding the conditions in which their investigations,
12 both incriminating or exonerating, were carried out? You may take a moment to consult
13 amongst yourselves.

14 MR GILISSEN: (Interpretation) Thank you, Mr President. Mr President,
15 members of the Court, I will address myself to the Bench so that there should not be
16 any confusion. It is up to the Bench to accept or reject my question or even to ask me
17 to rephrase the question and this would make it possible for me not to ask open questions
18 or leading questions.

19 We have one difficulty. My -- Mr President, it is the eligibility -- the
20 legibility of the materials of the investigation because we are able to see what influenced
21 the investigations, so there is an understanding of the major moments. I do not know
22 whether at this stage which concerns the methodology or the practices of the investigations
23 this question is appropriate. Maybe the Chamber will come up with a more appropriate
24 formulation, that is to make it possible for the witness to better inform us about what
25 were the major stages of the investigation; what was their point of departure; how did

1 things develop to the point where they could come up with the information available to
2 all the parties right now, that is, during the course of the procedure? I hope I was
3 clear enough, Mr President, your Honours.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr Gilissen, you were clear, but your
5 question seems to be an observation, even though at the end it could have been the beginning
6 of a question which could be the following question: Madam Witness, when your work as
7 an investigator started, how did you define the major stages of what that investigation
8 had to be? Did you in fact define the various phases? In other words, what was the
9 methodology that you jointly decided on so as to come up with a clear and comprehensive
10 record at the pre-trial stage and then at the preparation stage? I don't know whether
11 I interpreted that question correctly. I will have to ask Mr Gilissen that. Mr Gilissen?

12 MR GILISSEN: (Interpretation) Yes, of course, Mr President.

13 PRESIDING JUDGE COTTE: (Interpretation) It may not have been the same. It
14 may not have been the case. Now, Madam Witness, are you in a position to answer?

15 THE WITNESS: I will certainly try. The investigation comes up regularly with
16 investigation plans which define the activities for the next coming months, three or
17 four months ahead, so the course of the investigation is punctuated with a regular review
18 of the activities as to what still needs to be done and what is in the works.

19 Of course, the overall timeline of the investigation is also determined by the
20 points in time when an arrest warrant is being sought, when that is received and when
21 the investigation starts evolving towards a confirmation hearing and then the time after
22 the confirmation hearing.

23 In essence, a large part of the investigation has been conducted before the
24 confirmation hearing, although of course there was investigative activity that took place
25 also after that point in time. I don't know if this answers the question, but I am happy

1 to add anything if counsel would like to. Thank you.

2 MR GILISSEN: (Interpretation) Still with the leave of the Court, given that
3 we have to respect all the procedures, at this point is it possible to tell us concretely
4 regarding the case file of Mr Katanga specifically, and of Mr Ngudjolo, what the witness
5 thinks were the landmarks, that is the major points, in the course of those investigations?

6 PRESIDING JUDGE COTTE: (Interpretation) The question is a bit general in nature,
7 but are you in a position to answer?

8 THE WITNESS: I will certainly try. The major landmarks are in this investigation,
9 or have been in this investigation, like I mentioned, determined by the legal proceedings.
10 When the investigation started around May 2006 that was the -- that is where the development
11 of the case began. This evolved and went through 2006 and 2007 towards the point where
12 we were able to put an application for an arrest warrant, so that is another clear milestone
13 in this investigation.

14 From that point onwards, it was the development to the confirmation hearing,
15 because at that point there was an understanding of what the case was and that once the
16 arrest warrants became public also meant that we would focus into information and evidence
17 with our witnesses without -- or with a clear focus saying that this is what we are looking
18 at, so it was a different -- well, not a different, but a slightly different approach
19 to the investigation after the arrest warrants.

20 And likely -- and likewise, the third sort of milestone in the investigation
21 was the confirmation hearing because it meant that by that time most of the investigative
22 activity was finalised, although of course there was activity that continued for various
23 reasons. That is a very general answer, but that is to explain the main milestones in
24 the investigation. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr Luvengika, might you have a

1 question?

2 MR FIDEL: (Interpretation) Yes, I do have one question in order to obtain
3 additional information regarding the pace of the investigation. As the head of
4 investigations was saying, the investigations started in May 2006 and the legal
5 representatives of the victims would like to know something about the work methods, the
6 way that you -- the investigators and the OTP worked together. Now, were they apprised
7 of the situation in the DRC? Did the investigation office, when it received a mandate
8 to begin investigations, was that mandate limited temporarily or geographically? In the
9 replies to questions that you asked regarding the facts, we are wondering more than three
10 years after the facts or the events, I would assume that meant that there was knowledge
11 about the consequences of the attacks and that would have allowed the investigation teams
12 to bring together easily, well, find some sort of ground or area of investigation common
13 to them so that the investigation teams could easily identify witnesses and understand
14 the circumstances in which the events occurred.

15 Was there a mission or mandate was such that they could delineate? She talked
16 about the work being done in the field. Were they limited? Did they have to focus their
17 investigation on Bogoro or, from a geographical point of view or a time point of view,
18 were they able to broaden their investigation? That is the question I wanted to ask you.
19 Thank you.

20 THE WITNESS: To answer the question, Bogoro was not the sole focus of the
21 investigation from the beginning. It was a broader look at the crimes that had taken
22 place in the region. Thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) Well, at this particular point in the
24 proceedings we will suspend the session. I would like to ask each participant, and the
25 Court will try to be disciplined itself to ask questions as succinctly and concisely

1 as possible for all witnesses who will be appearing before us, and that way the witnesses
2 will know exactly what is expected of them. It is not always easy to summarise or to
3 boil down a question, but if we want a clear answer we have to ask a simple and clear
4 question.

5 We will resume at 2.30 and the Defence teams, Mr Hooper, will be able to ask
6 questions of the witness, and of course Mr Ngudjolo's team will follow asking the questions
7 they wish of the witness. We have an hour-and-a-half. We are not required to use the
8 entire hour-and-a-half. It will all depend on the questions that you ask and the length
9 of the responses from the witness.

10 The Court would like to thank the witness once again for the contribution made
11 this morning to the proceedings and the Court would like to ask courtroom officer to
12 declare the Court in closed session so that the witness may leave the courtroom and Madam --

13 MR GILISSEN: (Interpretation) With leave, your Honour, I was trying to get
14 your attention. I still have one question, but I could ask it right now or at the beginning.

15 PRESIDING JUDGE COTTE: (Interpretation) Is it a very long one and will it entail
16 a long answer?

17 MR GILISSEN: (Interpretation) It will be very brief, and I think the answer
18 will be just as brief.

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

20 QUESTIONED BY MR GILISSEN: (Interpretation)

21 Q. It's a two-part question: Now, did the investigators have contact with the
22 Congolese authorities? And in a subjective sort of way, did she feel that there was any
23 attempts by the Congolese authorities to manipulate information?

24 PRESIDING JUDGE COTTE: (Interpretation) The question is short and sweet, and
25 I think the answer will be short and sweet.

1 THE WITNESS: Yes. We have had some contacts with Congolese authorities; in
2 particular, in relation to logistical matters and conduct of the missions and operations
3 on the field. And, no, as far as I can remember, there hasn't been any manipulation of
4 information on their part. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr Gilissen, are you satisfied?

6 MR GILISSEN: (Interpretation) I am very satisfied. Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom Officer, could you
8 please order a closed session.

9 (Closed session at 1.00 p.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Open session at 1.02 p.m.)

15 THE COURT OFFICER: (Interpretation) Open session.

16 PRESIDING JUDGE COTTE: (Interpretation) The hearing is suspended, and we'll
17 resume at 2.30.

18 (Luncheon recess taken at 1.05 p.m.)

19 (Upon resuming at 2.31 p.m.)

20 THE COURT USHER: All rise.

21 PRESIDING JUDGE COTTE: (Interpretation) Our session is now underway again.
22 Please be seated. I note that the two accused are here in the courtroom with us.

23 Court officer, before calling the witness, the Chamber would like to bring to
24 the attention of the participants the following issue: On 28 August, the Prosecutor seized
25 us of a request for protective measures where it concerned the 22 witnesses who are called

1 upon to testify during our trial. The Chamber issued a decision on 23 November; and for
2 18 of these witnesses, they are accorded protective measures as requested, and for four
3 other witnesses it considered that it wasn't sufficiently informed, and that it would
4 need further clarification in this regard.

5 And it had in mind that there was a need to ensure that such measures were only
6 accorded upon an exceptional basis, taking into account the public nature of the hearings
7 and with regard to the grounds which will make it possible to assess this on a case-by-case
8 basis.

9 In an email received this morning - Wednesday, 25 November 2009 - the Office
10 of the Prosecutor has seized the Court of the situation of Witness 233 who should testify
11 tomorrow. A first email has been copied to the Defence team, I believe, an email which
12 contains grounds mentioned by the Prosecutor supporting this application and a second
13 email which is ex parte which has also been addressed to the Chamber mentioning other
14 grounds in support of this request.

15 The Chamber will rule before tomorrow morning on this application which concerns
16 face distortion and voice distortion for Witness 233 and the use of a pseudonym for this
17 person. Currently, do the Defence teams -- or are they able to share comments with regards
18 to the email they received this morning? Any comments that they might have, if they've
19 had time to become acquainted with that email, or would they prefer for the Court to
20 give them a time frame of 30 to 40 minutes to be able to look at this email and then
21 pass on their comments afterwards?

22 MR HOOPER: Mr President, I think we received that email last night. I responded
23 to it directly to Mr Macdonald, asking him if this particular Witness 233 had himself
24 requested this kind of extra measure of protection, and from the email I received back
25 from Mr Macdonald last night my impression was that that was not a question that had

1 been asked and that Mr Macdonald suggested perhaps it was a question that could be asked
 2 of him through the witness. Well, he'll clarify what he meant. That was my interpretation
 3 of what he was saying. But my impression was perhaps this witness hadn't himself asked
 4 for this, and that's something that concerns us. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) Bearing the information that the
 6 Chamber has, it had the feeling that this person had spoken to the Victims and Witnesses
 7 Unit about this matter. If we have confirmation of this, that this person did speak to
 8 the VWU, would the objection or the comment that you have be lifted, Mr Hooper?

9 MR HOOPER: Well, the difficulty with these situations is we're not party to
 10 these conversations and it sometimes might happen that a well-meaning member of the VWU,
 11 or some other agency of the Court, can approach a witness and say, "Would you like your
 12 face to be distorted for its image, or receive some other measure?", and the witness
 13 falls in with this when perhaps he doesn't really need it. And so we're just concerned
 14 that these particular measures and similar measures are only invoked when it's truly
 15 necessary. The particular witness -- I won't go into details, but how can I put it? No,
 16 I better not say anything, but he's -- he doesn't exactly hide away, if I can put it
 17 like that. You know what his position is.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, yes, it's important
 19 to solve this matter if we can deal with this issue quite quickly, given that the decision
 20 of the Chamber will not be given now here from the Bench.

21 MR MACDONALD: (Interpretation) I'm waiting for five seconds before I'm replying.
 22 I could mention we have read the decision of the Chamber with regards to protective measures
 23 and it was mentioned that this issue should be reviewed during the familiarisation phase,
 24 and it was the witness himself during this phase did mention this and he mentioned it
 25 here in the courtroom itself and I think that one of the representatives of the office

1 of Mr Kilenda was present. So it's not an issue that was raised by the Prosecution, or
2 the unit. It really was the witness who was informed of protective measures, because
3 people are also following this issue in the Lubanga case, so it comes from him.

4 Having said that, we do make the application in his name. That is true. As
5 mentioned in that email that was sent yesterday evening, the two both ex parte and public,
6 the unit as well supports this request of the Prosecution. They have met the witness
7 to be able to discuss these matters with the witness and they have -- and jointly they
8 are making a joint point themselves.

9 PRESIDING JUDGE COTTE: (Interpretation) So, this is the clarification that
10 we have on the part of the Prosecutor. The Court has heard what the questions were of
11 Mr Hooper -- and I haven't forgotten you, Counsel Kilenda. I have not forgotten you.
12 The Prosecutor has just brought a certain number of precision in this regard. The Court
13 has understood and listened to the comments made by Counsel Hooper, which he might have
14 had some of the answer that he wished to have. And now Counsel Kilenda, for Mathieu Ngudjolo,
15 we are now going to listen to you.

16 MR KILENDA: (Interpretation) Thank you. It is true that under the terms of
17 your order you ordered the Prosecutor to provide the Chamber with any additional information
18 with regards to the grounds justifying the protective measures that were asked for on
19 a case-by-case basis and also with regard to comments made by the witness, including
20 the testimony which we're talking about at the moment during the familiarisation procedure
21 that he's invited to follow when he comes to The Hague.

22 Now, I would like to be frank with you. I haven't been at these familiarisation
23 proceedings, because at the same time there was a press briefing and this was by way
24 of courtesy and so we haven't personally known about what was said during this process
25 of familiarisation but, if it is true that this witness did ask for protective measures,

1 then the Defence of Mr Ngudjolo does see no problem in that regard and anyway we would
2 of course refer to the wisdom of the Chamber.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Kilenda. So,
4 we have heard the comments of Mr Hooper and the words that -- remarks that have just
5 been made by Mr Kilenda. We will issue our decision at the end of the afternoon and at
6 the beginning of the ex parte hearing, which we should have at 4.30 after this current
7 hearing, and the Court will ask the court officer to bring to the attention of the participants
8 who will not be at the ex parte to make them aware of the content of the transcript of
9 the ex parte hearing in which our decision - our oral decision - will be issued. Are
10 you in agreement with that, court officer? So, you therefore have an important mission
11 to carry out soon.

12 Yes, Counsel Kilenda.

13 MR KILENDA: (Interpretation) President, your Honours, I don't know what -- if
14 what I'm going to say at the moment does go into the sphere of your competence and jurisdiction,
15 but when we learn something it's good. When it is of interest to this trial, it's good
16 to bring it to the attention of the Court.

17 We have learned that since yesterday evening, and this morning as well, from
18 our resource person who is based in Bunia, that this trial is not broadcast directly,
19 so everything that was said yesterday wasn't followed by the population in Bunia, or
20 at least in Ituri, despite the fact that for several days we had confirmation of this,
21 there were notices everywhere and also at the airport in Bunia.

22 I don't know if that is within the jurisdiction of the Court, but if you could
23 do something such to ensure that this trial can be followed by the population concerned
24 then we would ask you to ensure this, because where it concerns such serious crimes which
25 our accused are accused of and, knowing that the Court wants to fight impunity, we believe

1 it is in the interest of all the population concerned to know exactly what is happening
2 in The Hague.

3 We have also learnt that everything that happened yesterday was broadcast by
4 the different television channels, CNN, France 2, TF1 as well, and so it really would
5 be a great shame if the Congolese population, which is directly concerned and directly
6 affected in its heart and soul by this, to be cut off from The Hague while here there
7 are very important things that are happening.

8 That is the information which the Defence of Mathieu Ngudjolo wanted to deliver
9 to you. We don't know to what extent you can do something such that the situation can
10 be improved in this regard. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel Kilenda. The
12 Court would like to thank you for the information that you have provided it with. Perhaps
13 it has not understood what the measures that were taken to make it possible for the population
14 in the DRC to be able to follow and to understand the trial taking place here. You heard
15 yesterday the remarks that I had in the name of the Chamber and which, on several occasions,
16 stressed the importance that our proceedings not be limited to this courtroom, but to
17 be brought to the knowledge of those persons who are concerned in the frontline.

18 So I feel that, court officer, it would be desirable if perhaps tomorrow morning,
19 at the start of the hearing, if a representative, authorised one from the Registry, either
20 the Director of Court Services, or a representative of the services of PIDS for example,
21 could come at the beginning of the session and speak about the measures that have been
22 taken such that the trial can be followed so that we all know exactly where we are in
23 this regard, because perhaps we might have made certain errors with regards to our assessment
24 or understanding in this regard - this might be the case for me - but certainly with
25 regards to having certain clarifications which would make it possible to be able to get

1 rid of any misunderstandings there might be in this regard.

2 So, court officer, if you could ask that somebody either at the end -- the beginning
3 of the hearing, or at the end of the hearing, could come and provide us with their observations,
4 their clarifications and provide us with some communication in that regard.

5 THE COURT OFFICER: (Interpretation) That is something that will be done, your
6 Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So, court officer, we're
8 now going to take up the follow-up of the hearing this morning. Yes, Mr Luvengika.

9 MR FIDEL: (Interpretation) Mr President, I just wanted to take advantage of
10 this opportunity where we have some certain things being explained. I would like to express
11 the concerns of the team of the legal representatives of victims where it concerns, for
12 example, the absence of the decision with regards to the modalities of participation.

13 We have just mentioned the issue of familiarisation of witnesses and we have
14 shared this with the VWU and they've responded to us that, in principle, they cannot
15 have -- participate in these sessions unless they have a decision on the part of the
16 Chamber.

17 And, furthermore, all the -- or both teams here are concerned about the lack
18 of communication that there is with regards to all the documents that are subject to
19 exchanges and debates within this courtroom. Tomorrow we're already going to start with
20 the examination of the first witness, who is a witness who has direct links with one
21 of our victims and we would have wanted to be able to participate in his familiarisation
22 and we hope that we will be able to participate in the familiarisation of the victim
23 that we -- who will be familiarised, but there is quite a direct link between these two
24 and as such we wanted to make this request with this distinguished Court such that a
25 response be given within the shortest possible time frame. Thank you very much.

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel Luvengika, you have expressed
 2 a concern which is totally legitimate. It is certain that it is preferable that the decision
 3 with regards to the modalities of participation of victims be rendered before the start
 4 of the trial, but we have wanted to ensure that in the decision relating, or in the guidelines
 5 relating, to Rule 140 that it can be stated, or the participation modalities can be stated
 6 for the legal representatives of victims, but with regards to participation of victims
 7 it's something that will be issued really as soon as possible.

8 I think, court officer, that we can now call for the closed session. Please
 9 can you implement it and call for the -- call the first witness, such that we can continue
 10 with the hearing of this morning.

11 (Closed session at 2.48 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 2.49 p.m.)

18 THE COURT OFFICER: (Interpretation) Open session.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Katanga's Defence team may now
 20 proceed with questioning of the witness. You may ask any question you wish. Mr Hooper,
 21 you have half-an-hour, 30 or 35 minutes. Is that what you wish? Please proceed.

22 MR HOOPER: Thank you, Mr President.

23 QUESTIONED BY MR HOOPER:

24 Q. And, Madam Witness, as you've heard my name is David Hooper and I am representing
 25 Germain Katanga, who sits at the back there directly more or less behind me. Now you've

1 been in something of the hot seat all morning, I appreciate that, helping us with these
2 questions, and I just want to go back over some of them, if I may, with you.

3 My impression this morning was that, though from time to time you spoke about
4 the specifics of this case, you were talking generally a lot of the time about the way
5 in which your department and those that you are associated with here at the ICC, how
6 you functioned; is that correct?

7 A. I was talking on the basis of the practice in this particular investigation,
8 yes.

9 Q. All right. Well, thank you for clarifying that. So May 2006 was the start,
10 you tell us, of the investigation into Germain Katanga; is that right?

11 A. That is approximately when the investigation began. Of course, I was present
12 in this investigation only since September 2007.

13 Q. You came in about a year later?

14 A. That is correct.

15 Q. Now, you told us this morning about the various conditions. I'm looking at
16 the synopsis we had, thank you for it, relating to conditions and difficulties of the
17 investigation. Now, where are you based? Are you based --

18 PRESIDING JUDGE COTTE: (Interpretation) Counsel David Hooper, slowly please.
19 Slowly. And, please, five seconds between questions and answers.

20 MR HOOPER: Yes, it's an added difficulty of course when the witness is -- this
21 anonymous lady, who very clearly does speak English very well, it's very easy to forget
22 that there's many in this courtroom who perhaps don't. So, thank you for reminding me.

23 Q. Are you -- are you based here?

24 A. Yes, as the team leader I am based here in The Hague.

25 Q. Right. But from time to time you go to Ituri, or to DRC?

1 A. Yes, I visit Ituri and DRC every now and then, but due to the nature of my
2 responsibilities most of my work happens here in The Hague.

3 Q. All right. Now, the assets available to you, you've explained how you work
4 together with the court team, if I can put it like that, who are largely here this afternoon,
5 then you have your own particular investigatory department and you are part of what you
6 described as the joint team. How many, approximately, are there in the joint team?

7 A. The amount of staff in the joint team has varied over time. I would say that -- or
8 from my part in the investigations division, at the height of the investigations around
9 the time before confirmation hearing, would have been around 12 investigation, more or
10 less. This, in addition to this the Prosecution would have its own team, which would
11 be more or less the same.

12 Q. Yes.

13 A. And the cooperation division as well, although their staffing is less.

14 Q. So perhaps about 30 people in all?

15 A. I guess that is an adequate estimate, yes.

16 Q. And on the ground at that time in -- in DRC, approximately how many would there
17 be of that group, on the ground in the DRC?

18 A. At any one time we are on the ground, usually, maximum, two missions at a time
19 because of logistical considerations. There has been times when slightly more people
20 have been on the field but because of logistical and other circumstances it is one or
21 two teams at a time.

22 Q. All right. And do you have people of Congolese origin as investigators?

23 A. No, we do not.

24 Q. Well, do you have people who are investigators who speak the language of the
25 people who are the subject of your investigations?

1 A. I do have French-speaking investigators, yes.

2 Q. French-speaking. All right. Now, you told us this morning something of the
3 difficulties that you've faced out there, and I'm not going to go into those. We, of
4 all people, can understand them; difficulties of the volatility of the area, security
5 considerations, health, just getting about, the state of the roads, whatever it might
6 be. As I understand it, you found all those taken together to present considerable obstacles
7 to your investigations; is that right?

8 A. They are challenges but not necessarily insurmountable obstacles. We try and
9 work around them.

10 Q. And do you manage to?

11 A. We manage every now and then, more at other times than at other times.

12 Q. All right. Even getting to Bunia is a bit of a --

13 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, Mr Hooper. For all of us
14 here, all of us lawyers and legal experts, people who enjoy speaking, who enjoy language,
15 it is very difficult and very annoying to have to annoy -- to limit our verbal expression.
16 While a legal discussion requires spontaneity and quick answers and questions, but it
17 is absolutely necessary for us to speak slowly. It is just as difficult for me as for
18 all of you. Let us speak slowly and respect the five-second rule. Otherwise, the
19 interpreters -- or pardon me, the court reporters cannot keep up with the transcript
20 and it is very difficult. So please speak slowly.

21 MR HOOPER: I could speak in French. That would be slower.

22 PRESIDING JUDGE COTTE: (Interpretation) With a splendid English accent.

23 MR HOOPER:

24 Q. Returning to these difficulties: Would you accept that the difficulties that
25 you face with your assets available to you pose far greater difficulties to a Defence

1 team with far limited assets to conduct investigations in Ituri and in the DRC?

2 A. I am not aware of the full assets that the Defence teams have at their disposal,
3 but I would assume that the challenges would be similar to what we face.

4 Q. I'm suggesting the challenges are far greater than you face; would you accept
5 that?

6 A. I'm afraid I'm not in a position to judge that.

7 Q. Well, you're head of an investigation department, with hands-on experience of
8 the nature of the difficulties that you are confronted with. So, do you think you're
9 not perhaps in a position to concede that the Defence in this case is going to face even
10 greater problems than yourself?

11 A. You will definitely be facing similar problems than we will.

12 Q. All right. Now, security you mentioned. You mentioned volatility and you
13 mentioned active militia groups. Would I be right in suggesting that the militia group
14 you have in mind is the group known as the FPJC?

15 A. Yes, that is mainly what I'm referring to.

16 Q. Is there any other militia group which you've come across in your investigations?

17 A. I would have to go back to the security reports and analyses to give you an
18 accurate answer on that one.

19 Q. Now, you also referred to -- you also referred to witnesses having received
20 clear threats. Are you talking of witnesses who are due to appear as incriminating witnesses
21 in this case?

22 A. Yes, I am.

23 Q. Are you in a position to provide me with a list of those witnesses? Not now
24 in open court but by way -- but later, perhaps?

25 MR MACDONALD: The Prosecution objects to the question.

1 (Interpretation) I will speak in French. The Prosecution objects to the question, asking
 2 the witness whether the information can be provided or not. The information so far has
 3 always been dealt with ex parte with the Chamber regarding protection measures for each
 4 one of the witnesses.

5 PRESIDING JUDGE COTTE: (Interpretation) Another question, Mr Hooper?

6 MR HOOPER: Of course, my question is entirely subject to the Court, the Chamber's
 7 consent. But if that consent is forthcoming, are you in a position to provide me with
 8 a list of those witnesses who have made such a complaint and the nature of their complaint?
 9 Are you in a position to do that, subject to the Court's consent?

10 MR MACDONALD: (Interpretation) The Prosecution objects to the question because
 11 not only do they want the names, they want to have the content of the threats and the
 12 Prosecution cannot provide the content of those threats because that would reveal the
 13 sources of information, which would become at risk themselves.

14 Furthermore, at that point the Prosecution would be revealing how we obtained
 15 that information regarding threats to witnesses, so there would be a domino effect and,
 16 in the final analysis, the Prosecution wants to prevent any sources of threats have the
 17 ability to reorganise using information gained, or that they might gain.

18 PRESIDING JUDGE COTTE: (Interpretation) In the difficult exercise of striking
 19 the right balance that we have been engaged in for several months, the Court has always
 20 tried to ensure the maximum protection of witnesses. So, Mr Hooper, please go ahead,
 21 but with other questions.

22 MR HOOPER:

23 Q. Would you say that in this case you found the witnesses or did they find you?

24 A. For the most part we have found the witnesses.

25 Q. And has that been through intermediaries?

1 A. The Prosecution finds its witnesses through various sources and it tries to
2 ascertain the location of those witnesses before employing any intermediaries to work
3 on our behalf. So it is the OTP that tries to find the witnesses, not intermediaries.

4 Q. Do you think -- is there any advantage sometimes or incentive to someone being
5 a witness?

6 A. Yes, of course. I can -- I can easily see how individuals in the operational
7 areas could think that it might be beneficial to be a witness. This is, however, something
8 that we clarify to a very big detail with the witnesses before engaging in any significant
9 interviewing, or any investigative activity.

10 Q. By way of example, one of the witnesses that we're going to deal with this session,
11 I see has had at least the amount of \$10,000 spent on that witness?

12 MR MACDONALD: (Interpretation) The Prosecution objects on the basis of the
13 very order of the Chamber. It was clearly indicated in that order that no specific question
14 having to do specifically with witnesses to appear before this Court would be asked.
15 On this basis, the Prosecution asks -- well, objects to this question which gets into
16 specific details about witnesses. And furthermore, we are in an open session, I remind
17 you. We are on a potentially slippery slope.

18 MR HOOPER: Well, I'll pass on, Mr President.

19 PRESIDING JUDGE COTTE: (Interpretation) Indeed. Before Mr Kilenda takes the
20 floor himself, or a member of his team, indeed, this is the moment to remind all that
21 in that decision of 5 November 2009, paragraph 17, it was indicated, the Chamber stresses
22 that, during these exchanges of questions, the situation of particular witnesses should
23 not be dealt with and one should not question decisions or during expurgations basing
24 oneself on the various provisions of the Statute and the Rules. So the best thing, Mr
25 Hooper, would be for you to go ahead but with another question.

1 MR HOOPER: Indeed. Let me not try to indicate any particular case or subject
2 at all but speaking generally in terms of witnesses.

3 Q. Do you concede that these sums could, could be a significant incentive,
4 particularly in the context of the DRC, for a witness to come forward and appear, as
5 it were, in the best possible light to you as an investigator?

6 A. What I want to make very clear is that the sums that have been made available
7 to you are sums that the witnesses have necessarily -- have not necessarily ever even
8 seen. They are sums which the OTP has accrued in terms of, for example, witness accommodation
9 or transportation. They are not lump sums given to witnesses.

10 Q. I appreciate that. Now, let me come back to a detail that their Honours were
11 inquiring about this morning, and that's the exhumations at Bogoro. Now, we know that
12 there was a partial exhumation made. Why was there not a complete exhumation made together
13 with a positive effort to both identify the victims and to assess the nature of their
14 wounds such as, for example, occurred in the case of many thousands of bodies as we know
15 at the Srebrenica inquiries.

16 MR MACDONALD: (Interpretation) The Prosecution is seeking a directive from
17 the Bench, but this is not really an objection. We simply want to remind the Court that
18 despite the request of the Prosecution for those materials to be added to the incriminating
19 evidence, the Chamber granted the objection of the Defence, and now the Defence is asking
20 questions on those aspects in Bogoro. So what is the relevance of that question, given
21 that that evidence is not admissible?

22 PRESIDING JUDGE COTTE: (Interpretation) It is true that the Court handed down
23 a decision on the expert activities that took place in the Bogoro institute. There was
24 an application to grant leave to appeal but no decision has been taken on that yet.

25 This morning the Chamber itself was concerned about knowing whether the

1 investigative teams in the field had carried out an inventory of the corpses from the
2 mass graves or tried to establish lists of victims from other sources. This morning also
3 the Chamber attempted to find out whether the investigation teams tried to determine
4 the identity of a certain number of people who perished in Bogoro on 24 February 2003.
5 So, generally speaking, the Court feels that the question of Mr Hooper can be answered.

6 Would you like Mr Hooper to rephrase his question, because the Court wants it
7 to remain general?

8 MR HOOPER: ... (Microphone not activated).

9 THE INTERPRETER: Counsel's microphone is not on.

10 MR HOOPER: I accept there's no dispute there was a partial exhumation, not
11 disputed, but I think you gather my question is: Why was the decision made for this
12 investigation clearly focussed on one attack, in one place, with buried bodies, why was
13 there not a general exhumation?

14 A. The exhumation that was carried out in Bogoro was done for corroborative purposes.

15 Q. Well, that explain -- that explains why that was done. I'm asking, why was
16 the other not done?

17 A. The Prosecution did not see a need for a full exhumation, because, what I've
18 just explained, the purpose of doing exhumations there was for corroborative purposes.

19 Q. Now, can I come to exonerating material in the context of Article 54, and we
20 remind ourselves of course that it is the duty of the Prosecution to investigate both
21 incriminatory and exculpatory matters? You spoke this morning of potential themes of
22 exoneration, and am I correct in understanding that those themes are the same as the
23 criteria that the Prosecution served on us, which are the criteria in respect of disclosure
24 obligations? And there's six criteria there. As far as you know, are we talking about
25 the same thing?

1 A. Yes. Those are the general -- the six general groups of exonerating themes.

2 Q. You see, I suggest that there is a distinction to be made between the disclosure
3 of material that you may come across and a purposeful investigation into exculpatory
4 material. Now, from what you've told us, there was no specific investigation into
5 exculpatory matters in this case; is that right?

6 A. If I understand your question correctly, yes, there has been very specific
7 investigative issues and themes that have been conducted in the course of this investigation.

8 Q. Well, in that case, may I ask how many exculpatory witnesses have you approached
9 in the Katanga case?

10 A. Most of the witnesses that the Prosecution has approached have provided both
11 incriminating as well as exonerating information which has specifically been discussed
12 with them.

13 Q. Can you nominate one exculpatory witness who has been approached?

14 MR MACDONALD: (Interpretation) Objection from the Prosecution, and I think
15 the Chamber was awaiting that.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes. Indeed, Mr Hooper, I believe
17 that the concern for all of us at the beginning of this trial was to have a better understanding
18 of the modalities of the investigation, both for incriminating and exonerating materials.
19 But, once again, we did not wish that the head of investigators should be called upon
20 to discuss this situation of specific individuals. Maybe we did not act correctly in
21 taking that decision, but that is the decision that we took and we have to comply with
22 it. So, that question should not be answered. So, proceed with other questions.

23 MR HOOPER:

24 Q. Have you or any members of your team ever visited Aveba?

25 A. No, we have not.

1 Q. Now, Aveba, in the context of this case, I don't think I need review its significance.
2 If you're going to find exculpatory material, you're more likely to find it perhaps there
3 amongst the Ngiti people than perhaps talking to people said to have been the victims
4 of the Ngitis. So why didn't you go to Aveba?

5 A. This is because the Prosecution brought people from Aveba to other places to
6 be interviewed.

7 Q. But these were people who were already presumably willing to be, as it were,
8 incriminatory in their comments, were they not?

9 A. No, that is not correct. All of our witnesses, like I mentioned, have touched
10 upon both incriminatory as well as exonerating facts.

11 Q. So the material you're referring to seems consistently to be potential witnesses
12 you're meeting, who are providing you with incriminating material, now and again may
13 mention something that's not so; and therefore, fall into a category of being exonerating,
14 at least as to that part. See, I fail to see how that is a purposeful inquiry into exonerating
15 material?

16 MR MACDONALD: (Interpretation) Objection from the Prosecution. I did not do
17 so a short while ago --

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, when you started
19 speaking, the translation of Mr Hooper's intervention had not yet concluded, so I did
20 not hear anything about what you said. If you stand up, the Court will understand that
21 you have something to say. So when you are on your feet, wait for five minutes for the
22 interpretation to be completed, so that you can be understood. So, this is the whole
23 complexity of our common exercise.

24 MR MACDONALD: (Interpretation) I apologise for that, Mr President, and I hope
25 that with time we are going to develop that instinct, to know what to do in order to

1 make it possible for the court reporters to follow us and to follow our objections.

2 I did not object earlier, that is to the previous question which was partially
3 an argument, but at the end was a question. Mr Hooper is not asking questions; he is
4 pleading. And the Prosecution is objecting and would like to make it clear that he should
5 ask precise questions, just like you asked, Mr President, before the lunch break.

6 PRESIDING JUDGE COTTE: (Interpretation) At the beginning of this afternoon's
7 session, the Court had intended to remind everyone that it is important to focus on brief,
8 concise and clear questions; and in fact, Mr Hooper has done this very well for, I would
9 say, 80 per cent of the questions that he has asked so far. But from time to time, his
10 questions added to certain observations and comments. I wouldn't go as far as saying
11 that these are pleadings, but they make it difficult for the witness to understand.

12 So, this is something I am saying, not only for him, but also for the Defence
13 of Mathieu Ngudjolo, which will come afterwards. So, in order to have precise answers
14 from our witnesses, we have to the extent possible ask them short, concise and precise
15 questions. Mr Hooper, you can proceed.

16 MR HOOPER: I think, Mr President, if the Chamber will permit me to go into
17 extra time, I claim it as sort of injury time.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, the minor interruptions
19 will take five minutes; but it is crucial for Mr Kilenda's team to have 30 minutes also.
20 So, you have five minutes left, and we will listen to you intently during those five
21 minutes.

22 MR HOOPER: Thank you. Yes.

23 Q. Madam Witness, you'll appreciate I'm putting these questions to you, because
24 you are the unfortunate body in the seat there this afternoon. But let me ask you these
25 questions, specific questions: Did you go to any place in Walendu Bindi?

1 A. Are you referring to me personally or my investigators?

2 Q. Your investigators.

3 A. I would actually have to go back to check the exact locations that we have visited.

4 Q. Let me just give you some names, because it may help. I've mentioned Aveba.
5 Bavi, Gety, Bukiringi, Kagaba, for example?

6 A. No, we have not visited them, as far as I can remember.

7 Q. You were asked -- you were asked this morning about the *féticheurs*. Did you
8 seek to meet any of the *sages*, s-a-g-e-s?

9 A. No, we did not.

10 Q. Or *les responsables* of those areas I've just mentioned and named?

11 A. Yes, we have met individuals who are in a position of being notables. Yes.

12 Q. All right. Thank you for that. The FRPI and its place in this case, I don't
13 again review now. Did you ever -- and again, you don't have to answer this question,
14 if it in any way intrudes into any sensitive area, but I'm going to name a name. Did
15 you ever meet Aderodu Moraso Edouard (phon)?

16 MR MACDONALD: (Interpretation) The Prosecution objects, because that is a
17 specific question concerning a specific witness. Secondly -- well, that's it.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, do you have any further
19 questions for the witness?

20 MR HOOPER: Yes. To make it clear, my -- I'm not under any impression that the
21 person I've named is a witness or a PEXO -- an exculpatory witness or anyone the Prosecution
22 has seen. I'm sure if they had, I would have received some information about that, but
23 he is a significant figure in the organisation. And I'm asking this witness as part of
24 her methods whether she explored the structure of the FRPI and its development. Let me
25 put the question like that, then.

1 Q. Madam Witness, did you explore the structure of the FRPI and its development
2 with its leading and principal members?

3 A. Yes, we have, your Honour -- counsel, and also with several other sources.

4 Q. Very well, then. I'll be raising that as a disclosure matter at another time.

5 Have you had any discussions with those in government in Kinshasa, the *maison*
6 *militaire*, in the presidential office or in the knowledgeable command of the FRDC, the
7 present army in Congo?

8 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor?

9 MR MACDONALD: (Interpretation) The Prosecution raises the same objection, Mr
10 President, because the questions that Mr Hooper is now putting to the witness is contrary
11 to the order; but what he's doing is clear now, he's trying to find out what has been
12 disclosed and what has not been disclosed. That is what he's doing.

13 PRESIDING JUDGE COTTE: (Interpretation) The Court feels, however, that Mr
14 Hooper's last question is not very different from the question asked by Mr Gilissen this
15 morning at the end of the session. So, the witness should answer that question. But
16 before you do, Madam Witness, are you in a position to exceed by 10 minutes the time
17 that was initially allocated for you?

18 We can't continue beyond 4 o'clock, as there are technical constraints with
19 an ex parte hearing which has to take place at 4.30 immediately afterwards, and that
20 means that the courtroom has to be freed up. The witness is, therefore, going to reply
21 to the question of Counsel Hooper.

22 Counsel Hooper, we would ask you to really make your last question as brief
23 as possible, so that this will make it possible for Mathieu Ngudjolo's team to also have
24 30 minutes in which to be able to put their questions.

25 MR HOOPER:

1 Q. Did you make any inquiries of the principal leaders of the RCD-KML?

2 A. No, we have not.

3 MR HOOPER: I'm very sorry, Mr President. We didn't get an answer to the question
4 on the government *maison militaire* and the army as to whether there'd been contact in
5 respect of that, as a "yes" or "no," in respect to relevant events.

6 THE WITNESS: No, we have not.

7 MR HOOPER: Thank you very much.

8 PRESIDING JUDGE COTTE: (Interpretation) Okay. Counsel Hooper, you
9 have -- you started talking at 2.50; and it is true, you were frequently interrupted,
10 perhaps sometimes this would happen, but you did have -- despite the interruptions, you
11 did have half an hour, which was envisaged. Now it is important that the team of Mathieu
12 Ngudjolo have 30 minutes, and we are now able to listen to you.

13 MR KILENDA: (Interpretation) Thank you, your Honour. Your Honours, we are
14 not going to abuse the time that you have accorded to us.

15 QUESTIONED BY MR KILENDA: (Interpretation)

16 Q. Good morning. Good afternoon, rather. My name is Counsel Kilenda. I'm the
17 main counsel of Mathieu Ngudjolo, and we are going to examine you, cross-examine you.
18 Professor Fofé is also going to cross-examine you and myself. Now, this is the first
19 question that I would like to put to you: What credibility do you attach to the statements
20 of your witnesses with regards to the witch doctor or fetishist practices?

21 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Prosecutor?

22 MR MACDONALD: (Interpretation) Asking an opinion of the witness, this is up
23 to the Chamber having heard all the evidence to decide on the credibility of the evidence.
24 That is not the opinion of the investigator here present before you who is responsible
25 for the investigations. That if this issue -- if this question was put differently, if

1 we were asking -- but basically asking what the credibility of the evidence, this is
2 up to the Chamber to decide this question.

3 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda, I do think that the
4 Prosecutor is right. Here we want to know -- and I think Mr Hooper came back to this
5 point a moment ago. Here we want to know whether the investigation teams had sought to
6 hear the witch doctors and we want to know how they evaluated the credibility of certain
7 witnesses - of certain intermediaries. And here you are really asking the witness a question
8 with regards to what she thinks, and I think it has to be reformulated in such a way
9 as not to put the witness in a situation which isn't that which the Chamber wants her
10 to find herself today. So, could you reformulate your question.

11 MR KILENDA: (Interpretation) The question is of a lot of importance.

12 PRESIDING JUDGE COTTE: (Interpretation) Take the time to reformulate it.

13 MR KILENDA: (Interpretation) Following -- we were trying to find out this morning
14 if she had been able to question certain féticheurs, or witch doctors, and I think the
15 answer was no, but that these investigators did proceed with having questioning -- having
16 certain questions with regards to these féticheurs. Now, the idea when I asked this question
17 was basically to know if she -- if she thought what was said that these féticheurs did,
18 whether that was correct.

19 PRESIDING JUDGE COTTE: (Interpretation) Well, please try and reformulate that
20 question, if that is what you want to do.

21 MR KILENDA: (Interpretation)

22 Q. Can you take as being true what your witnesses have said with regards to witch
23 doctors?

24 A. Yes, we have tried to corroborate that information.

25 Q. Thank you. Now, with regards to the fact the number of 200 victims were mentioned,

1 the number of 200 victims was mentioned. The number of 200 people who were killed in
2 Bogoro, that was indicated by your witness.

3 A. Yes, that is information that comes from our witnesses.

4 Q. Can you therefore confirm that your investigation teams never carried out a
5 counting of the number of dead people? The number of bodies?

6 A. No, we have never counted the bodies physically.

7 Q. Thank you. And what makes you say and what makes you believe that the number
8 of two people -- 200 people who were killed is correct? What evidence makes you think
9 that this is correct?

10 A. We have several witnesses that testify to this fact. We have explored this
11 issue to the best of our ability with the people who have survived the attack. Of course,
12 it is always an estimate.

13 Q. Thank you. How would you have been able to be convinced that the 200 people
14 who died, how do you know they were civilians and not soldiers?

15 A. This is information from our witnesses who took part, for example, in the burying
16 of the bodies.

17 Q. Thank you. I will finish with my last question. At the stage where we are at
18 the moment, at this level of proceedings, are you able to favourably receive possible
19 requests from the Defence with regards to possible exoneration investigations and, if
20 this is the case, could you guarantee to the Defence teams that the -- there would be
21 total objectivity in the accomplishment of the duties which are so required?

22 A. The Prosecution has an equal obligation to investigate the exonerating facts
23 and, of course, that would be conducted with the required objectivity.

24 MR KILENDA: (Interpretation) I am satisfied, your Honour. I now give
25 Professor Fofé the floor.

1 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you have the floor.

2 MR FOFÉ: (Interpretation) Thank you very much, your Honour.

3 QUESTIONED BY MR. FOFÉ: (Interpretation)

4 Q. Witness, good afternoon. My name is Jean-Pierre Fofé. I am the Defence for
5 Mathieu Ngudjolo. I have a few questions which I would like to put to you with regards
6 to the methodology that was employed. The first question that I would like to ask is
7 as follows. So when you carried out the investigations, your concern was to come to the
8 discovery of the truth, isn't that right?

9 A. That is correct.

10 Q. Thank you very much. My second question is what were your criteria when it
11 came to choosing the witnesses; the criteria for the choice of witnesses to be able to
12 discover the truth?

13 A. We have tried to exploit as many different kinds of sources as possible to come
14 to the truth of each matter. Of course this has always not been possible, but this has
15 been our attempt.

16 Q. Thank you very much. In several evidentiary items disclosed by the Prosecutor
17 to the Defence, they mention high officials - high Ugandan officials. Why haven't you
18 questioned these high level people in Uganda - these high level soldiers? Why haven't
19 you questioned these Ugandan officers?

20 A. In light of the evidence that the Prosecution gathered from various other sources,
21 that was not seen as a priority in the context of this case.

22 Q. Thank you. Madam Witness, during your investigations you discovered the
23 existence of what is called the integrated operational staff. The Deputy Prosecutor spoke
24 of this yesterday very briefly in her statement - in her opening statement. According
25 to your investigations, who created the integrated operational staff?

1 A. Are you asking me about the facts of the case, or would you like me to elaborate
2 on the sources that we exploited for this -- this issue?

3 Q. I think that my question is precise. Given that you discovered the existence
4 of this integrated operational staff, did you have the opportunity to ask yourself questions
5 with regards to the time at which this integrated operational staff was created and also
6 with regards to what authority created this integrated operational staff, or "*état majeur*
7 *opérationnel intégré*" in French.

8 PRESIDING JUDGE COTTE: (Interpretation) I think, Counsel Fofé, Professor Fofé,
9 that we shouldn't ask the witness her opinion, but you have to put very precise questions
10 to her. In this regard I think that the first formulation of your question could correspond
11 with what the Court accepts, but the second formulation of it asks for an evaluation,
12 a consideration, a value judgment, that she won't give to you. So, please put your question
13 again under the first formulation that you had taken.

14 MR FOFÉ: (Interpretation)

15 Q. So, I will now ask my question again under the first formulation. In accordance
16 with your investigations, who created the integrated operational staff?

17 A. I would have to go back to the evidence to give you an accurate answer of what
18 our witnesses have talked about this issue.

19 MR FOFÉ: (Interpretation) Thank you. My next question goes into this issue
20 as well. This staff was a very important structure and linked, your Honours, with the
21 facts that occurred in Bogoro and that is why we would like to ask questions in this
22 regard.

23 Q. Witness, please could you tell the Judges when did the integrated operational
24 staff -- when it was created?

25 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor.

1 MR MACDONALD: (Interpretation) I understand the question. I understand that
2 it's linked with the case, but I would like to refer -- here we're going into the specific
3 details of the creation of elements. The person who is head of investigations isn't the
4 relevant witness. It's not a factual witness. The head of investigations is there to
5 shed light on the conduct of investigations, but not to go into individual details. And
6 the previous question I didn't object. The response was given. I understand that the
7 witness is there and I didn't say any more, but here we really are getting into the facts
8 of the case.

9 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, the Court is aware of that,
10 but at the same time it would seem that Professor Fofé had indicated that he wanted to
11 ask questions with regards to the method of investigation. And it's also true that the
12 approach of the Court, when it expressed its wish to hear what is a difficult exercise
13 for her, to listen to the head of investigations, the Court had the concern with regards
14 to the degree of precision that the investigative services, and therefore the Office
15 of the Prosecutor, had wanted to have and particularly had been able to have, taking
16 into account the local constraints.

17 Now, the question that refers to this integrated operational staff does perhaps
18 merit not to be taken apart too much to the extent that Professor Fofé has learnt from
19 the mouth of the witness herself that she wished to be able to reconsider her notes,
20 or review her notes. I think that you have obtained a degree of precision in regard to
21 the answer which should correspond to what you -- with what you expect. Perhaps it's
22 not what you expected to obtain, but I think now you can go on to another question.

23 MR FOFÉ: (Interpretation) Thank you very much, your Honour. Before I move
24 on to my last question, or my last series of questions, I would like to submit to you
25 for your assessment my last question having to do with the integrated operational staff.

1 One last question and I will ask the question of the witness.

2 Q. Ma'am, the integrated operational staff, I don't want to get into the details,
3 but I want to focus on the concept of operational. In operational, we find the word
4 "operation". As the head of the investigation, could you tell the honourable Bench what
5 operation was the EMOI responsible for planning and conducting?

6 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, I think we are really
7 getting into a degree of detail regarding one aspect, no doubt an important aspect in
8 your mind for this case, but within the framework of this hearing it would be difficult
9 for the witness to answer. I think that the Ngudjolo Defence team was expecting to get
10 specific answers regarding everything having to do with this EMOI and has realised that
11 it would not be possible at this hearing at this moment to get specific answers. It seems
12 to me that that is enough. We will now move on to another question.

13 MR FOFÉ: (Interpretation) Thank you very much, your Honour.

14 Q. Ma'am, within the framework of understanding the human context of this case,
15 did you conduct investigations on the specific cultural nature of the Lendu people?

16 A. Can you please specify what you mean with "specific cultural nature"?

17 Q. Thank you, I will do that. I will ask the question. My first sub question,
18 for instance, did you know what are the cultural taboos of the Lendu people when it comes
19 to rape?

20 A. Yes, we have tried to explore and understand the cultural context of, for example,
21 the issue of rape.

22 Q. Second sub question. Did you -- do you know what -- what are the cultural taboos,
23 or forbidden things, when it comes to rape -- theft?

24 A. Excuse me, are you talk -- I think there might have been a translation error
25 there. Can you please repeat your question?

1 Q. This is my second sub question in this regard, and I would like to know whether,
 2 for example, you know what are the cultural taboos of the Lendu people with regard to
 3 theft.

4 A. I'm afraid I would have to go back to the material and research that a bit more
 5 before answering that question.

6 MR FOFÉ: (Interpretation) Thank you, your Honour, no more questions.

7 PRESIDING JUDGE COTTE: (Interpretation) We have now come to the end of this
 8 hearing. The Court would remind participants that at no time did it want -- did it want
 9 this first witness - and she has a difficult task - we did not want her to be put into
 10 a difficult position gratuitously. The Court reminds all that the concern is to understand
 11 the circumstances in which the investigation was done, the methods that were used to
 12 investigate both incriminatory and exculpatory materials, to better understand the tools
 13 that the investigation unit had at its disposal: contextual tools, tools to deal with
 14 security risks.

15 The remarks made by nearly an hour by the witness this morning allowed the various
 16 participants to assess the difficulty of the task, the difficulty of the undertaking,
 17 to better understand the links between the people in the field and the people here in
 18 The Hague; and the people in The Hague sometimes are in the field as well. The people
 19 go back and forth between the DCR and the headquarters of the Court in The Hague.

20 The questions that the Court asked led the witness to go a bit further, and
 21 the witness was able to provide even more information about the conduct of the investigation
 22 of exculpatory material. The Prosecutor, in turn, asked questions that allowed the witness
 23 to bring out a number of points. The legal representatives of victims made their contribution
 24 as well to this search for a better background against which we can understand the stakes.
 25 Mr Hooper, in his own manner, quick and incisive, asked a number of questions that for

1 some people may have gone somewhat beyond the framework of this hearing but also allowed
2 us to better understand the context, which is that of the case that we must try. A few
3 moments ago Mr Kilenda and Professor Fofé completed that work of questioning the witness,
4 and the witness responded in a very conscientious manner.

5 The Court would like to thank the witness. The Court will ask the courtroom
6 officer to resume a closed session so that the witness may leave the courtroom and, once
7 that has been done, the closed session will end so that the Court will be able to announce
8 that the hearing is over. But, for the time being, Madam Courtroom Officer, could you
9 implement a closed session now?

10 THE COURTROOM OFFICER: (Interpretation) Closed session.

11 (Closed session at 3.59 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 4.00 p.m.)

17 PRESIDING JUDGE COTTE: (Interpretation) We are back in open session. The
18 hearing is adjourned, and the next hearing will be held tomorrow morning at 9.30.

19 (The hearing ends at 4.01 p.m.)

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1 CORRECTION REPORT

2 After verification, the Court Interpretation and Translation Section
3 has made the following correction into the transcript:

4 *P.37 line 2

5 "...the offer has always remained."

6 Is corrected by

7 "...the offer has never been taken up."

8

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