

1 International Criminal Court

2 Pre-Trial Chamber III - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge Joyce Aluoch

5 Situation in the Central African Republic - ICC-01/05-01/08

6 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo

7 Status Conference with Registry, OTP, Defence and OPCV

8 Monday, 8 March 2010

9 (The hearing starts at 11.30 a.m.)

10 (Open session)

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

13 PRESIDING JUDGE FULFORD: Good morning. This is a public
14 status conference in the Bemba case, requested by the Chamber following
15 receipt of the Defence admissibility challenge. The main reason for
16 holding the status conference is to establish a timetable for the
17 efficient disposal of the application and to assess whether or not
18 there are going to be any consequences for the current start date of
19 the trial, which is 27 April.

20 Taking this I hope logically, in terms of what needs to be
21 built into the timetable, the first issue that needs to be addressed
22 is the summary which, under Regulation 59(2), the Registry has an
23 obligation to prepare. Our proposal is, given that the Registry now
24 has the application both in French and in English, that a week should
25 be sufficient for one or more individuals working hard to produce the

1 summary, and we are proposing, therefore, 15 March at 4 p.m. for the
2 preparation of that document.

3 Does anybody wish to comment on that suggestion? Right.
4 15 March it is, 4 p.m.

5 The Bench will need a few days to review it, and we anticipate
6 concluding our review by 4 p.m. on 19 March, so that Friday.

7 The summary then needs to be provided, at the very least,
8 to the Central African Republic, and they have got to be given a
9 reasonable opportunity to respond to it, if they wish. It seems to
10 us, on a preliminary basis, that we cannot expect them to do so in
11 less than 30 days, which would take us, give or take a day, to 19 April.
12 Does anyone wish to submit otherwise, suggesting either a shorter or
13 a longer time period? Certainly.

14 MR KILOLO-MUSAMBA: (Microphone not activated)

15 THE INTERPRETER: Counsel is not using his microphone. The
16 interpreters cannot hear him.

17 PRESIDING JUDGE FULFORD: I am going to ask you to start
18 again, please, so your suggestion can be recorded.

19 MR KILOLO-MUSAMBA: (Interpretation) Thank you, your
20 Honour. Our concern today was to ensure that, as far as possible,
21 issues relating to our admissibility application should be addressed
22 before the start of the case on 27 April 2010.

23 Now, under these conditions, shouldn't it -- shouldn't we
24 make sure that the deadline for the response from the CAR be made to
25 tally with the deadline set for the Prosecutor to respond to our

1 application, in accordance to Regulation 34(b) of -- the rules of the
2 Court. This will help us to gain time, especially given that Mr Bemba
3 has been in detention for almost two years today.

4 PRESIDING JUDGE FULFORD: Yes, thank you, Mr Kilolo. We,
5 in fact, discussed that possibility before coming into court this
6 morning. However, it seems to us that with a document of the size
7 that has been delivered, together with the number of attachments which
8 it will be necessary for the relevant individuals in the Central African
9 Republic to read and then to communicate their response to us, anything
10 less than 30 days will simply be to impose a deadline which will be
11 unreasonable and unachievable. And what we don't want to do is to
12 create a timetable which we are going to have to vary at some later
13 date because we simply haven't afforded sufficient time for relevant
14 government officials to address the admissibility challenge which,
15 and we don't criticise it at all, but which the accused has chosen
16 to make at this particular stage in the proceedings. Given he has
17 chosen to mount his admissibility challenge now, we've got to deal
18 with it now, and it seems to us that 30 days is the absolute minimum.

19 Now, the next issue is whether or not the summary should
20 be transmitted to the Democratic Republic of Congo as well, given
21 Mr Bemba's nationality.

22 Any views on this, Ms Kneuer?

23 MS KNEUER: Your Honour, the Prosecution agrees with that
24 proposal.

25 PRESIDING JUDGE FULFORD: Thank you. Anything from the

1 Registry on this, as to whether or not it should be the CAR only or
2 the DRC as well?

3 MS DAHURON-JACOBY: (Interpretation) Your Honour, the
4 Registry has no comments to make on that.

5 PRESIDING JUDGE FULFORD: From the Defence?

6 MR KILOLO-MUSAMBA: (Interpretation) No, your Honour.

7 PRESIDING JUDGE FULFORD: Good. Our order then is that the
8 summary should be provided to both countries.

9 Now, that then takes us to who else needs to receive the
10 summary. By Rule 59 the entitlement of the legal representatives of
11 victims is to the summary only. However, on a preliminary basis, we
12 are of the view that it would be helpful if the legal representatives
13 of victims were provided with a suitably redacted copy of the Defence
14 application so as to put the legal representatives in the best possible
15 position to file their observations on the application. Now, when
16 we say "suitably redacted," that will really simply involve ensuring
17 that any names or references to individuals that could put them at
18 risk, following disclosure to the legal representatives, has been
19 excised.

20 Do you have any submissions on that proposal, Ms Kneuer?

21 MS KNEUER: The Prosecution does not have any reservations
22 that the legal representatives are having access.

23 PRESIDING JUDGE FULFORD: Would you have any objections,
24 Mr Kilolo, to the legal representatives of victims having a
25 suitably-redacted version of the application?

1 MR KILOLO-MUSAMBA: (Interpretation) No objection, your
2 Honour.

3 PRESIDING JUDGE FULFORD: That's extremely reasonable.
4 Thank you very much.

5 Now, Ms. Massidda, given the terms of Rule 59, I think you
6 are going to have difficulties, aren't you, in saying that you are
7 legally entitled to a full non-redacted version of the application?

8 MS MASSIDDA: Thank you, your Honour. We appreciate the
9 fact that the Chamber would like victims to have a suitably-redacted
10 version of the application. I have only two comments on this. The
11 first one: Names of persons indicated in the application by the Defence
12 should not be redacted, in our submissions, if the person enjoys the
13 dual status and the person is represented by one of the two legal
14 representatives appearing in the case.

15 Second, I would like to draw the attention of the Chamber
16 to a previous ruling of Trial Chamber II in respect of the admissibility
17 proceeding. With the leave of the Chamber, I will give a number of
18 the document in one second.

19 PRESIDING JUDGE FULFORD: Well, Ms Massidda, we're going
20 to make a decision now. There is not much point, and it's not very
21 helpful, to provide us with a document reference while we are on the
22 Bench, about to set a timetable. Now, what is the gist, in your
23 submission, of what Trial Chamber II decided in relation to disclosure
24 to legal representatives of victims?

25 MS MASSIDDA: Thank you, your Honour. All reference to

1 national proceedings, all documents, confidential documents,
2 classified as such pertaining to the national proceedings were provided
3 to the legal representative in the Katanga challenge.

4 PRESIDING JUDGE FULFORD: Right. What you will be entitled
5 to, Ms. Massidda, following the indication that I gave a little while
6 ago, is that you will receive the application together with the
7 references to all of the relevant documents set out in the application,
8 unless there are well-founded security reasons for not providing that
9 material. And that obviously means that there is a proper basis for
10 saying that disclosure to the legal representatives could put someone
11 at risk on account of them having, as it were, come into connection
12 with the activities of this Court. So it is simply a limitation that
13 revolves around the identified risk to individuals, and no more than
14 that.

15 MS MASSIDDA: My apologies, your Honour. It was probably
16 my misunderstanding. I thought that the Chamber was simply referring
17 to the reference to the documents and not to the documents themselves.
18 That's the reason why I was insisting.

19 PRESIDING JUDGE FULFORD: Well, Ms Massidda, we're not going
20 to put you in a better position than the Chamber itself is in. At
21 the moment we don't have the documents either, which is an issue I'm
22 going to return to in a moment. At the moment all we've got is references
23 in the Defence application. It may be that this position is going
24 to improve by the end of the morning, but you're certainly not going
25 to be in a better position at the moment than we are in currently.

1 MS MASSIDDA: Thank you. Good to know it.

2 PRESIDING JUDGE FULFORD: Right. Now, time for your
3 response, Ms Kneuer, 21 days?

4 MS KNEUER: That is perfectly fine, your Honour.

5 PRESIDING JUDGE FULFORD: Right. We will need you, please,
6 to liaise with the Defence to ensure that an appropriately-redacted
7 version of the application can go to the legal representatives, really
8 by the close of play tomorrow, by 4 p.m. tomorrow. So, can you, please,
9 liaise with Defence counsel and between you agree on the form of the
10 document and then ensure that it is provided to the legal representatives.
11 Thank you.

12 And we will therefore give you, not 21 days but 20 days,
13 Ms. Massidda, to respond so your responses will come in at the same
14 time.

15 MS KNEUER: Your Honour, may I ask for one clarification?
16 We are also supposed to submit by close of business today a proposal
17 for a redacted version of the admissibility challenge to be released
18 to the public. But I assume what you are proposing is a different
19 document, solely for the purpose of the legal representatives, correct?

20 PRESIDING JUDGE FULFORD: It absolutely is because what can
21 go to the legal representative of victims may be more extensive than
22 can go on the Court's web site.

23 MS KNEUER: I fully agree. If I may, your Honour, I have
24 another clarification question. When the Chamber proposed that the
25 DRC will be notified of the summary, is your Chamber also inviting

1 the DRC government to comment and submit observations, or not?

2 PRESIDING JUDGE FULFORD: The point of serving it on them
3 is to give them the opportunity to respond if they wish. It is up
4 to the country whether or not they do put in a response, but it is
5 to give them the opportunity, and it seemed to us, given the position
6 of the accused, that it would be sensible to extend this to one country
7 in addition to the Central African Republic.

8 MS KNEUER: May I assume that it would be the same timeline,
9 30 days?

10 PRESIDING JUDGE FULFORD: Absolutely.

11 MS KNEUER: Thank you, your Honour.

12 PRESIDING JUDGE FULFORD: Thirty days for both. And if I
13 didn't make that clear, then it should be for both countries.

14 Yes, Ms Massidda.

15 MS MASSIDDA: Thank you, your Honour. I'm also seeking a
16 clarification from the Chamber. The 20 days we understand is for victim,
17 let's say that we know. Now we have a question relating to victims
18 having communicated with the Court, because if the Chamber will request
19 the Office of Public Counsel for Victims also to provide observations
20 on behalf of these persons, we will not be able to do in the 20 days,
21 simply because we don't know the persons yet. Thank you.

22 PRESIDING JUDGE FULFORD: Well, Ms. Massidda, the reality
23 is your office and those victims who are participating are going to
24 have to do your best under the difficult circumstances which now apply.
25 The matter must be dealt with and so you, please, are invited to put

1 in submissions, if you wish, in your role, within the 20-day period
2 and, of course, any currently participating victims can. It's to be
3 regretted that other victims who may participate hereafter are not
4 going to have that opportunity, but a pragmatic decision must be made
5 so as to ensure that this case progresses.

6 MS MASSIDDA: Thank you very much.

7 PRESIDING JUDGE FULFORD: Now, the next issue is whether
8 or not there is a hearing so that counsel can further develop their
9 submissions. At the moment, I think there's a resounding silence on
10 this issue. Does the Defence anticipate asking the Chamber to hold
11 a status conference so that you are able further to develop your
12 submissions, possibly; to reply orally to the observations filed by
13 the Prosecution, the legal representatives of victims, and possibly
14 by the Central African Republic or the Democratic Republic of Congo?

15 MR KILOLO-MUSAMBA: (Interpretation) Yes, your Honour.
16 Considering the importance of the subject matter of this application,
17 we think it would be proper for us to hold a hearing.

18 PRESIDING JUDGE FULFORD: Mr Kilolo, at what stage would
19 you wish to do that? Would that be after the 30-day period has expired,
20 meaning once we have in the submissions from the Central African Republic
21 and the Democratic Republic of Congo, if they file submissions.

22 MR KILOLO-MUSAMBA: (Interpretation) Yes, your Honour.
23 Well, we will be available after the expiry of the deadline. We will
24 be available after the expiry of the deadline for the CAR and the RDC.

25 PRESIDING JUDGE FULFORD: Ms Kneuer, your view?

1 MS KNEUER: The Prosecution will also be available after
2 the expiration of the 30-day deadline.

3 PRESIDING JUDGE FULFORD: Available? Neutral on the
4 subject? Do you encourage a hearing? Are you against a hearing?
5 What's your position, Ms Kneuer?

6 MS KNEUER: We are supporting a hearing.

7 PRESIDING JUDGE FULFORD: You're supporting a hearing.
8 Right. Thank you. Ms Massidda?

9 MSMASSIDDA: We are also supporting the hearing, your Honour,
10 and we will be available after the expiration of the 30-days time limit.
11 Thank you.

12 PRESIDING JUDGE FULFORD: Thank you.

13 Now, Mr Kilolo, we understand that you would have liked a
14 slightly shorter time period for the response from the two states,
15 but we've already dealt with that, and we are minded, because we had
16 considered the exact submission that you made in detail before we came
17 in. We, therefore, are going to have to build in, in all probability,
18 given that there is a joint application from everyone for there to
19 be a hearing, we're going to have to build into the timetable a date
20 for that hearing. Just give me a moment to have a word with my colleagues.

21 (Pre-Trial Chamber confers)

22 PRESIDING JUDGE FULFORD: So, Mr Kilolo, what we propose
23 is that, given all written submissions should have been received by
24 19 April, that the current date reserved as the start date of the trial,
25 27 April, becomes the status conference during which you will all have

1 an opportunity, to the extent that's reasonable, of developing your
2 oral submissions on the application. Do you wish to respond to that
3 proposal?

4 MR KILOLO-MUSAMBA: (Interpretation) Yes, your Honour. I
5 would like to insist on this fact: That we are not asking for a
6 postponement of -- for the start of the trial, which is billed for
7 27 April 2010. In any case, we think that it would be proper for us
8 to hold a hearing before this date, if it pleases the court.

9 PRESIDING JUDGE FULFORD: Mr Kilolo, you can't ask for two
10 mutually contradictory things. If there is to be a proper consideration
11 by this Chamber of your application in relation to admissibility, we
12 have got properly to consider it. And if that is going to take us
13 beyond 27 April, you cannot simultaneously insist, or attempt to insist,
14 that the trial should commence on 27 April. If, even setting the
15 tightest sensible deadline, the consideration of admissibility is going
16 to go beyond 27 April, then the trial cannot start on that day. And
17 it is pointless standing up and insisting on maintaining the trial
18 date if that is self-evidently an impossibility.

19 Now, we are deeply conscious of the fact that Mr Bemba is
20 in custody, and it is our desire to have this trial commence as soon
21 as it possibly can. But we are now in receipt of your application
22 in relation to the admissibility challenge, which has got to be dealt
23 with. So, looked at sensibly, given that the submissions will not
24 be in until 19 April, it seems to us, so as to give everyone an opportunity
25 of digesting the submissions that have been made so that sensible

1 submissions can be advanced on them, that we use the date that is
2 currently fixed for the commencement of the trial.

3 Now, bearing those observations in mind, is there anything
4 else you would wish to say?

5 MR KILOLO-MUSAMBA: (Interpretation) Very briefly, your
6 Honour, with your permission, I would like to return to Article 19(4)
7 of the Rome Statute. I think this provision is very important, because
8 it deals with the time of the filing of an admissibility challenge.
9 It also deals with the time for processing such an application.

10 Article 19 of the Rome Statute, paragraph 4 indeed states
11 that an admissibility challenge has to be raised before the start of
12 the trial. I think this is the case here, so there's no problem here.
13 I think the jurisprudence of our court is clear on that, namely, that
14 the start of the trial is the time when we have to discuss an admissibility
15 challenge. The real problem here is that of the time during which
16 we have to deal with this admissibility challenge, which was filed
17 before the start of the trial.

18 I also think that this provision also provides for the fact
19 that the admissibility challenge be addressed while the trial is under
20 way. And so, if you combine this with Article 58(2) of the Rules of
21 Procedure and Evidence, "When a Chamber of the court is seized of an
22 application which challenges the admissibility of a case, it could
23 hold a hearing. It could examine the challenge or the issue within
24 the framework of a confirmation hearing or a trial on condition that
25 this does not lead to excessive delay."

1 Your Honour, I think that in this case we could imagine that
2 the trial starts on 27 April, and at a given point in time a hearing
3 will be held on admissibility. But the time that you are going to
4 take to hold deliberations on the issues which we have raised in our
5 application would enable us to carry out -- we continue with hearings,
6 with substantive hearings. I think that would be a good compromise
7 to ensure that we avoid any delays, delays which I think are becoming
8 unjustifiable. I will return to that in a short while.

9 PRESIDING JUDGE FULFORD: Mr Kilolo, on your first point,
10 we have been very careful not in any way to criticise the Defence for
11 the timing or the manner of this challenge to admissibility. You are
12 absolutely right that within the statute the application needs to be
13 made before the commencement of the trial. That is what has happened
14 here, and we do not -- and I stress we do not in any sense criticise
15 you or the accused for its timing or its length. On your second point
16 give me a moment.

17 (Pre-Trial Chamber confers)

18 PRESIDING JUDGE FULFORD: Ms Kneuer, do you have any
19 submissions on what we take to be the Defence suggestion that we should
20 hold the date of 27 April for the trial and somehow work in our
21 consideration of the admissibility challenge around that date, not
22 necessarily - I think almost inevitably - having not resolved that
23 issue before the Prosecution makes its opening statement and begins
24 to call its evidence?

25 MSKNEUER: Your Honour, it is the position of the Prosecution

1 that the question of the admissibility needs to be resolved, at the
2 minimum, before the parties start presenting the evidence at trial.
3 Also, I would like to refer your Honours to rule 58(2), the last sentence,
4 which clearly states that the question of the challenge should be dealt
5 with first.

6 There's also the option that an admissibility challenge may
7 cause other circumstances, or follow-up incidences, which would then
8 further delay the trial. So to start with a trial, to put it on hold
9 with presenting the evidence, may not be the most expeditious way to
10 proceed with that matter.

11 PRESIDING JUDGE FULFORD: Right. Our view is that it is
12 undoubtedly in the interests of justice for this challenge to be resolved
13 prior to the commencement of the trial itself. Given that the accused
14 is saying that this case should not be taking place in this court,
15 we are of the view that that issue should be dealt with prior to the
16 commencement of a trial which, it is suggested, should not be taking
17 place. Therefore, in as expeditious a way as possible, we intend to
18 resolve this application prior to the commencement of the trial itself.

19 Now, if the status conference for submissions takes place
20 on 27 April, possibly lasting more than one day, the Chamber is then
21 going to need some time to reflect on the submissions, and it would
22 be preferable, maybe rather stronger than preferable, for our reasons,
23 however we find, to be delivered prior to the commencement of the trial
24 itself, because there may be elements of the reasons which the parties
25 need to reflect on and to take into consideration prior to the

1 commencement of the Prosecution's opening and its evidence.

2 We wish to create a sensible and achievable timeline for
3 this, and given that the status conference will take place just before
4 the beginning of May, it is our view that the trial date should be
5 moved back effectively two months until Monday, 5 July. That will
6 give the Judges sufficient time to deal with the various matters that
7 have been raised and to prepare a fully reasoned judgment on the
8 application.

9 Now, we wish to raise the issue of the current form of the
10 admissibility challenge. The document itself doesn't require
11 commenting on, but the annexes do.

12 We were -- the Court has been provided with the application,
13 but, as I understand it, none of the documents referred to in the many
14 footnotes have been filed. Instead, references have been provided,
15 some of which are inaccurate or incomplete, and amongst them, the Chamber
16 is simply referred to various web sites and presumably invited to go
17 and conduct our own researches of those web sites to obtain the documents.

18 I'm afraid this is not acceptable. If any party in
19 proceedings before us wishes to rely on documents in support of an
20 application, those documents must be filed with the Court and must
21 accompany the application.

22 Therefore, each and every one of the documents relied on
23 and referred to in the footnotes must be separately filed and filed
24 together so each has a separate filing; but this must be done all in
25 one go, within a very short timeline. How long, Mr Kilolo, do you

1 need, in order to file each of the documents referred to in the footnotes?

2 MR KILOLO-MUSAMBA: (Interpretation) Your Honour, we
3 think that five working days would be sufficient to table all those
4 documents. Now, it goes without saying that that could be done within
5 a lesser period of time, as well.

6 PRESIDING JUDGE FULFORD: Five days, then, at the outside,
7 Mr Kilolo. We encourage you, though, to try to do that -- to complete
8 that exercise in a shorter period of time because it is obviously going
9 to add to the work of everyone involved if those -- the longer it is,
10 that those documents are not readily available.

11 Now, I'm extremely grateful to the legal officer to Judge
12 Aluoch who has prepared a schedule indicating over four pages -- or
13 three-and-a-half pages a number of footnotes which are either
14 incomplete or for which no proper reference has been given. At the
15 end of this hearing, I'm going to ask her to liaise with the Defence,
16 to show you footnote-by-footnote where problems have been encountered
17 so that you can address that appropriately when you are providing the
18 documents.

19 Yes, Mr Kilolo, was there something you wished to say?

20 MR KILOLO-MUSAMBA: (Interpretation) Yes, your Honour,
21 with leave. Well, I don't want to hinder the work for today's meeting,
22 but I think it's important to immediately make an application from
23 the Defence regarding the fact that you have decided to delay the date
24 of commencement of the trial to 5 July 2010.

25 And we hereby request -- and I think you've already touched

1 upon this question to some extent. Now, you said that you would not
2 be making any criticisms of the Defence or the OTP regarding the actual
3 time that the Defence made its application regarding admissibility,
4 but it does seem important for us not to avoid the issue either.

5 Now, there's the whole matter of accountability, who is
6 accountable for this delay, and also the unjustifiable nature of this
7 delay. Why? Because I think you've seen, your Honour, that Mr Bemba
8 strongly wishes to be judged as quickly as possible - I said that a
9 few moments ago - that he has been in detention for nearly two years,
10 and he does enjoy the presumption of innocence and we have no reason
11 to believe he is not innocent.

12 We would hope that within the decision taken by the Chamber
13 to delay the date of the hearing that you might observe that this delay
14 caused by -- this delay to the beginning of the trial is wholly
15 attributable to the OTP and is unjustifiable. Why? Because I think
16 we've already dealt with this matter five months ago.

17 It was on 22 July 2009 before the Pre-Trial Chamber the Defence
18 introduced its initial application for disclosure of relevant items
19 having to do with admissibility; and I can give you the reference number,
20 ICC-0105-01/08-458. And then after that, we had to wait for about
21 one month. And I was only on *13 August that we received an answer
22 from the OTP stating that the OTP had already complied with all its
23 obligations having to do with disclosure concerning the whole issue
24 of admissibility. And once again, I can provide the reference number,
25 ICC-01/05-01/08-474.

1 So finally, on 22 September, the Defence attempted -- well,
2 asked, rather, a second time the OTP to disclose documents, specific
3 documents that were properly identified concerning the whole matter
4 of admissibility. And once again, I will provide reference number,
5 ICC-01/05-01/08-542, paragraph 7.

6 And finally, a few days later the OTP responded again,
7 continuing with the observations of 13 August. And they said that
8 everything had been disclosed to the Defence. And finally, the Defence
9 was to bring the matter before the Chamber on 5 October regarding certain
10 pieces of evidence having to do with admissibility.

11 Oddly enough - and third reaction from the OTP - without
12 waiting for your decision, the OTP radically changed its position and
13 disclosed and partially disclosed certain items of evidence that were
14 in its possession having to do with admissibility on 12 October 2010.
15 And I will give you the reference, ICC-01/05-01/08-556.

16 And finally, on 2 December, your Chamber informed the parties
17 that an ex parte hearing would be held with the OTP to look into the
18 status of various disclosures requested by the Defence,
19 ICC-01/05-01/08-632, paragraph 31.

20 And indeed, after that conference was held, that ex parte
21 status conference with the OTP, your Chamber realised that the
22 OTP - contrary to its affirmations - had not proceeded with complete
23 disclosure of admissibility as we had been asking for for several months.
24 And so, at that point, your Chamber issued an order regarding disclosure
25 on 14 December 2009, ICC-01/05-01/08-655. And that order said that

1 the OTP had to proceed with complete disclosure of all items of evidence
2 having to do with admissibility by 18 December.

3 And finally, the OTP proceeded with that disclosure of items
4 of evidence that it had in its possession for several months. And
5 then the Defence had to -- because of all this beating around the bush,
6 had to wait until December, five months, a delay of five months before
7 beginning to work on its application for -- regarding admissibility.

8 And we believe that this application is of the utmost
9 importance, and we will not talk about the excessive delays that we
10 have seen so far; we will return to that point when we make later
11 submissions. But already, we would like to request that you observe
12 that this delay is unjustifiable and can -- and the OTP is entirely
13 responsible for all these delays.

14 PRESIDING JUDGE FULFORD: Extremely clear, Mr Kilolo.
15 Thank you very much. Now, Ms Kneuer, it's your choice really as to
16 when and how you respond to that. You can respond now orally, if you
17 wish. Alternatively, you can build, as it were, this issue into your
18 response which is due in 21 days; because, as I understand it, Mr Kilolo
19 is asking us to take into consideration what he says is unconscionable
20 delay - having been caused by the Prosecution - when we are considering
21 the admissibility challenge.

22 MS KNEUER: Your Honour, the Prosecution indeed prefers to
23 respond to the submissions of the Defence in writing. However, we
24 want to reiterate that the question of resolving the problem of
25 admissibility before a trial is to be seen separate of any disclosure

1 matters or detention matters at the preface.

2 PRESIDING JUDGE FULFORD: I think you must be a little careful
3 with that, because in order to mount an appropriate admissibility
4 challenge, you may have to have received appropriate disclosure from
5 the Prosecution in advance. So I don't think, Ms Kneuer, you can
6 completely separate disclosure from admissibility. There may be a
7 relationship between the two. Indeed, you may wish to address that
8 point in your written submissions in due course. Right. But you can
9 respond then to that later.

10 Now, about five or seven minutes ago when we were setting
11 various deadlines, I saw you trying to get to your feet, Ms Kneuer.
12 Was there something that you wanted to say? Please do so.

13 MS KNEUER: Thank you, your Honour. Your Honour granted
14 the Prosecution 21 days to respond to the admissibility challenge of
15 the Defence; and the question for us is, when the 21 days start to
16 count? Is it as of today or after the Defence submitted the attachments
17 in a proper way.

18 PRESIDING JUDGE FULFORD: I am afraid you're going to have
19 to do the best you can with the references that have been provided,
20 Ms Kneuer. And I will ask the legal advisor to Judge Aluoch to provide
21 you with what I think will be a document which will highlight those
22 footnotes in relation to which we've had difficulties so that you can
23 then resolve them face-to-face with Mr Kilolo, rather than having to
24 try to find documents for which there's been either no reference given
25 or an ineffective one.

1 Now, Ms. Massidda, you will want to participate in these
2 discussions and, indeed, you should be admitted to them. Yes. Thank
3 you.

4 Now, there is a confidentiality issue which we need to discuss
5 in private. Private session, please.

6 (* Open session at 12.18 p.m.)

7 MR KILOLO-MUSAMBA: (Interpretation) With leave, your
8 Honour, before we go into private session, I just wondered if I could
9 have the right of reply to the observations made by the OTP.

10 PRESIDING JUDGE FULFORD: Well, we seem to have moved rather
11 rapidly from public to private, back into public again.

12 Mr Kilolo, could you bear in mind in future that once I've
13 given the instruction that we should go into private session, we then
14 go into private session even if we then have to wait to come out of
15 it, but it's very difficult if you intervene whilst the instruction
16 is being transmitted to the administration. But no matter.

17 Right, we are in public session. Please respond now.

18 (Open session at 12.19 p.m.)

19 MR KILOLO-MUSAMBA: (Interpretation) I apologise, your
20 Honour. I will take that into account. I just wanted to ask if it
21 would be possible to have a few moments to respond to the observations
22 from the OTP, particularly regarding accountability and the
23 unjustifiable delays?

24 PRESIDING JUDGE FULFORD: Well, I don't think Ms Kneuer has
25 really responded, Mr Kilolo, apart from to ask for time. I think she

1 made one remark, which I then pulled her up on. Are you seriously
2 suggesting that the observation just made by Ms Kneuer necessitates
3 a response from you at this point in time?

4 MR KILOLO-MUSAMBA: (Interpretation) No, your Honour. I
5 was speaking of the written submissions that would be filed by the
6 OTP.

7 PRESIDING JUDGE FULFORD: Five days after receipt of the
8 Prosecution's submission, within five days you have an opportunity
9 to respond, Mr Kilolo.

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

12 (Private session at 12.21 p.m.)

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13 (The hearing ends at 12.40 p.m.)

14 CORRECTIONS REPORT

15 The following modifications have been implemented into the transcript:

16 *Page 17 line 21 "13 July" is corrected by "13 August"

17 * The excerpt of the transcript starting page 21 line 6 finishing line

18 17 was noted Private Session but has been held in Open session.