

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 The case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Status Conference
9 Friday, 9 July 2010
10 The hearing starts at 11.48 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) We are reconvening.
15 Please be seated.
16 Right. This is the status conference during which it should be
17 possible for us to know exactly where we are on all sides and to better
18 plan our work for the coming months. Messrs. Hooper and Kilenda and
19 Professor Fofe, you intervened. We have taken due note of what you said
20 at the end of the hearing. This is a question that's been brought to our
21 attention, and we shall devote our attention to it indeed, but we cannot
22 do so here and now, and we must avoid things getting mixed up, even
23 though in all likelihood you will tell us that certain of your activities
24 are determined by certain other things.
25 Prosecutor, and I'm addressing myself to the OTP in general, you

1 have received the order convening this status conference, so you have
2 taken note of the matters that the Chamber wishes to raise, and I will
3 consult the very same document myself.

4 In broad terms, rather than chopping things up, let me run
5 through our concerns and expectations. In (a) of the convocation, we are
6 asking you whether you intend to use the entire 120-hour period for the
7 examination-in-chief that was granted to you on the 1st of December,
8 2009, to present your days. It's decision 1665 on Rule 140 and refer to
9 paragraph 8.

10 In the middle of July, in other words, a few days from now. If
11 we have concluded - and we all hope this will be the case - the hearing
12 of Witness 267, we'll have had 15 Prosecution witnesses who have
13 testified. The amount of time used out of 120 hours allocated as of
14 yesterday, the 8th of July, was 68 hours, 57 minutes. This is the
15 information that the Court Officer -- the Court Officer has provided us
16 with. So it's important that you tell us today what is the situation.

17 When do you intend to conclude the presentation of your case,
18 bearing in mind the list of witnesses still to testify. It should,
19 however, be pointed out that we have yet to clarify the situation
20 concerning three witnesses. First of all, Witness 166.

21 You'll recall that the Chamber was wondering about the absolute
22 need to have this witness called to testify, and I refer to the
23 transcript of the status conference of the 3rd of November, 2009, page 9,
24 and to your submission of 1599, dated 5th of November, 2009, concerning
25 the filing of a revised list of Prosecution witnesses, and I refer to

1 paragraph 7.

2 The Chamber does not overlook the fact that through a submission
3 2020 you suggested that there be admission of the written statement of
4 that witness. The Chamber has not given its opinion, but you have taken
5 due note of the filings made by both counsel teams. So we need to hear
6 what is your position on this. We have this matter pending, so what is
7 your position as regards the possible appearance of Witness 166?

8 We also have to hear from you as regards to Witnesses 157 and
9 238.

10 On the 1st of April, 2010, orally and then through a written
11 submission, 2024, dated 15th of April, 2010, which was filed at the
12 request of the Chamber, you asked postponement of the witnesses 157, 238,
13 in other words, to come to the -- at the very end of the presentation of
14 the incriminatory evidence, and here I refer to paragraph 8 of the
15 submission saying, and I quote from it:

16 "That the Prosecution considers that postponement of
17 Witnesses 157 and 238, on the basis after possible withdrawal, is part of
18 a concern that due diligence be shown in this trial and that there be
19 full guarantee for the accused of being judged without excessive delay."

20 On the 10th of May, 2010, in an oral decision the Chamber
21 accepted this request to modify the order of witnesses submitted by the
22 Prosecution, pointing out on the one hand there was no major objection
23 from the Defence teams; on the other hand that it was probable that 157
24 and 238 be removed from the list of witnesses.

25 So the question that we put in addition to the one that we have

1 put as regards whether or not you will use the full 120-hour period is as
2 follows: Are we to expect to hear the testimony of 11 or 8 witnesses?
3 And here I'm referring to Witnesses 166, 157, and 238.

4 We'd also like to know how many hours examination-in-chief you
5 are planning for the remaining witnesses. Obviously, this will depend on
6 whether we're talking about 11 or 8, and it should be pointed out in this
7 context that the Chamber does intend to make sure that you stick to the
8 120 hours that have been allocated.

9 Next question, and if necessary I will re-clarify them as we go
10 through them once again. As for the remaining witnesses, what are the
11 subject matters to be covered by their testimony? In other words, the
12 sheets that you've submitted in submission 1514 of the 7th of October,
13 2009, we would like to know whether they are still up-to-date or, on the basis
14 of the testimonies to date, do you intend to refocus your future
15 questions concentrating on those matters that you deem to be most
16 relevant? It would seem to the Chamber that the matter of time you have
17 available to you, 120 minus round about 69, is such that you will really
18 have to be far more rigorous on that issue and that the questions put
19 during your examination-in-chief have to be extremely pertinent.

20 So, Prosecutors, we have before us one and a half hours of this
21 status conference, up until half past 1.00. Everybody has to have the
22 necessary speaking time, and as far as you are concerned these are the
23 questions that are put to you, and the Chamber would like to have from
24 you as much information as possible, and obviously this information will
25 be useful for all of the parties involved.

1 You have of the floor.

2 MS. DARQUES-LANE: (Interpretation) Good morning, your Honours.

3 I shall try to answer the questions in the order in which you put them to
4 us.

5 First of all, in your first question as to whether we're going to
6 use the entirety of the 120 hours allocated to us, the answer is yes.
7 Indeed, as you said previously, we have already used roundabout 67 -- no,
8 69 hours. I'm sorry. At this stage we can confirm that Witness 166 will
9 appear, but according to our submissions, the examination could be
10 curtailed, devoted to specific questions as we set out in our
11 application.

12 Then on the question pertaining to Witnesses 157 and 238, at this
13 stage we cannot answer your question, cannot give you a final answer.
14 What we can do, though, is confirm that both witnesses are likely to be
15 withdrawn.

16 PRESIDING JUDGE COTTE: (Interpretation) When will you be able
17 to tell us, if you can tell us. When do you think you will be able to
18 tell us whether or not they will be removed from your list of witnesses?
19 Are you talking about two weeks, one month, two months? Do you have an
20 idea that you could share with us.

21 MS. DARQUES-LANE: (Interpretation) One moment, please. I
22 should like to consult my colleague.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course.

24 (Prosecution counsel confer)

25 MS. DARQUES-LANE: (Interpretation) So at this stage what I can

1 state to the Chamber is that we can give you an answer in September but
2 not before then.

3 PRESIDING JUDGE COTTE: (Interpretation) The earliest would be
4 the best. If it is possible for it to be in the first two weeks of
5 September rather than the last half of September, because we're therefore
6 very close to October. So probable withdrawal. That's what we take, 157
7 and 238, with the precision that we would ask for in mid-September.

8 Please continue, Prosecutor. On the other hand, 166 is coming,
9 and we will respond to your submission.

10 MS. DARQUES-LANE: (Interpretation) Yes. And we have noted the
11 urgency to answer the question with regards to the arrival of that
12 witness. We have certainly noticed -- noted your request in that regard.

13 As we were able to note in the examination-in-chief of the
14 witness, the one who was in the militia, Witness 250, they take longer
15 than envisaged, and that is why the -- is a probable withdrawal of two
16 witnesses, 157, 238. There is the need for the 120 hours which were
17 allocated. That is a need we maintain.

18 PRESIDING JUDGE COTTE: (Interpretation) You continue to
19 understandably to ask for the 120 hours. The Chamber notes that. It's
20 important that on your side that you note that we won't go beyond 120
21 hours.

22 Things being very clear, you can therefore continue.

23 MS. DARQUES-LANE: (Interpretation) I think that the following
24 question that you asked us relates to the issues which our witnesses are
25 going to speak about and how up-to-date those issues are. At this stage,

1 if we have an update to make, that will refer to 166 with regards to 219.
2 We have expressed ourselves with regards to the matter, reducing the
3 number of questions that were put and answered by our witness. Also with
4 regards to Witness 28, we still don't know if we're going to be able to
5 call that witness or not. Where it concerns the issues that the other
6 witnesses are going to address, at this stage we would refer the Defence
7 to the submission 1514, which -- which should describe -- so 1514, which
8 describes the issues for the witness.

9 PRESIDING JUDGE COTTE: (Interpretation) Perfect. So we will
10 remain with submission 1514 in this regard, and we would recommend that
11 with regards to 166 there is a different approach, but of course that the
12 Defence team be notified thereof so that they are not taken by surprise.
13 Also, we have noted with regards to 219 there are -- there is a reduction
14 that you are attempting to make. And this is also the case for 28.

15 Thank you, Prosecutor. You've also heard and taken into account
16 that the Chamber thinks, while not minimising the difficulties that the
17 examination-in-chief or cross-examination represents of certain
18 witnesses, the Chamber does think that certainly we have to have a better
19 relevance with regards to the questions that are put, and each time not
20 leading the witness in anyway with what's going to be said, but we have
21 to make this effort, try to make the effort to make the questions such
22 that the witness can be precise. Don't -- don't make them too vague, too
23 long. If you have -- for example, if the witness goes on for too long,
24 this makes it difficult to understand what's actually being said, whereas
25 if it's shorter, this does make it possible for the Chamber to better

1 work towards the truth that it's trying to obtain now.

2 A hundred and 20 hours. That's what is needed. There are 11
3 witnesses left. It's not certain that 157 and 238 are coming. This
4 means that perhaps there are only nine witnesses. If we base ourselves
5 on four days of hearing per week, four hours per day, from the 23rd of
6 August, it would seem that your case should be able to be finished when
7 would you say?

8 MS. DARQUES-LANE: (Interpretation) According to our
9 calculations which are very approximate at the moment given that the
10 Defence has taken up about 70 hours in cross-examination, maybe it will
11 take less, maybe it will take more, we think that mid -- at the start of
12 mid-December we should be able to finish our case. I'm sorry. According
13 to the calculations of the hearing time and the speed of the proceedings
14 that we have noted up to now.

15 PRESIDING JUDGE COTTE: (Interpretation) What is certain is that
16 the Chamber has seen certain difficulties. We weren't able to have all
17 the hearings we wanted to do. There were different reasons. There was a
18 cloud, there was technical problems as well. There was also the
19 availability of interpreting booths, also own reasons with regards to
20 members of the Chamber. There were official missions abroad, other
21 reasons which were health reasons, but we hope that in the coming weeks
22 the planning of hearings can be better respected than it has been so far.

23 We are aware that there are events that can arise, the legal
24 aspects, and the Registrar, really, or the Court Officer makes sure that
25 nobody is prejudiced when these legal issues arrived. So we have

1 integrated the Legal Representatives of Victims. They should have seen
2 that. We have to have a very good picture of the exact speaking time of
3 everybody. This makes it possible, reasoning in this way thus, that
4 we'll have not 11 but 9 witnesses, and if there's greater regularity with
5 regards to the hearings, the mid-December is far too far away. It is
6 imperative that we can finish your case in the latter half of October.
7 This is the objective that we have. Of course, we'll have to see if
8 that's possible. It's also not conceivable that the proceedings be poor
9 because we're trying to go too fast, but what we would like to do is have
10 the best possible discipline and mid-December does seem to be an
11 extremely far-off date. We all want to see a reasonable date and a
12 diligent conduct to the proceedings. We're all accountable for that.

13 So at this stage, practically mid-July, we have to take into
14 account the end of the month of October.

15 MS. DARQUES-LANE: (Interpretation) We are very aware of the
16 concerns of the Chamber with regards to the proceedings. Our projections
17 were based on the unexpected events that might arise. Obviously, if such
18 events don't arise, it will be possible to go faster. However, our
19 experience has been that proceedings take longer than one would initially
20 envisage and that's why we want to give a conservative estimate with
21 regards to the hours rather than a too restrictive approach in this
22 regard in order to give an idea of what is to be expected from us.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
24 Please, therefore, note of the wish of the Chamber, it is clear that if
25 this cannot be respected for legal reasons which are good reasons, then

1 this will have a most significant consequence, but when it comes to
2 setting deadlines which is too long, it means that we wouldn't be
3 respecting the diligence, the due diligence, that is expected of us.

4 Madam Prosecutor, before we go into the large (B) of the agenda,
5 do you have any other organisational points which you wish to raise at
6 this time? You have the opportunity to take the floor later if you so
7 wish.

8 MS. DARQUES-LANE: (Interpretation) I will take the floor if I
9 so need.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
11 So we would now like to also address ourselves to the Defence teams. We
12 would just like to know -- well, Counsel Hooper referred to that at the
13 beginning of the week, if there were discussions underway between
14 yourselves with regards to new admissions. Are there discussions with
15 regards to new admissions? Is anything envisaged with regards to new
16 admissions in the short term or at the end of August, and if there are,
17 could you tell us on what issues. If you're the one who are going to --

18 MS. DARQUES-LANE: (Interpretation) Please excuse me for taking
19 the floor again, but given that it comes from our application, I would
20 like to take the floor on this subject. So in light of paragraphs 101
21 and 102 of the decision 1665, we have provided our Defence colleagues
22 with a table of evidence which we wish to submit without the presence of
23 the witness, documentary evidence and video evidence as well. We have
24 received comments from the two Defence teams, and we will address these
25 issues this week, and we intend to submit something next week, an

1 application next week, on this subject. All the agreements that we
2 manage to achieve with the Defence team will of course not be submitted
3 to the Chamber, but for anything that still remains a point of
4 controversy will appear in our application.

5 PRESIDING JUDGE COTTE: (Interpretation) Among the Defence team,
6 does anybody want to take the floor or not?

7 Counsel Hooper.

8 MR. HOOPER: Well, talking about admissions generally, there's
9 nothing particularly that comes to mind. I mean there's a specific
10 issue, as you know. I can leave that to one side. But there's no
11 general schedule of admitted facts at the moment that's being passed
12 between us.

13 What my friend's just referred to are -- is presumably the bar
14 table motion. We've -- we've put forward our -- our submissions in
15 respect of that. The only thing that concerns me is the timing of what
16 may be, I don't know, presumably a written submission on the part of the
17 Prosecution that's just been referred to, which will come presumably the
18 day before the recess. We seem to be occasionally provided with
19 substantial matters on the final day of -- of -- of our sittings, which
20 is a matter of concern. And so, you know, here working as a team but
21 breaking up obviously not only for those three weeks but, subsequent to
22 that, for two weeks on mission to the DRC with the consequence that we
23 are not really effective, may I put, as a team as much we should be
24 until -- or rather, in a different manner, until we come back for the
25 hearings shortly before the 23rd of August. So basically from about the

1 16th of August we -- we are coming more effective, but prior to that both
2 with the recess, which we're observing, and we've made that plain to the
3 Prosecution as they have to us, there won't be any filings unless it's
4 something quite extraordinary during that period, and we don't anticipate
5 that there'll be any filings for the two weeks afterwards from us, unless
6 again it's something quite essential. So we can indicate that we're
7 looking at four or five weeks when we hope we're not going to be plagued
8 with paperwork nor plague you, the Judges, with paperwork, and so
9 that's -- that's our position.

10 So hearing about the bar table motion here just raises a slight
11 anxiety with us. May I rephrase that? A considerable anxiety with us,
12 but we'll have to deal with things as they evolve. What would be helpful
13 is to know sooner than later. Not on Friday or Thursday or Wednesday but
14 by Monday.

15 PRESIDING JUDGE COTTE: (Interpretation) Did you hear that?
16 Counsel Kilenda.

17 MR. KILENDA: (Interpretation) Thank you, your Honours. It is
18 true, as the Prosecutor states, that in accordance with paragraphs 100
19 and 102 of your decision 1665, the Office of the Prosecutor did submit to
20 us a table of evidence which it intends to have submitted without the
21 presence of a witness. We answered. We said make your comments to us,
22 and we are now waiting for the application they've spoken about. They
23 said that they intend to make it in the coming days. Our concern is the
24 timing of this application. We would wish to be able to take full
25 advantage of our holidays, and we hope that this application will not

1 come -- or will not force us to make submissions during the judicial
2 recess.

3 Are there admissions envisaged? No. It's not ruled out, and we
4 will see if there have to be admissions to ensure that we operate in a
5 diligent way to ensure that the Chamber can rule thereon with all due
6 diligence.

7 I will not go any further in this regard, your Honour.

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

10 MR. KILENDA: (Interpretation) Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, please go
12 ahead.

13 MS. DARQUES-LANE: (Interpretation) I'd like to take the floor
14 just a for a moment, just to point out to the Chamber that *the Defence have
15 not only just received this table.The Defence has had time to read it, to
16 react, and they do know this document.They have done for a long time.So we
17 would consider that the submission of this application shouldn't cause
18 major anxiety for the Defence with regards to the work to be carried out
19 because it's already on done.

20 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper.

21 MR. HOOPER: Just to say (Microphone not activated) ... is quite
22 wrong in that assumption. This is a substantial matter. It will involve
23 substantial pleading, substantial legal issues are involved. The
24 documents themselves are often vast and substantial. This is going to
25 take substantial time, and we'd certainly ask that the period of recess

1 doesn't count towards any time running in respect of any response other
2 than perhaps urgent matters concerning, perhaps, the liberty of the
3 accused or anything like that, but outside that we'd ask that as a
4 general principle that the time of the recess in no way is to be counted
5 towards the normal response times, for example, 21 days with a motion
6 like that, and, indeed, we might be asking for further time in addition
7 in respect of that particular motion.

8 It's right to say that we've provided the Prosecution with our
9 essential and short views in respect of each of the documents. We've
10 seen our way to admitting a proportion of them, about 30 per cent of
11 them, I think, 25 per cent of them. There are considerable issues
12 relating to the remaining documents. It's not a one-size-fits-all
13 argument. Each document requires a subjective approach and would require
14 arguments tailored to that particular document because the objections are
15 different in -- in their application to each of the documents.

16 So I'm sorry, I don't want my friend to think that this is a
17 matter that we're familiar with. We know the issues, but this is not an
18 easy -- it will not be an easy matter to -- to -- to draft.

19 MR. KILENDA: (Interpretation) If you would allow me.

20 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda.

21 MR. KILENDA: (Interpretation) I have to stress that this
22 document is a 65-page document setting out very important acts. We're
23 not going to treat it like a novel. We really have to examine it
24 seriously. We hope that the holiday time -- if this document has to be
25 dealt with during the holiday time, it wouldn't be appropriate. We want

1 the Chamber to take this into account. The Office of the Prosecutor
2 should also take this into account.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 Counsel Kilenda. I do not think that the Prosecutor has underestimated
5 the importance of the issues in this document, neither in terms of the
6 time to be spent on it. We will take the time that is necessary, a
7 reasonable time, which will make it possible to formulate the most
8 enlightened comments thereon. We're not going to continue now. We're
9 now going to go on to the Legal Representatives of Victims, because where
10 it concerns the timetable it's also important that they give us a certain
11 number of clarifications in this regard. So I would now turn towards
12 Counsel Gilissen and Counsel Luvengika.

13 You have been able to note that in the call to this status
14 conference several questions were asked of you. These are grouped into
15 the (A) to (D) in the questions that I'm going to ask you, so if you
16 envisage filing applications with a view to having one or more victims
17 testify, one or more who you represent, you will remember that the
18 decision 1665 relating to the 1st of December, 2009, relating to
19 Rule 140, had several paragraphs which covered this possibility. I'm not
20 going to re-read it, but would I just like to draw your attention to
21 paragraph 22, which does state the conditions according to which this
22 possibility for the Legal Representatives for victims has to have a
23 victim testify. These are quite strict conditions. Then you have
24 paragraph 25 which gives a reminder that it is necessary to file. Before
25 the Prosecutor has finished, you have to present a written submission

1 with a statement -- written statement signed by the victim which has a
2 complete summary of the testimony. Then paragraph 27 says as far as
3 possible, then, we have to avoid any unuseful redactions. And if certain
4 are necessary, then that should be submitted to the Chamber. With
5 regards to paragraph 28, the application and the statements should be
6 notified to the parties who would have a seven-day deadline to provide
7 their observations. And paragraph 29 reminds that in a case of
8 acceptance of the application by the Chamber, then contact should be
9 taken up with the unit, the VWU, and if that should be envisaged and
10 taken -- if they should be envisaged and taken, there should also be
11 protective measures. Then you have the question to see under what -- by
12 what deadline such applications should be filed in accordance with
13 paragraph 22. It is before the end of the Prosecutor's case, because
14 these statements, if they are to be submitted, they should in no way
15 delay the proceedings. The Chamber feels that it is also necessary to
16 distinguish between the applications, this is something that we would
17 come back to, but do you at this present time envisage applications to
18 have one or several victims testify?

19 Counsel Gilissen, you are first. I just have to remind you that
20 we have to suspend at 1.30.

21 MR. GILISSEN: (Interpretation) I would just like to be very
22 brief on this subject. I'd like to be as complete as possible, though.

23 In the group of victims I represent, I have been careful to
24 review all of the subjects that can be addressed. That was the
25 methodology I used for my work, and I have to say that currently unless

1 there is a new element which would I have to inform the Chamber of as
2 soon as possible, I would consider that all the subjects which could be
3 dealt with via the victims that I -- victims that (indiscernible) these
4 have already been dealt with by witnesses appearing before the Chamber.
5 So just to summarise that unless there's a new element or information
6 with regards to the daily proceedings, because there is a type of
7 precariousness with regards to victims I represent. There's security
8 risk. The situation is delicate, and that's why there is a procedural
9 reason why I wouldn't present a witness, but I'm -- would have to state
10 that there is a possibility to amend my position in accordance with the
11 running of the proceedings, and if that is the case, I would inform the
12 Chamber, actually all participants within the shortest possible
13 time-frame. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) No. It's we who would
15 like to thank you, Counsel Gilissen.

16 Counsel Luvengika.

17 MR. LUVENGIKA: (Interpretation) Yes. Thank you, your Honour,
18 your Honours.

19 Since the start of the proceedings, this also meets the concerns
20 of the victims that I represent, namely to come to testify themselves of
21 their case before the Chamber and the court, and that's why we will
22 continue to reflect on that. The call of these victims as witnesses has
23 to be in the interest of the manifestation of the truth, and it has to be
24 able to contribute to the proceedings.

25 Now, at this stage we have the feeling that it is not ruled out

1 that we will propose to the Chamber to allow the appearance of certain
2 victims. Some aspects of the case could benefit from additional
3 clarification in order to aid the Chamber. However, we have no concrete
4 information to propose because we have to examine the issue very closely
5 with our clients. If I have planned a mission during the summer recess
6 in order to answer this question.

7 You will have understood, your Honour, ladies and gentlemen of
8 the Bench, that we would have liked to carry out this mission earlier,
9 but in practice it was not possible, or it would have been extremely
10 difficult for various reasons. Our means compared to those of the other
11 parties is very limited, and all our efforts have been concentrated on
12 following the proceedings. Our efforts have also been concentrated on
13 the need to keep our clients informed and to gather their concerns and
14 views as far as possible. And finally, with regards to the hearings and
15 the rhythm of them, it hasn't been able to go to the DRC in order to do
16 this.

17 Despite these difficulties, we have already reflected
18 considerably on this matter within the team, and we have prepared this
19 mission, this upcoming mission. On return from the mission, we will have
20 to analyse the data which we have taken therefrom and evaluate if there
21 is an interest in having witnesses -- or victims, rather, appear, and we
22 would of course want to inform the Chamber and the parties as soon as
23 possible of our intention to call victims to appear, and as a consequence
24 to submit any application in this regard as soon as possible.

25 To the extent that the mission will be carried out from mid-July

1 until mid -- mid-August, and the members of the team will only take
2 holidays after this mission has been carried out, we will have to have
3 reasonable time in order to analyse all this information that has been
4 gathered, and this then will mean that we will be unable to give a
5 precise answer as to the deadline by which we can confirm to the Chamber
6 this intention.

7 We have just heard what the Chamber has said to the Office of the
8 Prosecutor with regard to the deadline for the presentation of their
9 case. We have to admit that the deadline of December would have helped
10 us considerably with regard to that of October given the massive work
11 that we have to carry out following the identification of victims who
12 could bring something, contribute something, to the proceedings before
13 the Chamber, but this also requires several interviews, the taking of
14 statements. All this work has to be carried out with the means we have
15 available to us, and it would seem to us to limit us if we had to conform
16 to this October deadline.

17 Obviously, regarding possible protection measures for victims, if
18 indeed victims are called to testify here in this courtroom, we think
19 that we could arrange to file the request, the applications, for
20 participation at the same time as the applications for protection
21 measures if this becomes necessary. That is what I can tell the Chamber
22 about the victims I represent.

23 MR. GILISSEN: (Interpretation) Mr. President, with your leave,
24 I would like to add just one thing, and I am addressing the Defence teams
25 and also the Chamber.

1 I believe that there is a link, and I think everybody should know
2 about that now, particularly the Chamber, between the possibilities given
3 us to examine witnesses and the necessity to actually call victims. I am
4 pointing this out, because recently there were discussions about the
5 scope of the questions that we could ask. I believe this is under the
6 authority of the Chamber. But if it is possible for the Chamber to know
7 all the information, it is obvious that this would facilitate our role
8 when we are thinking about the possibility of calling victims. So this
9 will save a lot of time for everyone, and we will avoid this cat and
10 mouse game between the Prosecutor and the other teams, for example, when
11 Legal Representatives are deemed to be subsidiary prosecutors.

12 MR. LUVENGIKA: (Interpretation) Mr. President, I would like to
13 take the liberty to speak again in light of the schedule or the agenda
14 that was given to us, there was a item on communication during the
15 judicial recess. It seems to me that both the Defence and the OTP have
16 had exchanges on this matter. I don't know if we should deal with this
17 ourselves or the Chamber will talk about it later?

18 PRESIDING JUDGE COTTE: (Interpretation) We will revisit this
19 issue later. Thanks to both of you.

20 Mr. O'Shea, please.

21 MR. O'SHEA: Sorry, Mr. President. I didn't mean to interrupt
22 you.

23 I have to say that I'm a little taken aback by the lack of
24 clarity of the position of the Legal Representatives of the victims with
25 respect to whether or not they are calling witnesses, how many witnesses

1 they intend to call, and on which topics. We all know this, of course,
2 but I think it's appropriate to recall that there is, of course, a
3 pending motion before the Appeals Chamber where the Defence has been
4 arguing that at least in relation to victims who are going to give
5 evidence on incriminating matters, that should be subject to disclosure
6 prior to the commencement of the trial, not -- not the end of the
7 Prosecution case.

8 We're faced with a situation where the Prosecutions has indicated
9 to us that they may, on the basis of their observations of how things
10 have gone so far, be bringing their case to a term in mid-December, where
11 the Chamber has indicated that in principle the Prosecution case should
12 be brought to term in mid-October, and where one of the legal
13 representatives is now saying that they have to look into the matter
14 regard to their own witnesses.

15 Can I make it plain first of all, that if there are going to be
16 witnesses, whether of an incriminating nature or not, we will first
17 require, or at least we will argue that we require, if there's any
18 contention about this, the names and the statements of those witnesses
19 well in advance of the intended time of their testimony in order to
20 conduct appropriate investigations for cross-examination of those
21 witnesses. And we will also require adequate time to prepare for these
22 new elements in the trial for which the Defence would have had no prior
23 notice.

24 So it's important that the parties and the participants keep that
25 in mind in the equation about time, that the Defence requires time to

1 prepare for the victims's case, if I can put it in those terms, absent
2 another appropriate term to use.

3 So if there's going to be any question of testimony from the side
4 of the -- of the victims, we need to have full details sooner than later.
5 Probably well -- well before the end of the Prosecution case in order
6 that this -- this process can move forward expeditiously, and -- and we
7 may need time outside the courtroom to prepare as well, and that needs to
8 be taken into account.

9 Thank you, Mr. President.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.
11 You somewhat anticipated what the Chamber wanted to say.

12 To begin with, if we thought that the deadline of December was
13 far off for the conclusion of the Prosecution case, it was also because
14 we were taking into consideration the fact that we should not rush
15 things. We also take into consideration the situation of the detained
16 accused persons.

17 Now, if Legal Representatives have to call witnesses, then there
18 is a process that they have to begin and the earlier the better.

19 Mr. Luvengika has said that he is preparing a mission to the DRC,
20 and this is a very good thing, but we would like to draw your attention,
21 Mr. Luvengika, to paragraph 22 of decision 1665 of the 1st of December,
22 2009. There is a possibility that is open for the Legal Representatives
23 to call victims as witnesses, but this possibility is subject to very
24 strict conditions.

25 If you wish the Chamber to grant the motions that you are going

1 to file, you have to bear these conditions in mind.

2 It was also pointed out that any legitimate testimonies of
3 witnesses who were also victims should not excessively delay our
4 proceedings. So during your mission with your associates to the DRC, you
5 have to make a rigorous selection of the victims that you would like to
6 call. They have to be possible witnesses who are likely to contribute
7 something tangible to the Chamber, and I refer you here to paragraph 22.
8 Given the time limits that I have mentioned, you have to distinguish
9 between applications that need or do not require protection measures.
10 The applications that require protection measures will have to be filed
11 approximately six weeks prior to the end of the presentation of the
12 Prosecution case, and this is quite consistent with the dates of your
13 missions and the rest time for your team members. This will mean that
14 your applications should be filed before the Chamber during the first
15 half of September.

16 So, Mr. Luvengika, you have to be rigorous in your selection, and
17 if this is the case, the analysis work before presentation to the Chamber
18 will be facilitated. And with regard to the applications that require
19 protective measures, as I have said, we should have those applications
20 during the first half of September.

21 The second group of witnesses that do not need protection
22 measures might be -- the applications for them may be filed later but not
23 much later. The Defence teams have a deadline of seven days to react,
24 but your applications will have to include the approximate time for the
25 examination of those victims who are also witnesses.

1 And Mr. O'Shea, the Chamber is fully aware of a pending appeal
2 before the Appeals Chamber, and leave has been granted for that appeal.
3 We do not, for the time being, know the schedule of the Appeals Chamber,
4 but we intend to respect fully, remind the Appeals Chamber that there is
5 a certain degree of urgency here. However, that should not prevent the
6 filing of any applications within a time limit that makes it possible for
7 the Defence teams to react. And once again, this should be done during
8 the first half of September.

9 Mr. Luvengika, and in answer to Mr. Gilissen's concerns, if it
10 happens that the last witness is called to testify by the Prosecutor
11 raised issues that require any of the Legal Representatives to wish to
12 call witnesses to testify, there will be decisions -- there will be
13 decisions to extend the period that is beyond the 15th of September for
14 applications, but this will be done on a case-by-case basis, that is in
15 case any one of you Legal Representatives feels that it is absolutely
16 necessary to call a victim to testify as a witness, and that is the
17 condition for calling such witnesses. We have to contribute something.
18 And I refer you to paragraph 22.

19 MR. GILISSEN: (Interpretation) I would like to confirm to the
20 Chamber that we fully understand what you said, and that is how I
21 conceived my intervention a short while ago. I think there cannot be any
22 difficulty there. There are not going to be any nasty surprises for the
23 Defence teams, and it is only a new development that would justify any
24 modification of my position.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika.

1 MR. LUVENGIKA: (Interpretation) Mr. President, from what has
2 been said here, I fully understand the substance. However, I wanted to
3 request the Chamber to be somewhat flexible given that I have 354 victims
4 currently who are scattered throughout an entire region. So contacting
5 them is already an exercise that is very difficult.

6 I'm going on a ten-day mission with my team, but there are no
7 guarantees that we'll have the possibility of meeting a maximum of those
8 witnesses -- or, rather, those victims during that period of ten days.

9 Furthermore, after having met with the victims, in order for us
10 to have a broad enough sample, given the requirements and conditions set
11 out in paragraph 22 and others of the Chamber's decision, it is in our
12 interest to have a broad sample from which to select victims that meet
13 the necessary criteria regarding the subjects that we would like to deal
14 with before the Chamber.

15 Without putting into question your decision, we would like to ask
16 for a certain degree of flexibility and indulgence from the Chamber to be
17 able to carry out our duties effectively.

18 Thank you, Mr. President.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
20 Mr. Luvengika. You have to reassure us that you are not intending to
21 call 300 victims as witnesses.

22 MR. LUVENGIKA: (Interpretation) Obviously, Mr. President, maybe
23 five would be too much even.

24 PRESIDING JUDGE COTTE: (Interpretation) Once again, we are not
25 trying to close the door to victims who might be called as witnesses, but

1 once again, I refer you to paragraph 22. You have to be very selective
2 in order to be useful. I believe we have understood each other.

3 Now, let me move on to the Defence teams. (b) of the agenda,
4 Mr. Kilenda, Mr. Fofe, Mr. Hooper, Mr. O'Shea, (b) is related to the
5 investigations that you intended to carry out after the spontaneous
6 statements made in the room by Witness 161, oral decision of the 4th of
7 March, 2010, and the Witness 159, oral decision of the 24th of March,
8 2010.

9 You planned to carry out investigations and maybe even to file
10 motions for the purpose of recalling those two witnesses. We went over
11 the situation. Last 6th of May, Mr. Hooper stated that at that point in
12 time there is no indication that he would ask for a recall, while
13 Professor Fofe pointed out that he had to position regarding Witness 161,
14 and that for Witness 151 the process was ongoing. We had to discuss this
15 point on the 21st of June but we postponed it to today.

16 Now, is it possible for you to tell us your current position
17 regarding these two witnesses, and do you intend to file any applications
18 for the recall of those witnesses?

19 Professor Fofe, Mr. Kilenda, Mr. Hooper?

20 MR. HOOPER: For my part, my position hasn't changed since we
21 last addressed this, so I can say that certainly, from information I have
22 at present, or the lack of information I have at present, I have no
23 reason at the moment to think that I will be making that application, but
24 I can't close, as it were, the door on - I hope - on myself as it were in
25 respect of that. So there may be developments. We've got a mission to

1 the DRC shortly, and to be honest, we've been focusing on other things.
2 I have to confess to that. So I think it unlikely, but a remote, a
3 remote possibility.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
5 So far as you are concerned, for the time being at least you do not
6 envisage to file any application to recall those two witnesses.

7 Mr. Kilenda.

8 MR. KILENDA: (Interpretation) Thank you, Mr. President. Our
9 position also has not changed. We did not see anything that would
10 justify an application for the time being. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.

12 Now, can both of you tell us at what stage in your investigations
13 you are right now, and how much time do you think you need after the
14 conclusion of the Prosecution case, and if applications are made for
15 victims to be called as witnesses. With the understanding that a status
16 conference is going to be convened at a date to be decided, and on that
17 day, when the time comes, you will tell us the number of witnesses that
18 each Defence team intends to call while specifying witness by witness the
19 themes of their testimony. You will also specify the approximate
20 duration of the examinations and also whether protection measures have
21 been applied for from the unit for some of those witnesses.

22 So let me summarise. A status conference will be convened later
23 on to receive from you that information, number of witnesses, subjects to
24 be discussed, approximate duration of examinations, and possible
25 protective measures. And I would like to ask you today at what stage in

1 the -- in your investigations are you right now, and after the conclusion
2 of the Prosecution case, how much time will you need, just so that we
3 should all have an idea.

4 Mr. Hooper, please.

5 MR. HOOPER: During the Prosecution case much of the immediate
6 Defence efforts concern investigations into the Prosecution witnesses
7 themselves, and certainly when we're sitting here with witnesses that
8 tends to be what we're concentrating on, and I'll remind you,
9 Mr. President, that of course we have just one resource person available
10 to us in the Congo. That is the full extent of our DRC assets, as it
11 were. And he is largely based in the Bunia area.

12 Over the last two years, we have, either through our resource
13 person or directly ourselves, been in contact with a substantial number
14 of people. This, more than most cases in my experience, is a situation
15 where we're far from actually forming as a team our objectives for a
16 defence case. The simple reason is we're still waiting to see the shape
17 of the Prosecution case. And I was -- if I can just address a side issue
18 here and go back to point (a) and the time that this Prosecution case was
19 anticipated to take, in my mind I'd always felt the end of October was a
20 probable and indeed reasonable objective, because everyone behind me on
21 my team would tell you my crystal ball has often been far from accurate,
22 and you've experienced that yourself. It's a very difficult exercise.

23 But if it's nine witnesses to come, we have ten weeks from coming
24 back to the end of October. I would have thought with nine witnesses
25 that's doable.

1 If these three other witnesses are to be called, then perhaps I
2 can see that the Prosecution case might take a further four weeks. Of
3 course, that doesn't take into account weeks when we might not be
4 sitting.

5 What concerns me though is that witnesses -- the Prosecution --
6 and I appreciate my friend's position, but the Prosecution are saying
7 today, "Look. As far as Witness 28, 157, and 238 are concerned, we'll
8 let you know if we're going to call them, but we can't do that until
9 perhaps the end of September." Three months' time.

10 238 is of little concern to us. 28 and 157 very much are. With
11 a 14-day or 13-day mission due to come in a few weeks' time to DRC,
12 Eastern DRC, what are we to do, because both 28 and 157 are significant
13 witnesses if they are to be called. So are our efforts supposed to be
14 focused on them? And if they are, is that all wasted effort when we
15 could be doing other things?

16 Why is it that at this stage, a little over, I think, halfway
17 through the Prosecution case, how is it that -- why is it that there's
18 this procrastination. We all know -- certainly the Prosecution should
19 know what their case is, they know what their witnesses are, and they can
20 see - as I suppose we can all see - how these witnesses potentially fit
21 into that case. So are they going to call these witnesses or not? Why
22 should we have to wait to mid-September? Why can't we have our answer
23 before the recess, before we have to start focusing on missions to the
24 DRC? Our mission to the DRC is pending authority, financial authority.
25 I don't even know it's going to be granted. I hope that it will. But we

1 do have, and I know this is said repeatedly, in terms of the
2 investigatory budgets available to us, we are limited. So I'm very
3 concerned.

4 I'd make a formal application to the Prosecution stop this
5 procrastination, commit themselves one way or the other. Are they going
6 to call these witnesses, one, two, or three of them? Yes or no? And can
7 we know by the end of next week?

8 Returning to time. Whenever the Prosecution case ends, there may
9 be, we hear, from Mr. Luvengika particularly, the likelihood -- well,
10 possibility, let me put it, of calling several witnesses. And
11 Mr. O'Shea's already reflected the Court's concern as well as to we, in
12 the Defence, having proper investigatory time. So I'm going to leave
13 that to one side, but presumably any such witnesses that are to be called
14 have to be called, subject to the Defence interest to investigate, very
15 shortly after the close of the Prosecution case.

16 So I assume that we're talking now about how long will it take
17 between the end of the of Prosecution case (and any such victim
18 witnesses) before the Katanga case team would feel that they were in a
19 position to present the Defence case?

20 My estimate and my -- and our team's estimate, because we've
21 discussed this, obviously, in light of the agenda set for us today, is
22 realistically we will need 12 weeks, three months, not including, if I
23 may put it like this, a week or two over the Christmas period which will
24 fracture inevitably that period of time. Now, that is a reasonable time.
25 It compares, on average, may I say, very favourably, in fact, far less

1 than, for example, ICTR cases between close of Prosecution case and
2 commencement of Defence case, and that's highly relevant because the ICTR
3 is, of course, an ad hoc Tribunal that is dealing with African cases.
4 And African investigations, as we all know -- and those weeks are going
5 to be largely spent in terms of investigation and meeting potential
6 witnesses. The logistics of doing that, the timing of doing that is --
7 is always problematic. There's a lot of administration to address. And
8 of course, during that period of time I'm sure there will be the usual
9 flow of -- of motions and documents to address by other members of the
10 team, including those who will be dealing with that establishment of the
11 Defence case and, in particular, the Defence witnesses. So I stress that
12 in these cases counsel also do the investigations. It's not just the
13 person of resource.

14 You've seen also in the course of this case the amount of time
15 that the Prosecution have been able to commit to witnesses. Again and
16 again we've had witnesses that have been seen, questioned, and
17 interviewed for upwards of 40 hours again and again, an average of about
18 25 hours. We're lucky to actually see people for the first time for an
19 hour or so, and you can well understand the actual time-consuming nature
20 of -- of gathering and examining and securing potential Defence witnesses
21 and preparing a case in that way. And I'm just talking there, of course,
22 about the witness element, not the other, perhaps, documentary element
23 that also to be attended.

24 So three months compares in this way: It is significantly less
25 than the time that would be allocated or allowed at the ICTR. These

1 cases are also, I think, different to many case that come before the
2 other sister ad hoc Tribunal of that, and that's the ICTY, which I know,
3 of course, two of you have great experience. So I would say that that is
4 the reasonable minimum time that the Defence will need.

5 PRESIDING JUDGE COTTE: (Interpretation) As of the Prosecutor
6 resting his case; is that correct?

7 MR. HOOPER: If the Prosecution case ends on the last week of
8 October, I say we're going to need November, December, and January.
9 Start the case 1st of February, for example. It becomes just a little
10 more complex if we take in the victims' position, because I assume that
11 if the Prosecution case finishes on the 31st of October, then
12 Mr. Luvengika will be ready to roll on the 1st of November or in that
13 week, subject to the Defence having had sufficient notice to make those
14 investigations. But accepting for a moment -- let's lay aside the
15 victims' position all together, because it's an unknown ingredient, but
16 once the Prosecution's case has concluded, yes, 12 weeks, three months
17 from then would be the time that we'd need.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We take due
19 note. The point I made is important, because the objective we're after
20 is to the extent possible to make sure that the end of the Prosecutor's
21 case be followed on in linear fashion by possible presentations of Legal
22 Representatives of Victims. What the Chamber wanted to know is whether
23 the three-month period that you are suggesting, that you consider to be
24 essential, is one that would start at the end of the case of the
25 Prosecutor or the end of the presentations on the part of the

1 witnesses -- the victims Legal Representatives.

2 MR. HOOPER: In my own mind I see the two of them together, you
3 see. I'd say Prosecution case ends, and my expectation would be if there
4 are to be witnesses, we all know there's argument against that. But if
5 there are to be witnesses that they start immediately. Or they should be
6 in a position to start immediately, which mean, of which was Mr. O'Shea's
7 point and your point, of course, the Tribunal's concern, that we're going
8 to need -- mid-September is the latest point when we should be holding
9 witness statements provided by the victims in order to have that minimum
10 period to -- to investigate. Bearing in mind that we're going -- we'd
11 have had our mission by then. That's part of the argument for not
12 admitting victims at all at this stage, because for this particular
13 trial, as you know, we're saying it's -- it's too late. The nature of
14 this case, they've missed the bus, necessarily, because our rights can't
15 be sufficiently protected. That's unfortunate, but it's because this is
16 one of the first cases. Who knows, perhaps the only case. We don't know
17 at the moment. So it's -- it's -- that's -- that's our position.

18 So ideally if, at the end of October, all that's finished, then
19 we were looking forward to November, December, and January. And may I
20 say, I'm not repeating this, and I hope overbeating, but you know, from
21 our experience of this kind of thing having, had to prepare cases in --
22 in -- particularly in African cases, we know we're going to need that
23 time. We know that it's -- it is chronofrage (phoen) as a word I learned
24 this week.

25 Yes, Mr. O'Shea makes the point --

1 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper.

2 MR. HOOPER: (Microphone not activated)... either.

3 PRESIDING JUDGE COTTE: (Interpretation) To avoid beating about
4 the bush, which is a familiar expression, we have the equivalent in
5 French, the three-month period starting at the end of the Prosecutor's
6 case, is that when it starts, or is it the end of the presentation by the
7 victims of possible witnesses? It's a theoretical point but it's
8 important, because it's not the same starting point and we really want to
9 know how you see things, and then quickly I'd ask you to hand over to the
10 Ngudjolo -- Mr. Ngudjolo's team so that they can express their position
11 as well.

12 JUDGE DIARRA: (Interpretation) A simple question such as this
13 requires a simple answer, Mr. Hooper. You started to beat about the bush
14 again.

15 MR. HOOPER: Beware of simple questions. I'd say -- I'd say
16 after the victims given their evidence, and therefore in order to have
17 expedition the victims have to be ready, if they're going to give
18 evidence, immediately at the close of the Prosecution case or not at all,
19 because otherwise it's going to extend things overmuch. And also it
20 would be very difficult if we included that time in those 12 weeks,
21 because we'd necessarily be here, distracted, focused on quite other
22 issues.

23 So from the close of any victims' evidence to the start of the
24 Defence case three months.

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

1 Mr. Kilenda, please. Would you grant me five minutes before the
2 end? But of course you're entitled to speak as well.

3 MR. KILENDA: (Interpretation) Thank you, your Honour. To date
4 our team has only had four missions. It's not finished because there are
5 many other duties to be carried out. We should finalise the list of
6 witnesses to come to The Hague. We have also to define the subjects for
7 the testimony, because we want to avoid there being any repetition. This
8 would perhaps lead to a delay in due process. So there'll be further
9 missions to the DRC and to other continents as well.

10 As to the question of the time we need to prepare ourselves once
11 we've heard the accusation and the Legal Representatives, we think that
12 three months would be enough.

13 Thank you, Your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
15 The Chamber wished to tell you that it hopes to be able to hand down its
16 decision concerning the filing under Rule 78 before the judicial recess.
17 That is to give an answer to the Prosecutor and to allow the Defence
18 teams to know how to proceed in due course.

19 Furthermore, the Chamber would like to know -- or would like to
20 remind you that if it were to be possible for the Defence teams to call
21 joint witnesses, then you must bear that in mind. I'm sure you would
22 have thought of that anyhow, but we'd like to remind you. If it were to
23 be possible, if there were to be certain interests on certain matters
24 that were to be common to both accused, then it would be good to have
25 joint witnesses.

1 Item (E) of the agenda. At our very first status conference you
2 made observations as to the advisability of an in situ visit. If I
3 recall correctly, over the last few weeks and months, the Prosecutor once
4 or twice to this. Mr. Kilenda's team also referred to it.

5 Do you have any further observations to make on this precise
6 issue? Very briefly, because we're not going to embark upon the whole
7 discussion around the matter.

8 MR. HOOPER: Well, we would submit that as the trial has
9 progressed it becomes more and more apparent that a site visit is
10 essential.

11 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe.

12 MR. FOFE: (Interpretation) Thank you, Your Honour. Absolutely.
13 If we take account of the testimony of different witnesses, the need for
14 the Chamber to see for its own eyes the configuration of certain sites,
15 the distances between sites, certain infrastructure, airports, roads, et
16 cetera, we think it really would be necessary for the Chamber to visit
17 the site.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We will
19 assess this in light of your feeling it is necessary. And obviously if
20 there were to be a visit, then all representatives of the different
21 parties involved would have to take part.

22 Fine. Last point. This is something that I would not
23 necessarily have added but it's been suggested to me by virtual
24 unanimity, which is why it's important to include it, and this is to do
25 with the need for people to rest adequately in order to work better when

1 they come back from their holiday period.

2 It's true that during the recess period if there are applications
3 that are going to be made, if they're not absolutely essential perhaps
4 they could be postponed to the presumption of work. Everyone would
5 appreciate it, and I think that's what I've understood from what various
6 people have been saying. So I would recommend this. The accused should
7 not believe that we are not working. They're with us pretty well every
8 day, but they should also be aware of the fact that we work better when
9 we perhaps step back from our daily business.

10 So this is the recommendation we make. It would seem that
11 everybody goes along with it. Mr. Hooper voiced his opinion earlier on.
12 Mr. Luvengika did as well. For some, the recess period will be a
13 hard-working one.

14 Yes, Mr. Luvengika, you wish to speak? Ah, Mr. Gilissen.

15 MR. GILISSEN: (Interpretation) Your Honour, a couple of
16 comments. First of all very briefly, and this is to do with point (E).
17 I think we can add that we are in full agreement with what has been said
18 by the Defence as to the need for a site visit. And let me add the
19 following: Clearly, there is a wish on the part of the victims, and
20 there are a number of reasons for this. It's not just to investigate
21 matters, but there's a feeling that there would be greater attention
22 attached to their fate, and that's something that obviously should be
23 born in mind.

24 Secondly, there's a matter that we glossed over, and that is
25 what's to be done as regards the famous protocol that's still pending.

1 We have received, and I'd like to thank both of the Defence teams for
2 this, we have received their observations. Clearly, there is a
3 difference of opinion. We feel that there has been a total fairness. We
4 filed the protocol as quickly as we could to the Chamber. We haven't yet
5 set out our arguments. We hope we'll be able to do so at the latest, at
6 the absolute, outset, this Wednesday.

7 On the basis of what I've heard from our learned colleagues, I
8 get the impression -- the impression is that we're going to be setting
9 out our responses set in arguments, but that is not all the case. We
10 haven't even set out our basic arguments. If there is going to be a
11 problem, we could perhaps bring it forward to Tuesday, but the idea is to
12 move ahead expeditiously, and I think that the Chamber -- and I apologise
13 for speeding up, but should have all of the cards in its hands so that
14 things are perfectly clear.

15 Now, I have prepared something in writing and I'm holding it but
16 I don't really think that there's any need for that. There are no
17 surprises. Neither on our side nor on the Defence side, and it would be
18 unfortunate if things were not to be done this way. I think everybody
19 would agree that we have been the locomotive force behind the
20 negotiations, everyone's played their role, and we have been -- we would
21 have been holding things back we had not provided elements that we felt
22 that were part and parcel of the conventional aspects of the discussion.

23 We think that the choices made are correct. The idea is to talk
24 about certain of these elements, but independently of what we will be
25 setting out in our arguments, we will have to be able to respond to some

1 of the things that have been set out by Defence, but once again let me
2 say that there's no conflict between us. Our concern is to make it
3 possible for the Chamber to have a totally transparent view of the
4 situation. We get the impression that with the procedures that exist at
5 the time being, there was a certain aspect that perhaps was preventing us
6 to reach agreement as to the way of submitting written procedures.

7 PRESIDING JUDGE COTTE: (Interpretation) Well, thank you. We
8 await this, and we shall then decide on the admissibility and also on the
9 merits of your arguments.

10 Two things. Prosecutor, did you wish to say something? Please
11 go ahead. And you will allow me three minutes at the end.

12 MS. DARQUES-LANE: (Interpretation) I'm sorry, your Honour. I
13 said earlier on that I would be coming back, and I am now taking an
14 opportunity to do so. This is on two matters.

15 First of all, as we're talking about questions to deal with
16 investigations, the Prosecution would like to point out that for the time
17 being we are carrying out certain investigations as a result of the cross
18 investigates -- cross-examination of certain witnesses, and following the
19 investigations, it is possible that we submit additional evidence and
20 that we call certain witnesses for very specific and limited issues. At
21 this stage I can say no more. We will obviously inform Defence and the
22 Chamber as things arise.

23 Second point. It's clear that as the trial moves on things
24 evolve and questions crop up during the cross-examination that were not
25 necessarily things that could have been foreseen by the Prosecution, and

1 that is why we have got involved in these investigations in -- in two
2 additional matters that were raised during the cross of some of our
3 witnesses.

4 Second point. This is to do with Witness P-30. Given that we
5 have not yet concluded the examination and the cross-examination of
6 P-267, we'd like to submit to the Chamber the following question: Should
7 the witness be sent back home, or are we going to try to begin the
8 examination of that witness for a very short period and then call him
9 back at the it end of August?

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

11 On the first point, that is information. So we don't know
12 whether anything will come of that. We take it as it is, in other words,
13 information.

14 On the second point, well, you've eaten into my three minutes.
15 Together with the other two Judges here I'm well aware of the fact that
16 it would not and good idea to start next week the hearing of Witness 30.
17 It's regrettable, because the witness is in The Hague, but the witness
18 was well aware of the fact that it was very likely that his testimony
19 would be interrupted.

20 So, Prosecutor, and I turn also to the Registrar, if you could
21 indicate to the VWU that the most advisable way of proceeding would be to
22 send Witness 30 back home and that person should return when we resume on
23 the 23rd of August. There are a number of complex procedural issues that
24 have added to the course of events, matters raised by Mr. O'Shea and
25 Mr. Hooper yesterday morning, and there was also the question raised this

1 morning to do with intermediary 143.

2 So we will all need a certain amount of time to work sensibly on
3 these different matters, and I would urge that to the extent possible we
4 conclude next week the cross-examination of Witness 267. It would be
5 regrettable if he were to be sent back home to call him back for just
6 one -- one day or one and a half days. So Witness 30 will not be called
7 next week. I think the situation is perfectly clear, and we think that
8 would be far more sensible to proceed in this fashion.

9 In the eventuality of there being difficulties in responding to
10 your submissions this afternoon to do with the legal questions concerning
11 the scope of questions that can be put to Witness 267, we can't exclude
12 the possibility of postponing the start of our hearing to Monday
13 afternoon or perhaps even cancelling it, but we'll apprise you of this as
14 quickly as possible.

15 We shall try to be there at 2.00 p.m. If it's at 3.00 p.m.,
16 we'll let you know, but please stay mobilised, ready for the hearing, but
17 don't be surprised if something along these lines were to occur. We will
18 do our utmost to make sure that it doesn't happen, our concern being,
19 obviously, to conclude the testimony of Witness 267 next week before the
20 recess, but there are certain legal problems that are important ones, and
21 this shows that we are not being overhasty.

22 So I'd like to thank everybody for their contributions today.
23 Some people have deadlines to respect. I would hope that you bear them
24 in mind.

25 Prosecutor, you heard Mr. Hooper. We're not jumping into the

1 assistance of Mr. Hooper, but if you could please define your position as
2 regards witnesses 238 -- the two witnesses that have been referred to.
3 This has to be done before the 15th of September.

4 So interpreters, court reporters, I'd like to thank you for your
5 help in the course of the morning.

6 We adjourn all being well until 2.00 p.m. on Monday. If there's
7 a change, you'll be informed.

8 Mr. Garcia, you -- it was quite simply that you were standing up
9 faster than everyone else.

10 The hearing is adjourned.

11 The hearing ends at 1.29 p.m.

12 CORRECTION REPORT

11 The following correction has been made to the English transcript:

13 * On page 13 line 14-15 "To point out to the Chamber that this table only
14 arrived recently. The Defence has had time to read it" has been corrected by:
14 " to point out to the Chamber that the Defence have not only just received
15 this table."

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