

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Before Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and

4 Judge Christine Van den Wyngaert

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

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

7 Status conference

8 Monday, 2 November 2009

9 (Open session)

10 (The hearing starts at 1:02 p.m.)

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

13 PRESIDING JUDGE COTTE: (Interpretation) Court is in session. You may be
14 seated. Security guards, could you please show into the courtroom Mr. Germain
15 Katanga and Mr. Mathieu Ngudjolo.

16 (Germain Katanga and Mathieu Ngudjolo Chui enter the courtroom)

17 PRESIDING JUDGE COTTE: (Interpretation) Very well. Please excuse me for
18 this slight technical hitch. Mr. Prosecutor, thank you for being present at the
19 outset of the hearing. Could you please present to us the members of your team?

20 MR. MORENO-OCAMPO: Mr. President, my team is composed of Ms. Florence
21 Darques Lane, Dianne Luping, Krisztina Varga, Sandra Schoeters, Eric Macdonald,
22 Gilles Dutertre and Lucio Garcia.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
24 Mr. Prosecutor. The legal representatives of victims, could they please introduce
25 themselves?

1 MR. FIDEL: (Interpretation) Yes. Thank you, Mr. President, for allowing me
2 to address the Court. Mr. Fidel Luvengika. And by my side Catherine Denis from
3 the Brussels Bar, and she will serve as my assistant in this case.

4 MR. GILISSEN: (Interpretation) Yes. Good afternoon, Mr. President. I am
5 Mr. Gilissen from the Liège Bar, and I'm representing child soldiers. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. David Hooper, could you please
7 present or introduce to us the members of your team.

8 MR. HOOPER: Good afternoon, Mr. President. There's myself and
9 Andreas O'Shea as counsel; Sophie Menegon, who is our case manager; and our legal
10 assistants, Nathalie Wagner and Caroline Buisman. I'm also assisted by an intern,
11 *Aurélie Stoflique. Our other intern is in the public gallery, as we've overflowed
12 in our numbers.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.

14 Maître Jean-Pierre Kilenda.

15 MR. KILENDA: (Interpretation) Yes, Mr. President. Good afternoon, your
16 Honours. On my left, you have Madam Hélène Gorkiewiez, who is our case manager.
17 Just behind me seated you have Aimée Merlandt and Caroline Martin, who are legal
18 assistants. They are pro bono. And on my right you have Professor Jean-Pierre
19 Fofé, who is our co-counsel. And myself, I am Jean-Pierre Kilenda, senior trial
20 lawyer at the Brussels Bar.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

22 Courtroom officer, I am under the impression that our audio equipment is
23 going to be somewhat problematic, either it is too loud and there is a hissing
24 sound or it becomes nonexistent. Can people hear me properly? Well then, I am at
25 risk of not hearing others. So I shall try and -- well, there we are. Thank you

1 very much.

2 So we have a very heavy programme ahead of us, and we shall follow the
3 agenda. We wanted to render a number of oral decisions, which I shall do. The
4 first oral decision concerns Witness 12. The Prosecutor informed the Chamber on 27
5 August 2009 by way of document number 1436 of his intention to disclose to the
6 Defence at the behest of the Defence team for Germain Katanga documents that
7 Witness 12 had mentioned in his first statement. In the filing it states that in
8 its opinion these documents are not Prosecution documents and that they do not
9 pertain to Article 67(2) of the Statute or Rule 77 of the Rules of Procedure and
10 Evidence. It indicates nevertheless that it is willing to disclose them.

11 It also notes that some of these documents have undergone redactions
12 authorised by the Trial Chamber I in the Lubanga case. In this regard, and at the
13 behest of the Chamber, the Prosecutor, in an email dated 28 August 2009 provided
14 precise references to relevant decisions rendered by Chamber I. The Defence for
15 Mathieu Ngudjolo, in its observations 1446, filed on 1 September 2009, contends
16 that all elements linked to a Prosecution witness must be automatically disclosed.
17 This is an obligation which, in its opinion, the Chamber must remind the Prosecutor
18 of. The Defence therefore requests the imminent -- the disclosure of all documents
19 pertaining to Prosecution witnesses.

20 In application of Article 64(3)(c), 64(6)(f), 67(2) of the Statute, and Rule
21 77 of the Rules, the Chamber does not feel it is necessary to determine the exact
22 nature, nor the relevance of the documents in question as long as they are to be
23 disclosed in accordance with the request formulated by the two Defence teams.

24 Furthermore, it notes those decisions of Trial Chamber I granting leave for
25 some of those documents to be redacted and it is mindful of the provisions of

1 Regulation 42 of the Regulations of the Court. It does not deem it necessary to
2 revisit the issue of authorised deletions.

3 Lastly, on a general level, the Chamber invites on the one hand, the Defence
4 for Mathieu Ngudjolo to submit precise applications if it deems that some documents
5 mentioned in witness statements, Prosecution witness statements, have not been
6 disclosed. On the other hand, it invites the Office of the Prosecutor to disclose
7 the aforementioned documents relevant to Witness 12. It also requests that the
8 Office of the Prosecutor refrain in the future from making written submissions that
9 fail to state specific, precise and explicit requests.

10 The second decision, oral decision, is relevant to Witness 317, 317. In its
11 application number 1537 of 16 October 2009 the Prosecutor requested the
12 authorisation to add the statement of Witness 317 to the list of evidence and to
13 add this very same witness, 317, to the list of witnesses, in accordance with
14 Regulation 35, and on the condition, notably, that a number of deletions or
15 redactions be made.

16 The two Defence teams made their observations on 29 October 2009. The
17 Chamber is rendering its decision orally. It rejects the Prosecution application
18 for an extension of time limits. It authorises the Prosecutor to add Witness 317
19 to its list of Prosecution witnesses. It orders the Prosecutor to establish the
20 legal foundation as well as the reasons justifying the requested redactions by 4
21 November 2009 at 1600 hours at the latest.

22 It orders, I repeat, the Prosecutor to - I repeat - to say precisely which
23 legal basis it is bringing in order to justify the redactions requested. It also
24 requests that the Prosecutor in the interim disclose to the Defence the current
25 redacted version of the statement of Witness 317, and it orders the Prosecutor to

1 reply immediately to the request by the Defence of Germain Katanga for the
2 disclosure of supplementary documents falling within the scope of Rule 77 of the
3 Rules of Procedure and Evidence. The motivation of this oral decision shall be
4 filed with the Registry tomorrow.

5 Third oral decision concerns the eight witnesses, notably, Witness 15, 28,
6 159, 161, 166, 249, 250 and 268. These are applications from the Prosecutor.
7 These are two applications, notably number 1408 dated 20 August 2009, and
8 application number 1561 dated 26 October 2009. These applications aim to add the
9 transcripts for new interviews relative to Witnesses 28 and 250 to the Prosecution
10 evidence, and the second to disclose the transcripts of those interviews concerning
11 Witnesses 15, 159, 161, 166, 249 and 268 to the Defence teams in accordance with
12 Rule 77 of the Rules of Procedure and Evidence.

13 The Chamber grants the Prosecutor's request to add to the list, to the list
14 of its evidence, the transcripts of interviews of witnesses 28 and 250. It grants
15 the Prosecutor's requests to disclose to the Defence as evidence, in accordance
16 with Rule 77, the transcriptions of telephone interviews with witnesses 159, 161,
17 166, 249 and 268. It grants the Prosecutor's request to disclose to the Defence as
18 evidence, in accordance with Rule 77, the statement of Witness 15. It authorises
19 the Prosecutor to delete from, or to redact from the statements of witnesses 159,
20 166, 249 and 268 the names of locations, and it denies the application to redact
21 the name of a MONUC employee stated in the witness statement for Witness 166, and
22 it provisionally requests that the Prosecutor indicate the identification number
23 for intermediary 183 in all documents where his identity has been redacted. The
24 motivation underlying this decision will also be filed with the Registry tomorrow.

25 We shall now move on to point 4 on our agenda: Notification of charges.

1 Firstly, the document summarising the charges.

2 On 21 October 2009, the Chamber rendered its decision on the filing of a
3 summary of charges by the Prosecutor. Whilst emphasising the exceptional nature of
4 such an undertaking, it thought it fit to request of you, Mr. Prosecutor, that you
5 draft a summary of charges using the same terms that had been used by the Pre-Trial
6 Chamber in its decision on the confirmation of charges of 26 September 2008 and
7 stating each charge one by one, and assigning a number to each. This document was
8 filed on 28 October. Once a request for an increase in page numbers had been
9 granted on 27 October 2009, which you had filed on the very same day. In view of
10 the urgent nature of the matter, in view of the fact the document had to be filed
11 the next day, this authorisation was granted by email authorising the participants
12 at the behest of the Chamber and this was sent by the legal adviser.

13 In its decision of 21 October the Chamber indicated that it intended to
14 gather the observations submitted by Defence counsel as well as those of the
15 representatives, the legal representatives of victims today during this very
16 hearing.

17 Before requesting that they address the Court, notably to the -- the Defence
18 teams and the legal representatives for victims, the Chamber would first like, in
19 your presence, Mr. Prosecutor, to make a number of observations which it deems
20 particularly important and, in addition, to rectify a number of issues it deems
21 essential.

22 First observation: Mr. Prosecutor, in its decision of 21 October 2009, the
23 Chamber, I remind you, requested that the Office of the Prosecutor draft a summary
24 of the charges using the same terms as those used by the Pre-Trial Chamber in its
25 decision on confirmation of charges. The words used by our Chamber in this request

1 were not picked out of thin air. They are as important, as they form the basis of
2 the substantial discussions which we intended to settle in this decision of 21
3 October.

4 The Chamber then held that the decision of confirmation of charges rendered
5 by the Pre-Trial Chamber was to be the sole and unique point of reference during
6 the trial in order to determine the elements upon which the Defence was to
7 construct its case. It also held that the document from your office, entitled in
8 French, "Document indiquant les charges," and in English, "Document containing the
9 charges," which was filed on 26 June 2008, that is to say, before the decision the
10 Pre-Trial Chamber could no longer be a point of reference during the trial. It may
11 be that you yourself and the Office of the Prosecutor do not share this viewpoint,
12 which is of course your right, but this is nevertheless the position that the
13 Chamber decided to adopt.

14 Yet you deliberately decided to give another name to this document that you
15 tabled on 28 October. You entitled it, once again "Document containing the
16 charges," and making reference not to our ruling but rather to the practice of
17 another Chamber, and this is quite clear from the footnotes on pages 1 and 2 of
18 your document, which bears the number 1568. In your view, the document indicating
19 the charges, or containing the charges provided for under the Statute and
20 Regulation 52 of the Court, are still the one single reference point for the trial,
21 but this is not what the Chamber has decided.

22 Allow me to reiterate: The Chamber deliberately chose the word "summary" of
23 its own will, thus responding to the objections from the Defence teams who asked
24 for a true summary based solely upon the confirmation ruling and not on your
25 document indicating the charges.

1 We deplore the fact that the mechanism provided for within our ruling was not
2 followed to the very letter and we would like to make something very clear to you
3 because such an attitude cannot be accepted before any national or international
4 court.

5 Second observation: We are making this point, and it is particularly
6 important because in the document entitled "Containing the Charges" which you filed
7 at our request on 28 October 2009, we find many footnotes that come from your
8 document entitled "DCC," Document Containing the Charges, a document dated 26 June
9 2008 which came before the decision regarding the confirmation of charges. Some of
10 these footnotes are there to provide additional information, in particular,
11 regarding the identity of a number of victims. Other footnotes provide additional
12 information or additional material regarding confirmation. Others speak of various
13 contradictions or divergent points between your document of June 2008 and the
14 ruling by the Pre-Trial Chamber.

15 According to the Chamber, these footnotes should not have been placed in the
16 document. We wanted a document that was simple, clear, specific, based only upon
17 the decision confirming the charges. And yet, sir, the Chamber understands that
18 you were concerned that you would not be able to present the factual allegations
19 that you spoke of in your document indicating the charges dated 26 June 2008 that
20 were not expressly taken up in the ruling by the Pre-Trial Chamber, yet the Chamber
21 wishes to reassure you on one point: We will be able to make a distinction, to
22 distinguish between a new fact that may not have been retained by the Pre-Trial
23 Chamber, and are the court reporters and interpreters having too much trouble?
24 Madam clerk? Am I misbehaving? My colleague has reminded me to slow down.

25 We wish to reassure you that we will be able to distinguish between a new

1 fact that may not have been held or taken by the Pre-Trial Chamber in its ruling
2 and a simple explanation of a fact that the Pre-Trial Chamber upheld that now finds
3 itself before our Chamber.

4 And now my third observation, on paragraph 4 of report 1568, you indicate
5 that our Chamber in our ruling of 21 October would be depriving you of the
6 opportunity of introducing various items of evidence during the trial that may not
7 have been presented at the confirmation of charges phase.

8 But our Chamber has said exactly the contrary. There has never been any
9 question of depriving you of an opportunity to present new evidence after the
10 confirmation of charges decision. And we would refer you in particular to
11 paragraphs 25 and 27 of *ruling of 21 October which are quite clear on this point.
12 I thought it was appropriate to make this point.

13 Fourth observation. In this same paragraph, paragraph 4 of the forwarding
14 report numbered 1568, you protested the Chamber's decision which indeed deprives
15 you this time of the opportunity of presenting facts during the trial and no longer
16 evidence; but rather, facts not found in the Confirmation of Charges decision.
17 This is what we have ruled and we provided detailed -- or rather long explanations
18 of this, quite aware of the importance of the position we were taking.

19 So as to avoid any possible misunderstanding, the Chamber set out a number of
20 arguments and developed them in paragraph 27. We spoke of the various situations
21 that could occur, depending on how your continued investigations led to new items
22 of evidence relating to charges that may have been already confirmed, or additional
23 charges or charges having to do with new facts and circumstances.

24 The Chamber specified the procedures that should be followed in each one of
25 these three situations. Consequently, at this particular time - and the Chamber is

1 saying this quite forcefully - it is appropriate for your office to comply with the
2 ruling that we have made. And in the -- and this is definitive and this must be
3 done in the very terms that were set out in the decision.

4 Fifth observation. The Chamber was very surprised - and this word is quite
5 weak, really - we were surprised to repeatedly see in paragraph 4 that you were
6 keeping the right to appeal, filing a possible appeal, taking into account facts
7 not found in the Confirmation of Charges ruling. Once again, we must be very
8 clear. If the ruling that the Chamber made on 21 October 2008 was not to your
9 liking, well, you are entitled not to like it; and you must file an appeal within
10 the deadlines that are set by the regulatory authorities and thus allow the Appeal
11 Chamber to deal with the law.

12 You did not choose that option, and you certainly had the right to do so, but
13 that does not mean that once the deadline for an appeal is over, to threaten a
14 later appeal on an issue that is currently at hand today now, without any prejudice
15 of course to the position that could be taken by the chamber -- the Appeal Chamber.

16 This possibility of an appeal seems to contradict the principle that a party
17 cannot raise an issue before the Appeal Chamber for the first time if it has not
18 previously been challenged during the previous stage of proceedings. So you had
19 that opportunity and you certainly could have asked our Chamber for leave to
20 appeal. The Chamber reiterates, the ruling made 21 October 2009 is definitive now
21 and must be complied with.

22 Sixth observation. The Chamber is stressing this point with a great deal of
23 force, this obligation to comply with the ruling. Why? Because furthermore, we
24 have seen that in the footnote on page 2 of your report, paragraph 2, your office
25 challenges the position that we have taken, a direct challenge. But a footnote is

1 not the way you make your disagreement known, nor should one announce some
2 hypothetical appeal that will be made at some later stage of the proceedings.
3 Rather, one must file an appeal within the timeframes that are set by the various
4 authorities that govern all those who are now in this courtroom.

5 Careful respect of the foundation of the Court, the statutory authorities of
6 this Court, is our greatest guarantee for all of us. We would also like to take
7 this opportunity to remind -- we also take this opportunity to remind those present
8 that footnotes are intended to simplify a filing by putting references at the
9 bottom of the page, of course, or short additional information or explanations.

10 In our opinion, footnotes should not include legal analyses that are more
11 important than the analysis found in the very text of the filing. The Chamber was
12 quite surprised to see these footnotes, surprised by their length and in particular
13 surprised by the footnote found on page 2.

14 Sir, before I ask the two Defence teams to make observations, substantive
15 observations regarding the document, now, this document -- and I think this was the
16 first point on our agenda -- would you like to now address the Court and respond to
17 these observations and these clarifications that I have made, speaking on behalf of
18 the Chamber? I will be very clear, we are not going to hark back to a substantive
19 issue, but if you wish to address the Court, you may do so.

20 MR. MORENO-OCAMPO: Mr. President, thank you very much for allowing me to
21 clarify the Prosecutor's position. And let me start that, as it cannot be another
22 way, the Prosecutor has all due respect for the Court's decision. And the
23 Prosecutor regrets that our observations were taken -- were surprising the Chamber.
24 I do regret that.

25 I don't see that we have any substantial difference here. Maybe -- the

1 problem was, we like to respect -- and in fact, we respect your decision. We did
2 what you ordered us to do. The only problem we had is, we had to respect some
3 position that sometimes we have a different legal point of view. That's why we
4 explained to you that's our position, but we follow what you order. That, for us,
5 was the position we are taking.

6 It seems we have a different legal position in terms of interlocutory
7 appeals. One of the requisites is that the appeal -- we should demonstrate that
8 the appeal will advance the proceedings. And in this case, even if we have a
9 different legal view on Document Containing Charges, or the summary or the other,
10 we don't see a substantial difference, because we agree with your -- the president
11 that the facts are clear. They're well defined. The Trial Chamber confirmed what
12 the Trial Chamber confirmed. So it's very clear what is the substance on trial.

13 The little difference we present in the footnotes are just to be sure that
14 everyone understands, this is a little difference, but the Prosecutor will follow
15 the charges confirmed by the Trial Chamber.

16 So that is why as a Prosecutor I decided not to appeal the decision, because
17 even if I have a different legal opinion on how to call the Document Containing
18 Charges or who produced it, there is no substantial difference. That's why the
19 only possible -- the only possible problem for us is if at the end of this trial -
20 for some reason we cannot foresee today - there is a problem with this, that's why
21 we make the point, if this implies at the end of the trial an acquittal, then we
22 have the right to raise the issue. So it's just for us the precaution.

23 But I really regret that we surprised the Chamber. The only attempt, the
24 only intention was to follow the Chamber's decision scrupulously and just -- I'm
25 sorry. Thank you. I'm sorry I did this.

1 So to repeat, the Prosecutor's office discussed this decision carefully. We
2 found there is no substantial reason to appeal this. That's why we did not. Just
3 in case we flag our different views, we flag that there is at the end of the
4 process a substantial conflict, then the right for appeal will come back, again the
5 final decision.

6 But in all our understanding, we were following your decision, we
7 scrupulously took each word of the Trial Chamber and put in our document. We
8 presented our position, and also we called the document -- in some way, we are
9 confirming -- we are trying to be sure that our presentation will help the Chamber
10 to conduct an absolutely fair trial. And that's what we're trying to achieve. And
11 we regret again that we surprised the Chamber.

12 On the sanctimony of the decision today, on this topic, we have -- we are
13 very -- we are regretful. We have no difference. We agree. So we believe -- we
14 will try to help the Chamber to conduct this proceeding in a fair way and in a
15 smooth way. That's why, again, let me present to you, I regret that we surprised
16 the Chamber. We're trying to respect the Chamber's decision and our position --
17 just informing you on our position. And for us, the issue is very clear. We are
18 going to trial based on the charges confirmed by the Pre-Trial Chamber. These are
19 the facts that we tried to prove.

20 PRESIDING JUDGE COTTE: (Interpretation) We thank you, sir. We would like
21 things to be as simple as possible, as you describe them. You should know that
22 this Chamber, given its current composition, is not particularly susceptible -- and
23 I think this applies to the Defence teams and to the representatives of victims, we
24 all share one goal; namely, to come to a demonstration of the truth as quickly as
25 possible.

1 To do so, we want the rules of the game - if we can speak of a "game" here -
2 to be clear. And it appeared that when it came to the concept of charges and the
3 components of facts, the legal characterisations, the elements of evidence, that
4 there was a certain requirement, one of clarity and precision. And thus, after
5 listening to the various parties, we endeavour to provide this clarity during the
6 earlier hearing, and we asked you to file -- and you, sir, did file a 40-page
7 document which we discussed -- pardon me, that we will discuss in a few moments.

8 But this Chamber had more than the impression that the transmission report
9 requested took up, once again, what had been found in the other document, which is
10 why we are making these observations, making these important points that need to be
11 noted in the transcript of this hearing, and we all hope that things are now clear.
12 We thank you for being in attendance. We thank you for the explanations that you
13 have provided. And I think it's now to be understood by everyone that -- the
14 uncontested decision of December -- pardon me, of October.

15 Now, sir, you have taken time out of your schedule to attend this hearing,
16 and we thank you for that, once again. You are entirely free -- if you must now
17 leave the room, you certainly are free to do so, and we will continue our
18 proceedings with our usual -- with the usual people.

19 Now, moving on to the objectives of this hearing. Now, today we must make
20 some rulings regarding the content. And, once again -- I'm not speaking of the
21 transmission report, but rather of the document containing the -- confirming the
22 charges. It's a matter of bringing together all the various observations that
23 you -- I'm referring to the Defence teams and the legal representatives of victims,
24 the observations that you wish to make before the trial begins. Your observations
25 are of the utmost importance.

1 No doubt the summary that was requested is not the only reference dealing
2 with the charges. And as we said on 21 October, and as the Chamber has just
3 reminded all, it is the confirmation decision made by the Pre-Trial Chamber that is
4 the veritable reference point for the trial. Your observations must be made now
5 before the substantive issues are dealt with; namely, the trial itself. There may
6 be challenges regarding the precision of the charges against the accused.

7 Now, we would like you to make any substantive observations that you believe
8 are necessary. I stress the word "substantive." I remind you, our common goal is
9 to deal with -- to deal with the various items that you have raised, the various
10 differences that you may have found. Let me be very clear. Once again, we
11 cannot -- rather, you cannot reserve a decision or a position until some later
12 time. I have made this point.

13 And I will now ask the two legal representatives to address the Court,
14 followed by the Katanga Defence team and then the floor will be granted to the
15 Ngudjolo Defence team.

16 Now, first of all, I should remind participants that Mr. Kilenda did express
17 a desire over the weekend to push back the date for the trial by three months
18 because of compelling reasons, and I quote, "That require him to make this urgent
19 request."

20 Mr. Kilenda, now, if your request for a postponement is based on
21 considerations that just have to do with the document that we must discuss now, I
22 think an explanation would be appropriate at this time. If this request for a
23 postponement is based on some other reason, something other than the document
24 containing the charges, you will have an opportunity to make your arguments at a
25 later point in this hearing.

1 Now, is this request for a postponement to be --

2 MR. KILENDA: (Interpretation) Yes. Thank you. My request was not based on
3 the various issues we will be discussing today.

4 PRESIDING JUDGE COTTE: (Interpretation) Fine. We will look at them at a
5 later point in time. Mr. Kilenda, left us be very clear: If this request is not
6 related to the review of this document, please don't mix up different issues. This
7 goes without saying.

8 Gentlemen, which one of you would like to go first and give us your opinions
9 of this document entitled "Document Containing", but I think we should speak of a
10 summary rather? Please go ahead.

11 MR. GILISSEN: (Interpretation) I will go first, because I think I will be
12 the most brief. I will repeat that I think we've all -- we all saw the necessity
13 of your reminder to us and we must remember the compelling reasons that were
14 mentioned during the last hearing and also the various circumstances that you
15 described in paragraph 18 of the November ruling.

16 Your Honours, I would like to indicate that the observations that you have
17 just made have been very useful for avoiding any possible misunderstanding. I
18 think we can say that I have no particular point to raise at this time and I thank
19 you.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

21 Mr. Luvengika.

22 MR. FIDEL: (Interpretation) Thank you, sir, for allowing me to address the
23 Court. As my colleague was saying, we can only thank the Court for these
24 clarifications that were just provided. We have the impression that -- well,
25 reading the Prosecutor's documents, we had somewhat mixed feelings.

1 Now, this being said, to return to the matter of the document, the summary of
2 the particular document at hand, the legal representative of the main group of
3 victims thanks the Prosecution team for their efforts by producing these documents
4 which usually provide a general scheme, so to speak, or a plan, that will allow all
5 of us to make reference -- making reference to the confirmation of charges document
6 to find our place.

7 And I'm very pleased to hear from the Presiding Judge this explanation that
8 the Judge never -- that the Chamber never, never said that new facts could not be
9 provided to clarify certain facts or charges against the accused. Thus, as we
10 understand the matter, the summary is just a working document or tool that allows
11 us to make progress and, of course, prepare for the trial when we begin the
12 substantive debate. I thank you, sir.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Luvengika.

14 David Hooper, for the Defence team of Germain Katanga, the document
15 summarising the charges which was transmitted by the Prosecutor a few days ago,
16 does that correspond to the wishes which you'd expressed in one of your written
17 submissions?

18 MR. HOOPER: Thank you, Mr. President. As you will recall, we asked for a
19 single, clear, concise, authoritative document reflecting the core document, the
20 confirmation of charges document, in a language that was straightforward and easy
21 to understand, accessible to the suspect and a point of reference for all the
22 parties in the course of the trial, and we recognise the Prosecutor's undoubted
23 attempts to do that in conformity with the request of this Chamber as contained in
24 the document attached to his filing 1568.

25 We have nothing to add to the observation that's been made by the Chamber in

1 respect, in particular, of the effectively prologue that was contained in the
2 filing document that accompanied that particular document.

3 I note this morning -- this afternoon that, Mr. President, the Chamber has
4 expressed a concern that the language in that document hasn't been true - entirely
5 true - to the language of the confirmation document. I don't know whether it's in
6 the mind of the Chamber today to request that the Prosecutor brings this document
7 into greater conformity with the original intention and request of the Chamber, or
8 whether we're to be left in this perhaps slightly ambiguous position that seems to
9 be presented by the Prosecutor today. For my part, I have listened to what's been
10 said this afternoon. I can't claim to be entirely clear as to the Prosecutor's
11 position.

12 We are concerned, if the position is that the Prosecutor is essentially
13 saying, "Well, we think you, the Chamber, have started off on this on the wrong
14 foot. You've gone about this in the wrong way and, though we may not intervene
15 now, we can foresee a probability or strong possibility that this is going to
16 create problems in the future which we're then going to have to appeal," because if
17 the question is, if there is an issue here that the Prosecutor has truly identified
18 that could lead to a problem in the future, then we agree wholeheartedly with your
19 words, Mr. President, that now is the time. Well perhaps the time has passed, but
20 at least that is an issue that has to be addressed now, rather than at some time in
21 the future.

22 In terms of the document itself our only possible concern at present that
23 we've identified is a degree of concern over perhaps a degree of lack of precision,
24 but I'm not in a position this afternoon to list our concerns in that respect. We
25 did not get this document until relatively recently, and we consider this to be a

1 significant and important document - not just a casual tool, but an important
2 document - and we undertake that we will scrutinise this document very closely in
3 the next week or so and certainly, if there is anything within that document that
4 causes concern with us, we would of course wish to bring that to the attention of
5 the Chamber.

6 This is not a situation, in other words, where the Defence sees a position
7 where it can sit on its hands, as it were, and take advantage of that document,
8 bearing in mind of course in particular that it's a document that we called for and
9 requested and which is, as I've indicated, in our eyes a significant and important
10 document.

11 After all, this is a document that doesn't set out as it were to supplant the
12 Confirmation Chamber's decision, but rather to truly reflect it in an easy to
13 understand and concise manner. To that extent there should be no departure and, to
14 that extent, it should be a fair and proper document of resource for the Defence to
15 resort to in order to understand fully the case against the suspect. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) The Chamber will respond in a
17 moment, but we will first of all listen to the reply of Mr. Kilenda.

18 MR. KILENDA: (Interpretation) Thank you, your Honours. As you know,
19 certainly I am among those, or I was one of the only ones who right from the very
20 start has been against a summary of charges as presented by the Prosecution being
21 made, being presented to us in this form. Your decision of 21 October requested
22 this document, nobody appealed this decision and so this decision is currently
23 definitive, as you mentioned yourself, and the document has been presented to us.

24 The Defence of Mathieu Ngudjolo would like to thank you, thank the Chamber
25 and the Bench and the Prosecution for having taken all the diligent steps on Friday

1 to produce for us this document in our working language. This has made it possible
2 for us on Saturday and on Sunday to work very quickly with our client by going over
3 all the different points underscored by the Prosecutor, and we would like to say,
4 without going into the comments that you have made yourself, that in a general way
5 the Defence of Mathieu Ngudjolo considers that this document does reflect the
6 decision confirming the charges and it therefore constitutes a precious working
7 tool which makes it possible for us to take up the substantive debate.

8 Nevertheless, we would like to draw the Bench's attention to paragraph 4 of
9 this document. Mathieu Ngudjolo is born on 8 October in Likoni. We would
10 have wished that the Prosecution takes the exact place of birth of our client by
11 writing that he was born in Bunia on 8 October 1970 and he comes from Likoni. So,
12 your Honour, we would have wished, if it was just a wish that I would like to
13 express, that might go against what the Chamber thinks, but we would have wanted at
14 this time if, while we are in agreement with regards to the summary of the charges
15 as presented by the Chamber, and if your Chamber would have wished that we speak
16 now on certain substantive issues, or whether we would just like to know whether
17 you would like to know whether this document reflects the charges as mentioned in
18 the confirmation of charges decision. That's what I'd like to say and I'd like to
19 thank you very much.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I would like to thank
21 you. We'd like to thank -- the Chamber would like to thank you, both the Office of
22 the Prosecutor as well, where it concerns the efforts that have been made to make
23 it possible for the Francophone parties in this Chamber and for those who
24 participate in these debates to be able to have in French this document summarising
25 the charges within a very short time frame. We have been very aware of that.

1 JUDGE DIARRA: (Interpretation) Could I ask you to repeat what you said,
2 Mr. Kilenda? You were asking a question towards the end of your intervention and I
3 don't think you managed to finish it, so could you please take that point up again.

4 PRESIDING JUDGE COTTE: (Interpretation) Yes.

5 MR. KILENDA: (Interpretation) Yes, thank you, your Honour. In fact, our
6 concern is as follows. We are in agreement with the Prosecutor, who has produced a
7 document which in our view really does reflect the decision confirming the charges,
8 but nevertheless, when I listen to Counsel Hooper who promised to examine this
9 document carefully in the coming weeks, we have all noted a certain degree of
10 imprecision which could lead us to also going into certain substantive questions.
11 So our concern is, no, whether we should bring up these imprecise areas right now,
12 or should we wait before getting into such a substantive debate?

13 JUDGE DIARRA: (Interpretation) Thank you infinitely. This was very, very
14 important for me.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Perhaps in a slightly
16 disorganised way, but first of all, Mr. Kilenda, it's not a question of detail, but
17 it's more of a clarification with regards to what the Prosecutor mentioned in
18 paragraph 4, on page 4 of his document, with regards to the place of birth of
19 Mathieu Ngudjolo on page 200. This was taken up in paragraph 8 of the decision
20 confirming the charges, so the Chamber would find it difficult to ask the
21 Prosecutor to take up the very terms of the decision of the confirmation of
22 charges, because this is what he has turned to. Particularly with regards to the
23 place of birth of Mathieu Ngudjolo, the Chamber has understood that there was
24 precision that needed to be made and that will figure in the transcript and that
25 will be taken into consideration.

1 Now, where it concerns the document which summarises the charges, I would ask
2 the -- I would now turn to Mr. Hooper, and of course to you, Mr. Kilenda, and also
3 to your team. I would like to really make a proper distinction between these
4 documents and the report, the five page transmission report, which was subject to
5 observations and to clarifications made at the start of this hearing after the oral
6 decision. So I consider that certain ambiguities, Mr. Hooper, which might appear
7 in the document - in the transmission document - were raised, having listened to
8 the observations which were made by the Prosecutor in question.

9 Now, it's clear that this is something that is now appearing in the
10 transcript of this hearing that our decision of 21 October is a decision which,
11 unless it is appealed, it is now definitive and it says what the law is with
12 regards to the distinction that there is between evidence, on the one hand, and
13 facts on the other.

14 The Chamber on 21 October 2009, given everything that was said in the hearing
15 of 1 and 2 of October 2009, made a great effort to -- not to make explicit what was
16 understood as charges, so things are now clear and it is the decision of 21 October
17 2009 that should be referred to.

18 Now, what is still up for debate at this present time is the document which
19 summarises the charges. The Prosecutor has called it the document containing the
20 charges in English. We have collegially made a clarification in this regard,
21 because -- to state the fact that it wasn't called "Document containing a summary
22 of the charges".

23 But the legal representative of victims and the Prosecutor and Mr. Kilenda
24 have noted that this document, subject to certain footnotes which do make a
25 reference to a document of June 2008, we have certainly noticed that this document

1 does go into the confirmation of charges decision, that this was the source of this
2 document and a comparative reading of them, which we have all carried out this
3 weekend because apparently we've all done a lot of work this weekend, then a
4 comparative reading of the decision of confirmation of charges and the 40 page
5 document that came from the Prosecutor, does make it possible, without having major
6 migraines in this regard, to be able to note that it is in the confirmation
7 decision that the Prosecutor has taken up all the different elements that we have
8 put in and this is certainly a summary of the decision and it would be more simple
9 to call it a summary document. I don't know if that does answer certain -- some of
10 your concerns raised, Mr. Hooper.

11 Now, furthermore, it is true that the Chamber would have wished to be able
12 today to be able to note that everybody, legal representatives of victims and the
13 Defence teams as well, consider that this document does meet their expectations. I
14 do have the feeling, Mr. Hooper, that you need an additional amount of time, and I
15 think for Mr. Kilenda and Madam Diarra also wanted to have clarification in that
16 regard from you. It would, therefore, seem for you that you also need an
17 additional degree of time.

18 I'm sorry. Please, perhaps you would better take the floor before I
19 conclude.

20 MR. MORENO-OCAMPO: I don't like to interrupt you, Mr. President, but just to
21 say on this topic that you were informing, I took note that the Defence says there
22 is a degree of concern on lack of precision; but at the same time, she agrees that
23 it should not be a departure from the Pre-Trial Chamber decision.

24 And so, as the Prosecutor, I would like to say on the record, we call this
25 document a summary. And a summary, as a rule, cannot depart from the Pre-Trial

1 Chamber. I would suggest that as soon as the document is not departing, the
2 document is accepted as the document which will allow us to go for trial.

3 If the Defence in the future finds something that is a departure, they can
4 inform the Court. But in order to shorten this discussion, I would suggest the
5 guiding idea, following the Trial Chamber decision on 21 October as firm, is the
6 document should follow and cannot depart from the words used by the Trial Chamber.
7 And that is what the Prosecutor did.

8 So the point of the Prosecutor is, if in the future the Defence finds words
9 that were not corresponding with the Trial Chamber's decision, they can present the
10 issue. If not, the document has to be approved, because I can confirm, Mr.
11 President, that we were very careful to just use the wording of the Pre-Trial
12 Chamber. There's no departure. We cannot clarify more, because we cannot change
13 the words.

14 PRESIDING JUDGE COTTE: (Interpretation) The Bench would like to thank you,
15 Prosecutor, for these useful clarifications. Now we are speaking about a document
16 summarising the charges.

17 Mr. Hooper I would now turn to you again. If I have understood well, your
18 team is not able to say right now at this current moment that this document is
19 totally acceptable to you.

20 MR. HOOPER: Our reaction on seeing that document, I can put it generally
21 like this: We were pleased to see that document, and we thought that the
22 Prosecution had made a proper, as one would expect, effort at providing us with
23 that document that we sought or the measure of document that we sought.

24 We can call it the summary document or perhaps the single document. I say
25 "single" because, of course, before we were labouring with 250 pages of

1 confirmation document and argument and 50 pages of the original document. We now
2 have a single document that we understand reflects the case that the Prosecutor is
3 choosing to present against the person we represent in the light of the
4 confirmation decision.

5 I don't, obviously -- for obvious reasons, it would not be right for me this
6 afternoon to say that's a hundred per cent fine, because we can see that there may
7 be areas here where the Defence would be properly assisted, and the Chamber would
8 be properly assisted perhaps by some further detailing or precision, but I think
9 that's very much a matter for review.

10 And it may be that we won't be moved to come back to the Chamber or to the
11 Prosecutor for this added clarification. It will only be if we feel it's a
12 significant matter that we'd wish to do that.

13 So I think the answer, if I can take it shortly to your essential question,
14 is that the Defence raises no objection to this document at this stage; that is, no
15 objection in the light of its review so far. And as I've said, if in fact we find
16 that there are matters we should bring to the Chamber's attention in the spirit
17 that you've indicated already this afternoon is necessary in order to make this
18 journey a proper, an easy one for everybody, well, we will respond to that
19 responsibility. We recognise that responsibility.

20 PRESIDING JUDGE COTTE: (Interpretation) The Chamber notes, Mr. Hooper, that
21 you are a man who likes to use nuances, shades of meaning, and it has understood
22 you correctly that you are a man of shade, of meaning.

23 So even if we wanted to actually solve this issue today, it seems to us that
24 it is imperative that we grant you a brief extension of time; because as I said at
25 the outset, it is now that we need to bring this question out and bat it out

1 together, because afterwards we can no longer criticise the document summarising
2 the charges during the trial itself.

3 So this is why the representatives of victims will appreciate the fact -- and
4 they have expressed their views positively today - and the Defence teams, both of
5 you - will have -- please, produce by 5 November at 16:00 hours the observations
6 that you will have, the document that has just been baptised anew as a document
7 summarising the charges by the Prosecutor.

8 If there are no observations on your part, please tell us so in writing. And
9 were there any minimal observations on your part, then please tell us that they are
10 minimal in nature and that they do not actually target the substance of the
11 document itself. If there are substantial observations you would like to make,
12 then please say so, too. The Prosecutor will then have a time frame of three days
13 in which to respond, which should allow him to provide a response by the date of 10
14 November.

15 Now, once again, this Chamber would like this Chamber to be -- this issue to
16 be solved clearly before we start the trial. Mr. Kilenda.

17 MR. KILENDA: Yes. Thank you, Mr. President. I would, also, like for this
18 to be clear: For our part, we are saying that this document, as presented by the
19 Office of the Prosecutor, reflects precisely the decision confirming the charges.
20 And in view of the fact that we have to be prudent in life, we would like to say
21 that we support Mr. Hooper in his stance. And we thank the Chamber for granting us
22 a timeframe until 5 November so that we may then make observations.

23 The document does reflect the document containing the -- the document -- the
24 decision on confirmation, but of course this is a question of substantive debate
25 here. This is not the time for us to do this. We wanted to shed light on this

1 matter nevertheless. But if there was an element as to the summary provided by the
2 Prosecutor, then, yes.

3 However, with respect for the Chamber, we will provide you with a brief note
4 that we normally do via Madam Godart. We will tell you whether we are going to
5 provide you with observations or not. But for now, let it be clear the document
6 does indeed reflect the charges as confirmed by the decision of the Pre-Trial
7 Chamber. Our client knows what the charges are against him. He is ready to
8 prepare his case and for the Chamber to establish the truth.

9 PRESIDING JUDGE COTTE: (Interpretation) Pause, please. We should be clear,
10 nevertheless, Mr. Kilenda, the Prosecutor has been invited to provide a summary of
11 the decision of Confirmation of Charges. And if this summary is faithful, it is
12 not at that stage that you shall then raise any objections as to the charges that
13 the Pre-Trial Chamber deemed sufficient for Mr. Ngudjolo to be committed to trial.
14 So this would have to then -- this would then be occurring, if you like, during the
15 trial itself. So we are in agreement, it is now that we need to act. Thank you.

16 JUDGE DIARRA: (Interpretation) Yes. Maître Kilenda, the question that I
17 had not quite grasped is contrary to the conclusion that you have just provided us
18 with. You said that you had found some lack of precision in the document of the
19 Prosecutor. And you said that you were at the disposal of the Trial Chamber. And
20 you said that you wanted to either say what those lack of precisions were now or at
21 a later date.

22 Now, whether we do it now or later, the simple response on the part of the
23 Trial Chamber is that, well, if you have noted those lack of precision or lack of
24 clarity, well, I don't quite know what you're trying to say to us. All I know is
25 that it is contrary to the question that I'd asked you to shed light on earlier.

1 MR. KILENDA: Yes. Thank you, Madam. I just wanted the -- it is true that
2 the lack of clarity that we did note are substantive issues, but it is not those
3 substantive issues that we intend to broach now.

4 PRESIDING JUDGE COTTE: (Interpretation) Now, in view of the fact that we
5 are never as precise as we should be - everything, of course, is a question of
6 shade of meaning - I shall turn to you, once again, Mr. Prosecutor, who is still in
7 attendance, and I would say that we are in agreement that this document of 28
8 October that your Office of the Prosecutor baptized as document containing the
9 charges, it is now a document that is summarising the charges. Are we in agreement
10 on this point?

11 MR. MORENO-OCAMPO: Your Honour, we respect your decision, what you call
12 "summary," we call "summary."

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. We have about
14 10 minutes left before we adjourn at 2:30. And Maître Kilenda, I believe that this
15 is the time for you to tell us why it is that you want for the trial to be
16 postponed. And we would like for you to explain to us - and if you need so much
17 time, to explain to us your reasons.

18 MR. KILENDA: Thank, Mr. President. Thank you, your Honours. Now, on 2
19 October, you had just adjourned the status conference when I received the
20 resignation of my legal assistant Aurelie Gaelle Roche for the reason that she had
21 found a more stable source of employment elsewhere. And on that very day, I
22 confirmed that I had received her resignation and *I apprised the OPCD of the
23 situation.

24 A few days later, I got a letter from the *OPCD confirming the resignation of
25 this person and inviting me as head of the team to make sure that the effects, or

1 all the records and documents in her possession, be returned. And also stating
2 that she undertook to designate a new legal assistant.

3 On 20 October, I appointed Veronique Pandanzyla, who was previously a legal
4 assistant in the Lubanga team, *as legal assistant in the Mathieu Ngudjolo team. I
5 then transmitted the appointment form to the VWU indicating that this appointment
6 was done consciously, because I had *contacted Maître Mabille previously, and I had
7 also talked to *Madam Pandanzyla herself in order to ascertain whether there was
8 any conflict of interest.

9 Maître Maryse Alié said that they were opposed to this appointment for
10 reasons of -- and I am now awaiting from the VWU that they tell me quite what the
11 decision was made on this subject.

12 On 29 October, subsequent to a working session which I convened at the
13 detention centre, and at the behest of my client, he gave Madam Maryse Alié, our
14 legal assistant -- he told us that he was now lacking in trust. And he asked us
15 that he then leave the team.

16 Upon our return to the office, Maître Maryse Alié presented me with his
17 resignation, saying that *her first motive was quite private in nature; and stating
18 *her second motive as that being the breach of trust between herself and the
19 client. And on that very same day, I confirmed receipt of this resignation. And
20 Maître Maryse Alié is currently completing her checkout procedure from 30 October
21 to 3 November 2009, and she will then be definitively leaving our team on 10
22 November.

23 The situation currently within our team is somewhat difficult in nature
24 because we only have our case manager. We have co-counsel Mr. Fofé. And our two
25 legal assistants, who are pro bono. And myself. And our pro bono legal assistants

1 will be leaving in December. And as you know, contrary to the two counsel who
2 remain in their professional domicile, other people are obliged to live in The
3 Hague.

4 Now, even if we do have access to the case file at a distance, even though
5 there have been a number of technical issues recently, we do nevertheless request
6 or require for our legal assistants to be permanently present in The Hague. So I
7 must, of course, rapidly appoint another legal assistant. And I would say that VWU
8 wrote to me today, saying that between -- that since Friday, 9:42 a.m., it had sent
9 me a memorandum from the Office of the Prosecutor with reference to the appointment
10 of Madam*. So prior to attending this hearing, I attempted to print this document,
11 which I did not have time to analyse, but I was fast in noting that the Office of
12 the Prosecutor said that it thought that there might be a conflict of interest.

13 And the situation in which we find ourselves currently, and which I -- well,
14 I need to really fill this gap created by the departure of the legal assistant, and
15 even those who are obliged to live in The Hague -- and they need to find somewhere
16 to live. And once they've set themselves up, then they need to get to grips with
17 the case file itself.

18 And before they have had time to do that, I myself am obliged to go back to
19 the Democratic Republic of Congo in order to ascertain quite how far our
20 investigations have come. So as we know, the month of December is full of
21 holidays. And I think that under such conditions it will be very difficult for us
22 as a team to start out this trial due to commence on 24 November.

23 So Mr. President, your Honours, these are the reasons why we respectfully
24 request that the trial be postponed to the beginning of February 2010. And with
25 your leave, we are willing to file written submissions within the time limit that

1 you will state. And I thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Maître Kilenda. If we
3 understand you correctly, with reference to your first assistant, the Registry is
4 taking on board your suggestion that Veronique Pandanzyla join your team. This is
5 under discussion, and the Prosecutor is adopting a stance. This has not been
6 clarified yet. Now, Maître Maryse Alié, I believe that the Registry has also --

7 MR. KILENDA: I have not yet appointed the legal assistant who is going to
8 replace Maître Alié. I shall do that. But of course, it is the Registry that will
9 respond to this.

10 PRESIDING JUDGE COTTE: (Interpretation) Of course, it is very important for
11 you to file written submissions as to the difficulties encountered; and also, the
12 solutions that you might find for those difficulties.

13 Now, unless I have made a mistake - but we shall look at this more closely in
14 a moment - there are services that, to my mind, seem to be those to be provided by
15 the Registry; notably, that you will then, of course, refer this to us in writing,
16 but it is an urgent situation, and I believe that we should have by tomorrow
17 evening a stocktaking exercise and also that you can provide us with possible
18 solutions.

19 JUDGE DIARRA: (Interpretation) The president has raised a number of issues,
20 and I would also add that we could provide maybe an alternative date were we to
21 think that three months is quite a long time away.

22 PRESIDING JUDGE COTTE: (Interpretation) Yes, an alternative date. We should
23 bear in mind that this is an issue that has been added to the end of our agenda,
24 and we will talk about the issue of the date of the commencement of trial, which is
25 due for 24 November 2009, but the Trial Chamber will cease working between the 12

1 of December and the beginning of January because we will not have the technical
2 support to hold a hearing, but I believe that there will be an adjournment of
3 approximately one month, that is to say between 12 December and 12 January.

4 Now, all these elements are things that need to be taken into consideration,
5 Maître Kilenda, if you need to bring into your team new members, and of course you
6 need to bear in mind that the beginning of the -- of -- beginning of the case will
7 only commence on 24 November because there will be a little break thereafter. Now,
8 I do not want for people to think that the Trial Chamber is persecuting him, but I
9 will now turn to Mr. Prosecutor on the subject.

10 Mr. Prosecutor, I repeat, I do not want you to think that we are persecuting
11 you in any manner. However, during this hearing collegiality is of the essence and
12 it would seem that it is very simple; notably, that your Office of the Prosecutor
13 file the document which was already filed on 28 October and entitle it as a
14 summary, summarising the charges, and change its title. I believe, therefore, that
15 people will understand this even better once we return after a brief break. We
16 wish for things to be as clear as possible. So the Trial Chamber would request
17 that you file anew the document of 28 October, modifying quite simply the title,
18 using the word "summarising" in the English language, which I would not dare to
19 mention in English myself in a hearing.

20 JUDGE DIARRA: (Interpretation) And also using the classical wording of
21 "corrigendum brought to our document of," et cetera.

22 PRESIDING JUDGE COTTE: (Interpretation) We shall now adjourn. We have been
23 in session for an hour-and-a-half, and we shall resume at 1500 hours. Thank you.

24 THE COURT USHER: All rise.

25 (Recess taken at 2:32 p.m.)

1 (Upon resuming at 3.05 p.m.)

2 THE COURT USHER: All rise. Court is in session. Please be seated.

3 PRESIDING JUDGE COTTE: (Interpretation) Now, our agenda is now going to
4 lead us to take stock of the table of incriminating items and our 21 October
5 decision. Pardon me, I forgot. I forgot to ask the security officers to bring in
6 the accused. That's an important moment in the proceedings.

7 (Germain Katanga and Mathieu Ngudjolo Chui enter the courtroom)

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We were just about to
9 continue with our agenda by taking stock of the various elements found in the table
10 of evidence, and the Chamber asked the Prosecutor to amend the column within the
11 table entitled "Allegation of Facts" and to make a number of changes to the
12 references and indicate the proper paragraphs within the summary of charges. That
13 was the first request during the status conference of 1 and 2 October.

14 The Chamber also suggested other changes. We also asked you to take into
15 account possible agreements having to do with evidence, and in a few moments we
16 will be turning to agreements and matters of evidence and, as for the rest, unless
17 I am mistaken, I believe on 2 October we stated that on 23 October you needed to be
18 able to, to a certain extent, change your table. And where are you now, this work,
19 this reformatting or changing the table?

20 MR. MACDONALD (Interpretation) Thank you, your Honour. Before I ask
21 Mr. Garcia to address the Court, I would just like to make one remark. I would
22 like to go back to your initial ruling at the beginning of the hearing, for greater
23 precision.

24 PRESIDING JUDGE COTTE: (Interpretation) Witness 12?

25 MR. MACDONALD: (Interpretation) Yes, and similar requests. We could do that

1 now or later. I don't want to delay the proceedings.

2 PRESIDING JUDGE COTTE: (Interpretation) No, we will respond immediately, if
3 possible. We will take note of your request.

4 MR. MACDONALD: (Interpretation) Now, if I have understood the Chamber's
5 ruling, future requests or similar requests should be done by the Defence counsel
6 directly to the Chamber. It's really not up to the OTP to do so, playing the role
7 of the Defence.

8 PRESIDING JUDGE COTTE: (Interpretation) If I remember correctly, I believe
9 your filing dealing with Witness 12 did not end in a clear manner and the Chamber
10 really even was wondering whether we should respond or not. So, it was a general
11 observation asking you for clear, specific submissions, and, once again -- well,
12 you perhaps -- I don't have the document right here, but perhaps some sort of
13 wording might be better, and it is really -- this is why we asked you to be very
14 specific in future submissions. It really -- the matter goes no further than that.
15 If this answer reply --

16 MR. MACDONALD: (Interpretation) Yes, you have clarified the situation.
17 Thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) It's a matter of wording.

19 MR. MACDONALD: (Interpretation) If the conclusion led to some questions, we
20 would be willing to disclose, but we weren't sure whether the Chamber preferred to
21 rule on the matter, so -- well, there you have it. But we've understood your
22 point. In the future, we will proceed in that manner.

23 PRESIDING JUDGE COTTE: (Interpretation) We will all - and I am the first
24 one to say this - we will attempt to observe the five-second pause between a
25 change, between each speaker. When we speak to each other, we must allow a

1 five-second pause, and we will really strive to do so, to facilitate the work of
2 those people who are providing their assistance. So, sir, you can rise or remain
3 seated, as you wish, but we would like to hear a bit more information about the
4 table, not the -- not a complete re-write of the table but, rather, the changes
5 that you are making to this table.

6 MR. GARCIA: (Interpretation) Your Honours, I am the person who is responding
7 to the Chamber's questions regarding the table of incriminating evidence, and there
8 is one question before I respond and provide greater information about the table
9 and what will be the effect of using the word "summary" and I think -- does this
10 mean that we should keep the numbering that we had suggested in an earlier
11 submission to the Chamber? If that's the case, and I don't know whether -- well,
12 the reason why I am asking this question is that I am not quite sure whether the
13 Defence counsel have comments to make in this regard.

14 PRESIDING JUDGE COTTE: (Interpretation) I will now turn to the Defence. So
15 this question is whether, within the new version of the table, should the
16 Prosecutor refer to the paragraph numbers found in the document, this document
17 summarising the charges, the document you wish to obtain and which we have all
18 obtained? For the sake of clarity, wouldn't it be easier to make reference to the
19 new document?

20 Mr. Hooper, could you respond to this question from our colleague from the
21 OTP.

22 MR. HOOPER: Well, I am sure the Prosecutor, having gone to the trouble of
23 forming this document, will see it as a very practicable and helpful step to refer
24 to it. I would have thought it was pretty self-evident.

25 PRESIDING JUDGE COTTE: (Interpretation) MR. Kilenda.

1 * MR. FOFE: (Interpretation) Thank you very much, your Honour. The Defence of
2 Mr. Ngudjolo thinks that since the Prosecutor made an effort to provide a
3 summary, of facts within these documents we were speaking of earlier, I think
4 that it would be a good way of doing things. In the table that is being prepared,
5 there should be reference made to these new documents summarising the charges.

6 Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Is that possible?

8 MR. GARCIA: (Interpretation) Yes. We are going to use the numbering that
9 was provided in an earlier submission for that document summarising the charges, so
10 use that as a reference point for the table.

11 PRESIDING JUDGE COTTE: (Interpretation) Fine. Once again, provide -- what
12 about the agreements having to do with evidence? What would be the time frame for
13 providing us with a reformatted version? Would the 9th be suitable? Is that
14 possible? It would be very --

15 MR. GARCIA: (Interpretation) I understand, your Honour. Of course, we are
16 wondering about the method and we were wondering what deadline would be set for the
17 table, and I don't think I need to remind the Chamber that the table is more than
18 1,000 pages long and the analysis of the table took a great deal of time.

19 We thought that we would suggest to you, your Honours, that 16 November might
20 be appropriate. We would be confident of being able to provide that table, not
21 just with the changes suggested in light of the earlier status conference, but also
22 in light of the latest ruling from the Chamber, which -- ruling 1547, and that is
23 the last decision which includes a more detailed analysis regarding changes to the
24 allegations of facts found in the table because -- in light of factual conclusions
25 found in the document.

1 In light of the scope of the work, the work of doing this analysis, we are
2 continuing to analyse the table and we were able, in some ways, and to -- in some
3 parts of the chart we have been able to streamline the challenge, and we think that
4 16 November would be suitable. We would be able to make these changes requested by
5 the Chamber and including these changes that would be required pursuant to document
6 1547.

7 PRESIDING JUDGE COTTE: (Interpretation) If the Chamber must give its
8 opinion or agreement regarding the 16th, we would specify that the table must
9 include changes regarding the agreements on evidence. The 16th of November must be
10 a final deadline, firm deadline.

11 MR. GARCIA: (Interpretation) We agree. We have specified that date amongst
12 us and we took into account that point. We took into account the agreements
13 regarding evidence. So we think that we can do this by the 16th, including the
14 changes that we will be making regarding the agreement having to do with evidence.

15 PRESIDING JUDGE COTTE: (Interpretation) And Friday, the 13th, would not be
16 possible. Weekends are important for everyone.

17 MR. GARCIA: (Interpretation) Your Honour, clearly, at first glance, we can't
18 rule out 16th or the 12th but, of course, since we have worked on this document and
19 we know how much work this requires, 16 November is the date that we set as a
20 deadline for providing this table to the Chamber, to the satisfaction of the
21 Chamber. Thank you. The Chamber has ordered that the table be provided earlier.
22 We will try to provide the table earlier.

23 PRESIDING JUDGE COTTE: (Interpretation) Fine. So 16 November, and if the
24 table is finished earlier, we will all be pleased to receive it earlier.

25 Now we will turn to point 5 on our agenda which has to do with agreements

1 relating to evidence. I think we've already touched upon this to some extent and
2 possible changes to the table.

3 During the hearing of 1 and 2 October, during which we discussed many
4 matters, we asked you to table, by 23 October, a summary that would be divided into
5 two parts. The first part would set out the facts, very clearly, the facts that
6 you may have come to an agreement on and any facts for which there may be an
7 agreement.

8 The second part of this document would set out the areas where there was no
9 agreement. On 23 October you sent us a communication informing us that no
10 agreement had been finalised, and this communication only spoke of a number of
11 proposals. Since then, well, actually, on 28 October we received two pieces of
12 information; one from Mr. Ngudjolo's Defence team, and it was said that you
13 discussed possible agreements with him. And he thought that it was up to you to
14 deal with this and to take stock of these agreements made, or not made, and he did
15 not think that he had to make his own filing on the matter, and so he said he would
16 table one if necessary. We didn't ask him for that, saying that the summary would
17 probably be coming from you.

18 We've also received from Mr. Hooper for the Defence of Germain Katanga a
19 document presenting his comments with agreements that this Defence team considers
20 to have been able to give, also with certain reservations which are expressed, as
21 well as proposals for amendments.

22 So, currently, the Chamber does not have definitive information which is
23 clear and precise on what has been subject to a unanimous agreement between the
24 three of you: Prosecutor, Defence of Germain Katanga, and Mathieu Ngudjolo as
25 well. We therefore have deduced that the discussions have taken place, that they

1 perhaps weren't very simple; that the presence of two accused could, after an
2 interview has taken place with one team and you, that it might lead to a situation
3 where one team might make one remark which would lead to the discussions would go
4 on further.

5 We don't underestimate the difficulties there are. We would merely ask the
6 Prosecutor if it is possible to provide us with the document in two parts which we
7 would wish for; that is to say, on the one hand, the agreements that have been made
8 where there is consensus and, on the other hand, the proposed agreements which have
9 not been reached. It's 2 November today. Is it possible for the Chamber to obtain
10 this document for 5 November at 1600 hours?

11 MS. LUPING: Mr. President, Your Honours, I can confirm that the Prosecution
12 should be able to provide an additional document, as requested, setting out the
13 proposed agreed facts as well as matters of agreement and non-agreement of the two
14 Defence parties to facilitate the understanding as to where exactly we stand on
15 these issues, and should be able to do so by 6 November.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. So 5 November
17 at 1600 -- no, 6 November.

18 MR. MACDONALD: (Interpretation) With your permission, 6 November, for the
19 reason that we mentioned, we have to sit down again with our colleagues, bring the
20 two teams together. We have to -- also have to see the respective calendars of
21 each one, so -- and we also -- I have -- also have to inform the Chamber that there
22 has to -- the teams have to come together with one fact, and if they don't agree,
23 if the two teams don't agree on that they agree -- we presume that this fact will
24 not be submitted to the Chamber for its approval, for its acceptance, or do we
25 submit the request or the agreements which are made by one and by the other? So

1 obviously, if one team is ready to accept, does that tie that team in the
2 cross-examination if these matters haven't been raised? This is a question that I
3 would like to raise.

4 PRESIDING JUDGE COTTE: (Interpretation) This is why it is very interesting
5 to have a document in two parts, one which talks about the general consensus there
6 is and the second part which also raises what has been proposed so far and which
7 has perhaps partially been accepted, and what has been proposed and what has been
8 totally refused as well. So 6 November for this document stating that the table
9 for 16 November, and perhaps before then, will be amended, taking into
10 consideration the agreements on evidence that could have been made.

11 We will now go on to point 6 on our agenda, namely, the questions of the
12 Chamber with regard to the order of witnesses. Prosecutor, the Chamber has taken
13 good note of the amendments.

14 Sorry, please, Counsel Fidel, please go ahead.

15 MR. FIDEL: (Interpretation) Yes, your Honour, thank you for giving me the
16 opportunity to address the Court. The legal representatives of victims, without
17 wanting to get overinvolved with agreements which will take place between the
18 Office of the Prosecutor and the Defence teams, but in the interests of victims who
19 we indeed represent, we would like to be associated - perhaps not during these
20 agreements, perhaps at the end of these agreements - such that we can see if there
21 aren't any concerns with regard to these agreements in terms of the interest that
22 we represent before the Court. Therefore, at the current stage of matters, we do
23 not want to anticipate a request or application to the Chamber because we do expect
24 your decision with regards to the modes of participation of victims in the
25 proceedings. This is what is currently pulling us back from making an application

1 in this regard, but this is a subject on which would like clarification. But as we
2 are talking about evidence issues and agreements, then I would like to -- we don't
3 want this to harm the interests of our client. Without getting overinvolved in
4 these exchanges and agreements, we would like that, at the end of -- once
5 agreements have been reached, then we would like to be able to verify whether the
6 interests of our clients are challenged in any way.

7 Thank you very much.

8 PRESIDING JUDGE COTTE: (Interpretation) Counsel Fidel, just by means of
9 information and reservation in this regard, which I would like to make: The point
10 of information is, that the Chamber is currently working on the decision relating
11 to the modes of participation of victims, and that we would like to be able to
12 issue it very shortly, or at least we are certainly working on it.

13 The reservation that we would like to make is that it does seem to me that
14 the discussions which have to be held for this agreement has to be done on a
15 bilateral or trilateral basis or a triangular way between the Prosecutor and
16 Defence teams. I do not think that you immediately have to get involved in that
17 discussion, which, as far as I am concerned, are already complex and sensitive
18 enough at the moment.

19 And we will then see - and this is where your intervention has been very
20 useful - we will then see within the framework of the decision which we are
21 preparing at the moment, if there is a place for you to intervene and, if this is
22 the case, how you can intervene. Thank you very much in any regard for your
23 intervention.

24 I will, therefore, go back to point 6 on the agenda, on the order of
25 witnesses. So Mr. Prosecutor, the Chamber has taken note of the amendments that

1 you have made to the order of witnesses originally *amendments that you have made
2 to the order of witnesses, which was initially made on 14 August. It shows that
3 you have, to a certain extent, taken into account the proposal to have the
4 witnesses testify firstly with regard to the crimes;

5 and then regards to the modes of liability, which was a proposal which was
6 one that we initially suggested with a view of favouring a better transparency of
7 the debates and more rational progression of these debates, as well, with a view to
8 the examination of the modes of liability of the accused that the Chamber has to
9 try.

10 Now, with regards to the new proposals that you have made, these do merit
11 certain additional comments on our part. So on 9 October 2009, you wanted to -- or
12 you intend to start debates with a general presentation of the crimes alleged to
13 have been committed in Bogoro on 24 February 2003; and to do so, starting by
14 examining witnesses 233, the chief of the village of Bogoro, and 419, who is an
15 expert. The Chamber wonders whether Witness 233 would not perhaps have a better
16 place among the survivors of the attack of 24 February 2003, to the extent that he
17 is currently the chief of the village, in that he can describe the scenes of crimes
18 and he can give an overview of the facts or crimes which are alleged to have been
19 committed on this occasion.

20 The Chamber, therefore, suggests that this witness therefore give testimony
21 before Witness 268, who is currently the first surviving witness of the attack to
22 be called upon to testify. Do you consider that this suggestion would cause
23 problems for you? Would you like to have time to be able to reflect on that? But
24 we would like to express that to you.

25 MR. MACDONALD: (Interpretation) Your Honour, we had taken good note of the

1 comments of the Chamber last time during the meeting, the hearing in October, and
2 the Prosecution would like to start with 233. This is a victim. The Prosecution
3 considers that the place of victims is important to start with, and it's -- also,
4 we are talking about the chief of the village here. We are talking about
5 representatives of the village who were attacked, a witness who we believe is
6 solid, with a view to being presented as the first witness and to also to show what
7 crimes were committed in this regard. So there's also the other witness who will
8 be able to situate the visit geographically, to say where its limitations are. And
9 that can be done also with 419.

10 So the Prosecution at this stage is making all the preparations it can, such
11 that the witness can be the first one to testify. And together with the Registry,
12 we have ensured that the witness can come on the agreed date when we will open or
13 start the examination of the witnesses.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. The Chamber continues
15 with its suggestions nevertheless to provide its comments to you or its questions.

16 You have decided *to examine Witness 323, in the thirteenth position, in the
17 part of the hearing that is devoted to the statements of child soldiers.

18 This witness at the time was a UPC soldier, and he had survived the Bogoro
19 attack. Unlike child soldiers, he did not fight with the FNI or the FRPI. And in
20 reality, he has no common point apparently with them, other than the fact that one
21 day he was a soldier.

22 We, therefore, are wondering what the reasons are for the place that you
23 accorded to this person? Witness 323 has, it would seem, important information
24 with regards to the contextual elements, as well as with regard to the crime
25 scenes, which could -- or could have led to putting that person immediately after

1 the contextual witnesses and at the start of the survivors of the Bogoro attack.

2 Therefore, just before witness -- not 233, because you would like to have
3 that as the first position, but just after 268. We have noted that this statement
4 had few -- little information with regards to mode of liability, which would
5 therefore come later in the proceedings. And therefore, the Chamber would like to
6 concentrate on that, on a later stage of the trial.

7 So with regards to this analysis that we have made, does that correspond to a
8 reality that you see or do you necessarily want to put 323 in the *13th place that
9 you have accorded to that witness?

10 MR. MACDONALD: (Interpretation) Your Honour, the Prosecution with regards
11 to 323, well, we would note that we've put this person before the start of child
12 soldiers. I would say that we have put that person after victims. So everything
13 is a question of interpretation in this regard.

14 Obviously, we have no objection to the extent that we are going to have
15 meetings with the Registry with regards to modalities; but without going into the
16 details in a public hearing, but it's very likely that, yes, we could certainly
17 call Witness 323 before the victims -- or the victim 268. We were going to do it
18 afterwards, but if the -- we were going to do it afterwards, but if the Chamber
19 would like to hear that person before, we can put him before.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor. I am now
21 going to ask the Registrar to pronounce a closed session, which won't be very long,
22 but which is necessary before going to examine the situation of the witnesses that
23 we have mention now. Partial closed session. Sorry.

24 (Closed session at 3:37 p.m.)

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14 (Open session at 3.54 p.m.)

15 THE COURT OFFICER: Mr. President, we are in open session.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, madam courtroom officer.

17 We shall now move on to Witness 267. The Chamber has taken note, in its
18 report, of the report addressed to it by the VWU on 24 August 2009. In this report
19 the unit vigorously suggested that this witness, Witness 267, testify at the
20 earliest possible date in the trial and that there at least be a reasonable lapse
21 of time between the disclosure of his identity to the Defence, which was due to
22 occur on 9 October unless I am mistaken, and his testimony - his or her testimony -
23 at the trial. You in turn, Mr. Prosecutor, to hear the testimony of this witness
24 after the child soldiers and just after the testimony of Witness 373.

25 In view of the suggestions made by the unit last August, the Chamber was

1 wondering whether it would not be preferable for Witness 267 to testify just before
2 Witness 279, who is in fact the first child soldier to be called to testify? This
3 is a question from us.

4 MR. MACDONALD: (Interpretation) The Prosecution is of the opinion that this
5 witness should testify after the child soldiers, after certain evidence will have
6 been led before the Trial Chamber, and we are also following the security situation
7 of this witness and up to now the Office of the Prosecutor has nothing to report on
8 the matter. Of course it may be that the situation evolves, but to date the Office
9 of the Prosecutor would still like to place this witness in this position in the
10 order of appearance of witnesses.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Prosecutor. You've
12 all understood, of course, that this status conference aims to favour dialogue and
13 discussion with a view to organising our future discussions in the best possible
14 manner and we will take your observations into account, of course.

15 Now, Mr. Prosecutor, we are also, but we shall talk about this at a later
16 stage -- we are wondering about the absolute necessity of having testify witnesses
17 166 and 160, but we shall return to this issue in a moment.

18 I do not believe that the representatives of VWU would be required to
19 intervene on any other points of our agenda between now and 4:30 when we shall
20 adjourn. Of course you are welcome to remain, but if you need to be elsewhere then
21 you are free to leave us.

22 MR. MACDONALD: (Interpretation) We have a session at 5 o'clock. May I
23 suggest that VWU join us at that moment in time for us to be able to discuss a
24 certain number of details?

25 PRESIDING JUDGE COTTE: (Interpretation) Of course, if they are available at

1 that time, because they have not been told about this previously. Yes, their
2 answer is yes and so we shall come together again at 5 o'clock.

3 Of course, this is very important with reference to the duration of the
4 examination-in-chief and the examination of the trial itself. The Chamber has
5 taken note of the elements that you deem necessary to present your case. During
6 the status conference of 1 and 2 November, you indicated to us that we should
7 calculate approximately 300 hours of examination-in-chief.

8 In the list of subject area, on which the Prosecution witnesses will be
9 questioned, that is to say document 1514 of 7 October 2009, you note that you will
10 require 246 to 276 hours in order to question your witnesses. Now we are talking
11 about the total duration of all examination-in-chief conducted upon Prosecution
12 witnesses. You have provided us with an estimation of the number of hours, without
13 providing us nevertheless with the reasons for your calculation of such a figure.

14 The Chamber would therefore -- therefore sought to calculate the total
15 duration of this trial on the basis of the number of hours that you suggested for
16 your examination-in-chief and, in order to do this and in order to calculate the
17 duration of the trial, it utilised the manual of judicial practice for the ICTY.
18 This manual outlines a calculation method for the length or duration of a trial
19 which is based on hypotheses that of course are realistic and adapted to
20 international criminal tribunals, but also which have a certain proven track record
21 over the last ten years.

22 The Chamber, therefore, deemed it possible to use this calculation method on
23 the basis of the practical methods included in the ICTY manual. The Chamber, of
24 course, took into account the current configurations of the International Criminal
25 Court, because that which applies to international tribunals cannot be

1 automatically transposed to the ICC.

2 Thus, we took into account the following aspects. First of all, the number
3 of actual hours of hearing. According to the ICTY guide there is a distinction
4 between official hours, and here at the Court we can allow four hours of hearings
5 per day over a half day, four hours or perhaps 4.5 hours, but that is sort of the
6 scope, whereas at the ICTY there is this distinction between official hours and
7 effective hours. The official time, from which is deducted the duration of
8 suspensions, official statements, possible hitches along the way, based on the
9 practices of the ICTY the Chamber thought that on average the number of effective
10 hours would be three rather than four hours.

11 We also took into account the number of days of hearings per week.
12 Currently, our Chamber only has one matter before it and thus we will be able to
13 sit five days per week.

14 We also took into account the number of weeks per year. The Chamber realised
15 that this is the same number as the ICTY, 41 effective weeks, and this takes into
16 account the weeks when the Court is not sitting, the judicial recess and other
17 times of the year.

18 We also have to consider the cross-examination by Defence. This trial has
19 two accused and, according to the ICTY calculations, approximately 125 to 150 per
20 cent of the time granted to the Prosecutor should be granted to the Defence of the
21 two accused. We were of the opinion that a percentage of 130 should be used in
22 this case and I would remind you that repetitions must be avoided.

23 We took into account various questions from the Chamber. According to the
24 ICTY method one must take into account this amount of time set aside for questions
25 by the Chamber, which is set at approximately 20 per cent of time allocated to the

1 Prosecutor for examination.

2 One must also take into account the amount of time needed by the Defence to
3 present their case. In the case of two accused, the ICTY suggest allocating the
4 same amount of time as the amount of time allocated to the Prosecutor.

5 One must also take into account the cross-examination by the Prosecution, and
6 the ICTY method allocates 100 per cent of the Defence team's time.

7 And then we must not forget the examination by representatives of victims,
8 and generally speaking we tend to go by one particular criterion; namely, 20 per
9 cent of the time allocated to the Prosecution.

10 Thus, with reference to this manual and these methods used at the ICTY and
11 taking into account these various assumptions, which appear to be very reasonable,
12 and also taking into account the figures that you provided us with, sir, we should
13 allocate two-and-a-half years of time for the trial, unless you reassess the amount
14 of time that you require.

15 I think you will realise that such a duration is entirely out of the
16 question. We cannot consider such a thing for a number of reasons. In no way do
17 we wish to downplay the importance of this case and -- well, we must remember that
18 this case is about the events that occurred on one day - an attack on one place,
19 one day - and this trial involves two accused.

20 The Chamber observed that in similar cases, or cases that are clearly more
21 important, but also with two accused, that are currently before the ICTY, the
22 number of hours granted to the Prosecution is much lower. Thus, for a trial
23 regarding facts that took place over two-and-a-half years nearly, with 21 counts,
24 seven incidents, 50 witnesses requested by the Prosecution and 45 witnesses
25 authorised, the number of hours of examination dropped from 69, the number of hours

1 requested, to 60 hours. That was the amount of time granted by that Chamber for 46
2 witnesses, who were heard - all in all 46 witnesses - which is very far away from
3 what your office is currently requesting. And the Chamber can give you several
4 other similar examples. We do have these examples and you may indeed be familiar
5 with them.

6 We are well aware that in many cases that went before the ICTY the Prosecutor
7 used written statements, rather than having examination-in-chief of a witness. In
8 the very complete brief that you provided to us on 17 September 2009, and in
9 particular I refer you to paragraph 36, you have not ruled out such a possibility
10 as was provided for in a ruling by Pre-Trial Chamber I in the Lubanga affair on 15
11 January 2009. So, where are you really when it comes to this possibility of this
12 possible use of written statements, rather than examination-in-chief of a witness?
13 Are you in a position to respond, sir?

14 MR. MACDONALD: (Interpretation) Yes, I can respond, at least in part. And I
15 would go back to the calculations that you made and you spoke of two-and-a-half
16 years. You took into account the various holidays over two years, Christmas,
17 summer holidays. We calculated 257 -- 256 hours, including Witness 217, and we
18 calculated four days of testimony per week, and four hours per day. And we
19 calculated 16 weeks for examination by the Prosecution, if we respect the
20 timeframes provided for.

21 To answer your question, your Honour --

22 PRESIDING JUDGE COTTE: (Interpretation) Just are you making this
23 distinction, which we thought was important, that we find in the practice of the
24 ICTY, this distinction between true hours and effective hours. Insofar as
25 inevitably, any hour of trial is not really 60 minutes provided or allocated to

1 examination. There are always other events or other incidents.

2 MR. MACDONALD: (Interpretation) We believe that if we sit four-and-a-half
3 hours per day, that that will be sufficient for all the usual proceedings, bringing
4 witnesses in, taking them out, and so on and so forth. So we are saying four days
5 per week, four-and-a-half hours. And our calculation gives us the total of 16
6 weeks.

7 Furthermore, I believe it's important to specify one thing. At the ICTY, the
8 strategy is to wind down the tribunal, and their rules are designed with that
9 objective in mind. Currently, the ICTY is shutting down, and things are being
10 dealt with more expeditiously.

11 As for this Chamber, yes, we did consider that, particularly for expert
12 witnesses; but the Chamber did rule - and the only expert witness is Dr. Baccard.
13 And after that, we could focus on -- well, table the report. We could try to come
14 to agreements on evidence when -- regarding injuries, because he saw many of the
15 victims.

16 As for the visit in 2007 to Bogoro, well, we could deal with that, table his
17 report, and then move to cross-examination. So the time that was allocated to
18 Mr. Baccard was five hours, and that would go down to 20 minutes, and we would save
19 a great many hours.

20 Furthermore, your Honour -- and I understand the Chamber's concern, you want
21 to have an effective approach, focusing examination and cross-examination on the
22 important essential aspects of the case. But inevitably, your Honour, if we are to
23 proceed at a certain space -- or a certain rate, considering interpretation and the
24 two languages we are using - English and French - furthermore -- and Lingala, as
25 well, the evidence that the Chamber must retain is that provided by the witnesses.

1 The Prosecution is certainly willing to focus on the essentials; and then,
2 once testimony is given, fine. For the rest, then, well, the witness is subject to
3 cross-examination.

4 We have limited the number of witnesses to 26 for two accused for events that
5 occurred in the Congo. This is quite a limited number. The witnesses must come
6 here, and their testimony is crucial. It is certain. And you can be assured that
7 -- perhaps you could consider, as I said, we could perhaps even -- we could limit
8 the number of witnesses even more as proceedings occur. But at this stage, this is
9 a minimum.

10 Mr Lesic, for instance, an expert that we would like to have declared a
11 visual expert; but once again, we provide for a certain number of hours for
12 examination of this witness as long as certain aspects are not challenged, but, you
13 see, we could provide the visual presentation and then after that he would be done.

14 As for the victims, we could focus -- as the trial progresses, we could focus
15 on the issues of greater import. We could focus more tightly. But that, too, is
16 an area where it is important for the witnesses to have that possibility to have
17 their voices heard. Some victims are key, others are less. So we could focus our
18 examinations to a greater extent and really focus on the essentials as the trial
19 progresses, and that is why -- and it all depends on how things evolve, but some
20 testimony may be admitted and some witnesses will be less necessary.

21 To return to your question regarding witnesses 160 and 166, perhaps, yes,
22 perhaps 160 might be more important and 166 less because it's not just about a list
23 of witnesses. We have focused our attention on these issues for the main
24 examination, and, if that is so, if some topics or areas are of less importance, we
25 could just provide the written statement of the witness.

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel, participants, we must be
2 very clear about something here: I do not believe that just because the ICTY is
3 shutting down, that does not mean that there was no reason for setting best
4 practices there. It was because they gained experience over the years, expertise,
5 and they decided to define a number of principles or methods for a reasonable way
6 of conducting a trial before an international criminal court, and thus, we thought
7 it would be useful to make use of their experience, the experience of a number of
8 other judges, prosecutors, counsel, who have followed this discipline, and I would
9 reassure the Defence teams, the figures that I provided a few moments ago will not
10 be imposed upon you. They were merely an example, and the rest will be discussed
11 in due course.

12 It is important for us to look at these matters during this status conference
13 and determine how long will it take us to conduct the examination-in-chief of a
14 number of witnesses. We don't want to provide some sort of fast-track justice.

15 Now, I am not even sure if this can be translated into English, but we
16 mustn't botch this trial and conduct a trial at the speed of a Maserati. We must
17 provide the necessary time for the trial but just the necessary amount of time, and
18 the Chamber reminds you that this trial is about the events of one day at one place
19 and there are two accused. We must consider a minimum number of elements and there
20 has to be enough time provided but we've also understood, sir, that you are very
21 much aware of the approach we were asking you to take, and we hope this will be
22 useful.

23 All the same, assuming four or five days of hearings per day, because some
24 days we may not be able to sit on a particular day because of technological
25 reasons, for example, the technical maintenance of the equipment here, so we must

1 assume four or five days of hearing per year, and, on that basis, if the Lingala
2 interpretation allows for four-and-a-half hours of hearings per day, fine.
3 Otherwise, we will have to make other provisions taking into accounts the absolute
4 necessity that we find ourselves dealing with, to render justice within a certain
5 amount of time, not necessarily within two-and-a-half years.

6 All the same, we are subject to a number of restrictions; material
7 restrictions; there is only one courtroom that is large enough for two accused and
8 at some times we may have to share this courtroom and this is why we cannot
9 consider more than four, five days per week, assuming four-and-a-half hours of
10 hearing per day. As at 13 November at 4 o'clock we would like you to provide us
11 with new proposals with regards to the timetable and if you could do that before,
12 we would be very grateful for that.

13 Please, could you provide us with new proposals with regards to the hours but
14 do not reduce this slightly but in a radical and drastic way, in particular the
15 number of hours that you give to your examination-in-chief. Related to the
16 Democratic Republic of Congo, it's certainly not a case which is strictly analogous
17 one that -- to the ICTY cases. However, the experience that we have can be useful.
18 It won't dictate our method of proceedings but we can't ignore it because we have
19 to act within a reasonable time frame and try it within a reasonable time frame
20 and, perhaps, there will only be one case.

21 Now please, Mr. Prosecutor, 13 November at 1600 hours or before, if you can,
22 please, we need these new proposals where it concerns the number of hours that you
23 intend to devote to your examination-in-chief. What we would also like, and we
24 don't have the time to do it this evening - this is something for tomorrow morning
25 at 9:30 - we would also like to make suggestions which could also considerably

1 reduce the time of your examination-in-chief and, in this regard, we have --
2 provided us with the subjects on which the witnesses will testify, perhaps it will
3 be possible to concentrate certain witnesses under certain subjects or issues, and
4 also not to have such a high number of witnesses with regard to the same subject
5 matter. This is something we will go into tomorrow.

6 What I would propose to you is that in the five or ten coming minutes that we
7 take point 10 and 11 of the agenda, which should not take too long. I think with
8 regards to point 10, this is relevant to the admissibility and relevance of
9 evidence. We spoke about this on 1 October and 2 October as well, and the Chamber
10 is currently seized by the Defence teams of an important matter with regards it
11 would like to speak not before the opening of the substantive debate because it
12 won't have the necessary time, it would appear, but it will do so as quickly as
13 possible in the coming weeks. So it would seem, Prosecutor, that you still haven't
14 provided us with the observations from yourself with regards to the team of Mathieu
15 Ngudjolo related to the witness and also with regards to the filings provided by
16 Mr. Hooper a few days ago.

17 Now, with regards to the theory of similar facts, there have been exchanges
18 in this regard. We have your submissions in this regard. However, where it
19 concerns the comments that you have made, or will make, when do you think you will
20 be able to provide us with your comments with regards to what counsel Hooper filed?

21 MR. MACDONALD: (Interpretation) This is the date that we are going to be
22 working on, the three weeks. The work is something that has already been gone into
23 but we have -- there are a lot of things that we have to do. Everybody, like
24 everybody else, the Prosecution is not complaining here but obviously there is --
25 this table is something that takes a lot of time.

1 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, the Chamber has
2 understood that for all of us it is a very, very high speed rhythm. So, with
3 regards to the agenda. Now, we are going on to the defence of alibi or grounds for
4 excluding responsibility. We've only got five minutes to go into this. I want to
5 mention this point. If we don't have the time to go into it this is something we
6 will take up tomorrow but the Chamber just wants to remind you in your important
7 submission of 17 September, Prosecutor, you indicated that you wished to receive an
8 answer from the Defence teams with regards to the position that they intended to
9 adopt with regards to possible alibis and grounds for excluding responsibility.

10 On 2 October this point wasn't gone into any further because apparently you
11 hadn't had any answer from the Defence teams in this regard. The Chamber would
12 therefore like to know if the Defence teams are currently able to say what their
13 position is with regards to possible alibis or grounds for excluding
14 responsibility, bearing in mind that the Prosecutor under Rule 79(2) should have
15 sufficient time in which to prepare. With regards to this point, are the teams
16 able to briefly answer this? If not we will leave this issue to tomorrow morning
17 because I don't want to deprive you of the necessary time in which to speak.
18 Counsel Hooper.

19 MR. HOOPER: We responded to the Prosecution request within a few days and he
20 had our response before the last hearing. I can share that response with the
21 Chamber, if you wish, but that's the short answer, that we've --

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Counsel
23 Hooper.

24 So, Mr. Macdonald, are you in possession or do you have information which has
25 already been transmitted by the Defence team of Mr. Katanga?

1 MR. MACDONALD: (Interpretation) Yes. My colleague could perhaps repeat it
2 to the Chamber so that it's clear.

3 PRESIDING JUDGE COTTE: (Interpretation) Okay. So with regards to this,
4 perhaps in terms of Mr. Fofé or Counsel Kilenda. Sorry, please go ahead,
5 Mr. Hooper.

6 MR. HOOPER: No. My friend asked me to repeat what I've sent him. It's on
7 record because I sent him an email. So, unless you want me to take up time this
8 afternoon to repeat it, I can repeat word-for-word what I sent in the email.

9 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, the Bench won't ask
10 for that. It would just like to receive something in writing. It would seem from
11 you or from the Office of the Prosecutor, I don't know, but which does inform the
12 Bench with regards to alibis or grounds for excluding responsibility that are
13 envisaged.

14 MR. MACDONALD: (Interpretation) Okay, I am going to lead it.

15 PRESIDING JUDGE COTTE: (Interpretation) No, please don't lead it because we
16 haven't got the time.

17 MR. MACDONALD: (Interpretation) No, the answer is no. No, we don't have
18 any grounds for excluding responsibility. Mr. Hooper pretends or claims that given
19 in mind the modes of liability that is not something for the Prosecution, firstly,
20 and in the case of Counsel Kilenda, he says that for the moment there is no comment
21 to be made with regards to a lack of evidence on the defence of alibi or grounds
22 for excluding responsibility.

23 PRESIDING JUDGE COTTE: (Interpretation) Everything is clear.

24 MR. HOOPER: In answer to the Court, we've responded fully and appropriately
25 to the Prosecution request.

1 MR. MACDONALD: (Interpretation) We would ask Mr. Kilenda to provide us with
2 the -- or to provide the answer to the question because currently we do not have
3 any answer in that regard.

4 PRESIDING JUDGE COTTE: (Interpretation) So, if counsel Kilenda and his
5 Defence team has new evidence they will make it - or information - they will
6 provide it to you and Mr. Hooper, Mr. Kilenda, on the other side, the Chamber would
7 be grateful if you would send an email or a list of alibis or grounds for excluding
8 responsibility that you intend to provide to the Prosecutor with, if I've
9 understood, a legal analysis in support of that, of this -- or lack of alibi.

10 Now, we are now going to stop there, having thanked for this public part of
11 the hearing, the interpreters and the court reporters, and all of those people who
12 work with us and make it possible for us to work. We will be back at 9.30 here
13 tomorrow morning to be able to take up point 8 of the agenda as well as the
14 following points with the exception of points 10 and 11.

15 I would just like to state to the Prosecutor that we do not have a lot of
16 time for the ex parte hearing which is following at 5 o'clock and therefore we
17 really have to go into the heart of your concerns having said that the Chamber has
18 to issue a decision following this ex parte hearing. So we will be back tomorrow
19 morning. I would like to thank all participants here and we are now closed, the
20 session.

21 (The hearing ends at 4:30 p.m.)

22 CORRECTIONS REPORT

23 The Court Interpretation and Translation Section has made the following
24 corrections into the transcript:

25 *p.2 line 11

1 "Aurélie Roche" is corrected by "Aurélie Stoflique"

2 *p.9 line 11

3 "ruling of 27 October" is corrected by "ruling of 21 October"

4 *p.28 line 22

5 "I apprised the VWU" is corrected by "I apprised the OPCD"

6 *p.28 line 24

7 "VWU" is corrected by "OPCD"

8 *p.29 line 4

9 "and now she is in our team as legal assistant" is corrected by "as
10 legal assistant in the Mathieu Ngudjolo team."

11 *p.29 line 6

12 "contacted Maître Maryse Alié" is corrected by "contacted Maître Mabilie"

13 *p.29 line 7

14 "Madam Van den Zilla" is corrected by "Madam Pandanzyla"

15 *p.29 line 17

16 "his" is corrected by "her"

17 *p.29 line 18

18 "his" is corrected by "her"

19 *p.30 line 10

20 "Van den Zilla" is deleted

21 *p.36 line 1

22 "MR. KILENDA" is corrected by "MR. FOFE"

23 *p.42 lines 1-2

24 "proposed for 14" is corrected by "amendments that you have made to
25 the order of witnesses"

- 1 *p.43 line 16
- 2 "to exam Witness 233" is corrected by "to examine Witness 323"
- 3 *p.44 line 8
- 4 "third place" is corrected by "13th place"