

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge René

4 Blattman

5 Situation: Democratic Republic of the Congo - ICC-01/04-01/06

6 In the case of The Prosecutor v. Thomas Lubanga Dyilo

7 Status conference

8 Monday, 11 October 2010

9 (The hearing starts at 2.04 p.m.)

10 (Open session)

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

13 PRESIDING JUDGE FULFORD: Good afternoon.

14 Mr Sachdeva, the result of the Appeals Division decision of 8 October is
15 that the stay is now lifted, and the first, and I'm sure the most important, item on this
16 afternoon's agenda is to establish when we can begin once again to hear the evidence
17 of the outstanding witnesses.

18 As I understand it, either yourself or other counsel met with the Victims
19 and Witness Unit today to talk about scheduling, and I hope I'm right in anticipating
20 that you will have in your mind at least a proposal as to what the earliest time-span is
21 for us to properly recommence this trial.

22 MR SACHDEVA: Thank you, Mr President. Yes, indeed, we did have a
23 meeting with the Victims and Witness Unit this morning. We were advised that we
24 will be contacting the witnesses to ensure that they are available to travel to The
25 Hague, if need be, as soon as possible, and to that end we have been informed that

1 Witness 321, Witness 581 are ready to resume at any time. There were some issues
2 that need to be discussed with the Chamber, if I may, and one of them was the need
3 to -- the need for the witnesses to refamiliarise themselves with the evidence.

4 As I understand it, the Victims and Witness Unit have suggested that
5 this is -- because there has been three months since the last time they came to court,
6 this is, in a sense, a right of the witnesses to be familiar with the material. In our
7 submission, because there has been this long time-span since they last came to The
8 Hague, we believe it would be proper for them to review materials if, of course, the
9 Court permits that. And so, depending on whether that's permitted, it maybe extend
10 the time period within which the witnesses will be ready to testify.

11 PRESIDING JUDGE FULFORD: Right. Now, I think we need to break
12 this down slightly. 321 was in the process of giving evidence. We broke off at the
13 point when the disclosure of 143's identity needed to be dealt with. I assume that that
14 disclosure will be effected today, and the next question with that witness is whether
15 he can continue immediately, or whether, once disclosure has taken place, Maître
16 Mabilie is then going to need time to investigate any relevant issues in relation to 143
17 before that evidence meaningfully can continue. I mean, do you agree, first of all,
18 taking that witness, that those are issues that we must consider?

19 MR SACHDEVA: Yes, that's agreed, Mr President and, in fact,
20 disclosure of the material related to 143's identity has been effected by courtesy on
21 Friday. In respect of -- and, of course, the Defence may come back with further
22 submissions as to why there needs to be another delay, but what the Prosecution
23 would suggest is that we understand that 321 has requested familiarisation.

24 PRESIDING JUDGE FULFORD: I understand that. There's a separate
25 point in relation to familiarisation which we'll deal with in a moment.

1 Putting that to one side and, subject to Maître Mabilie wanting time, do
2 you at the moment have any idea how quickly 321 can be back in The Hague?

3 MR SACHDEVA: Mr President, the issue regarding the passport is not
4 there. The relevant visas are in existence and, therefore, I imagine, as soon as
5 possible, as soon as practically possible for the Victims And Witness Unit to arrange
6 the travel. The handover can be done relatively smoothly and quickly. So can I say
7 within ten days, perhaps, possible.

8 PRESIDING JUDGE FULFORD: All right. Well, we'll wait to hear from
9 the Victims And Witness Unit in relation to timing and Maître Mabilie in relation to
10 whether or not there needs to be a delay for investigations.

11 Now, 581, as I recall it, the possibility had been raised of 581 giving
12 evidence via the video link. Am I right in recalling you do not oppose that way of
13 proceeding, Mr Sachdeva?

14 MR SACHDEVA: That's right, we do not oppose that.

15 PRESIDING JUDGE FULFORD: I want to move on through the list.
16 555. Again, I think there had been, if not agreement, at least consideration of 555 also
17 giving evidence via the video link. Subject to any concerns that have been expressed
18 to the Victims and Witness Unit, are you content with that course?

19 MR SACHDEVA: If that is the wish of the witness, yes, we do not
20 oppose that and, of course, if the Defence agree. We may have some information that
21 perhaps viva voce testimony is preferable but, at this stage, if it was to proceed via
22 video link, we would not have an objection. May I say viva voce testimony in The
23 Hague?

24 PRESIDING JUDGE FULFORD: Sorry. Did you say "pre-recorded
25 testimony"?

1 MR SACHDEVA: "Viva voce testimony."

2 PRESIDING JUDGE FULFORD: Oh, "viva voce." Sorry. Right. Witness
3 38; I think it's generally been agreed that a video link will be used for him.

4 MR SACHDEVA: Yes, it was, Mr President. However, as we were
5 trying to contact the witnesses, we have been told that perhaps he would also prefer
6 to come to The Hague and give evidence. But, of course, whatever is deemed to be
7 the most efficient way of recording his evidence, we would have no objection.

8 PRESIDING JUDGE FULFORD: Thank you. Now, what about your
9 investigators, 582 and 583? Do we have any up-to-date information on their
10 availability?

11 MR SACHDEVA: We do, Mr President. Of course, during the stay we
12 have undertaken to contact the investigators to ensure that, if and when the
13 proceedings resumed, they would be ready to come and give evidence. We can
14 confirm that authorisation has been received. Therefore, there are no administrative
15 hurdles for them to come and testify.

16 We have been told by the two witnesses that their current availability is
17 middle of November, 15 November. They cannot come prior to 15 November. We
18 are, of course, trying to see if that can be brought forward, but the Prosecution would
19 stress that they do have other professional commitments and at this stage it is going
20 to be difficult for them to withdraw from those professional commitments. But, as I
21 said, we are trying to see if they can come earlier than 15 November.

22 PRESIDING JUDGE FULFORD: But, presumably, different
23 circumstances confront those two individuals. Every effort should be made,
24 Mr Sachdeva, to see whether it's possible for them to come to give evidence before
25 then. The Bench fully understands that they have other commitments now, but it

1 really doesn't need for me to say, given the very considerable delays that we've had,
2 we must try to make use of every possible moment that is now available to us.

3 Intermediary 316?

4 MR SACHDEVA: Intermediary 316, the Prosecution has been in contact
5 with the lawyer that he has requested, at least at this stage, to represent him in any
6 pre-testimony interview, which your Honours will recall was permitted in order for
7 the Prosecution to be aware of 316's position in response to the allegations that have
8 been levelled. And, to that end, we have informed -- we have informed his counsel
9 that we hope to have that interview conducted by the end -- in the next couple of
10 weeks. Essentially, 316 should be ready to travel as soon as possible once -- if and
11 when the stay was lifted.

12 PRESIDING JUDGE FULFORD: I'm sorry. I'm not quite sure about
13 this. A lawyer to represent him in any pre-testimony interviews. Now, just build on
14 that slightly, Mr Sachdeva, will you, please.

15 MR SACHDEVA: Mr President, you may recall that, pursuant to the
16 allegations raised by Witness 15 and Defence Witness 16, the Prosecution had sought
17 leave to essentially permit 316 to respond to those very specific and direct allegations.
18 And therefore, for the Prosecution and for the Court to understand 316's position, it
19 had been arranged that prior to Witness 316 giving testimony on the stand, an
20 interview could be conducted with that in mind.

21 And so, as I understand it, Victims and Witnesses Unit, in liaison with
22 the Prosecution, had determined that seven days in advance of giving testimony
23 would be sufficient for 316 to come to The Hague to be interviewed, for the necessary
24 registration of his interviews to be conducted and then ready for testimony.

25 And in respect of all of that procedure, the Prosecution has been

1 routinely in touch with his -- at this stage, his appointed counsel to ensure that the
2 logistical arrangements are finalised.

3 PRESIDING JUDGE FULFORD: Thank you very much. Now, in terms
4 of familiarisation, I just want to understand exactly what the Prosecution is
5 suggesting.

6 Are you suggesting that for all of the witnesses, but including 321, they
7 should look at their witness statements/interviews again, and that for 321, he should
8 be given the opportunity of reading the transcript of his evidence to date?

9 MR SACHDEVA: That is our submission, Mr President, given that the
10 amount of time that has transpired.

11 PRESIDING JUDGE FULFORD: Good. Very clear. Thank you very
12 much, Mr Sachdeva. Maître Mabilille?

13 MS MABILILE: (Interpretation) With regard to the request for
14 familiarisation, the Defence has no objection to raise in this regard for the witnesses;
15 notably, to review the contents of their testimony.

16 PRESIDING JUDGE FULFORD: Thank you very much. That's very
17 helpful.

18 You've had the identity of 143 since Friday, Maître Mabilille. Do you
19 need any additional time or not before we recommence the evidence of 321?

20 MS MABILILE: (Interpretation) Mr President, we have two
21 observations to make: We did receive certain documents on Friday evening that we
22 were able to look at this morning, but I would not hide from you the fact that we are
23 not happy with this disclosure and that we really need additional information. So
24 today we are not in a position to be able to tell you whether, firstly, I would say that
25 the disclosure is not sufficient with regard to 143. And the second point would be

1 that we do, indeed, need some time in order to conduct an investigation as broad as
2 possible in the shortest time into 143 so that we can start our cross-examination.

3 I find it somewhat difficult, Mr President, to give you an idea of time
4 because I believe that the Prosecutor should make further disclosure, and then we
5 will be in a position to tell you the minimum time that we require.

6 PRESIDING JUDGE FULFORD: Now, have you indicated to the
7 Prosecution the nature of the further disclosure that you're requesting,
8 Maître Mabilie?

9 MS MABILIE: (Interpretation) We did send a mail to the Office of the
10 Prosecutor at 11.00 a.m. this morning, Mr President.

11 PRESIDING JUDGE FULFORD: Have you seen that, Mr Sachdeva?

12 MR SACHDEVA: Mr President, we have, indeed, seen that. And of
13 course, there are other outstanding requests that the Defence have raised, and the
14 Prosecution is intending to meticulously respond to each of the requests the Defence
15 have made to us. However, in respect of 143, we have attempted to disclose what
16 was ordered in the 12 May decision which was, as I recall, identity information,
17 background information related to his previous work and contact between 143 or the
18 fact of contacts between 143 and trial witnesses, Rule 67, Article 67(2) witnesses and
19 Rule 77 witnesses.

20 Beyond that, in our submission, the material for disclosure -- some of
21 the material requested by the Defence does not, in our submission, fall within the
22 12 May order. And one must not forget there are no allegations against 143 and, in
23 that respect, there is a distinction between 316 and 321, leaving aside whether the
24 allegations are, of course, founded, and therefore, our submission would be that, of
25 course, we will respond to the Defence in an inter partes manner, if permitted, by the

1 Court, but the extent of disclosure with respect to 143 is not as extensive as the
2 Defence may believe, in our submission.

3 PRESIDING JUDGE FULFORD: Right. So it's -- so I can -- we haven't
4 seen the request, nor have we seen the disclosure that's been effected. So I can
5 understand it, are you saying that, certainly on a preliminary basis, the Prosecution's
6 position is that its disclosure to date as regards 143 is sufficient?

7 MR SACHDEVA: In our submission, it's sufficient for the Defence to
8 undertake their investigations. And it's sufficient, in our submission, in respect of the
9 order. Of course, there are materials that have been disclosed in the past where 143's
10 name was redacted. And we are going to disclose those materials with his name
11 unredacted but, in terms of material that, in our submission, goes beyond the order,
12 we don't believe the Defence is entitled to that material, as long as it is not within
13 Article 67(2) and Rule 77 obligations.

14 PRESIDING JUDGE FULFORD: Thank you. Now, Maître Mabilille, you
15 have the advantage of us. We haven't seen the disclosure that's been effected. We do
16 not know what additional disclosure you're requesting. It is critical that this is
17 resolved very speedily because we must set an agenda.

18 Now, given Mr Sachdeva's response, is that likely to prompt you to
19 make an application to the court? And if so, how quickly can you set out all the
20 relevant materials in writing for our consideration?

21 MS MABILILLE: (Interpretation) Well, I believe that in receiving our
22 email the Prosecutor realised that indisputably there is some information that he
23 needs to disclose to us, and I hope that he will do so. I am talking in particular about
24 the metadata to do with 143 that we have had no information on, but I'm not going to
25 give you the full list. There are certain elements that should not come into discussion

1 here that should automatically be disclosed to us, and if the Prosecutor intends to tell
2 the Chamber that, in respect of this one -- of this intermediary 143, he is not going to
3 provide us with the same information as for the other intermediaries, then we shall
4 seize the Chamber. And I believe that we are in a position to do so within the next
5 48 hours.

6 PRESIDING JUDGE FULFORD: Now, on the basis, Maître Mabilles, that
7 there is hopefully a satisfactory resolution to your request for disclosure - and I know
8 this is, in a sense, like asking you the length of a piece of string - but approximately
9 how long are you asking for to conduct these investigations into 143?

10 MS MABILLES: (Interpretation) This is a dangerous undertaking,
11 Mr President. I believe that from the date when we receive full disclosure from the
12 Prosecutor we will require ten days, Mr President.

13 PRESIDING JUDGE FULFORD: Thank you. That's helpful. 581, this is
14 an individual who has already testified. On 6 July you indicated that you wished to
15 ask him some additional questions about some documents that had been disclosed
16 after he completed his testimony. Are you happy for those questions to be put via the
17 video link?

18 MS MABILLES: (Interpretation) We have no problem with that,
19 Mr President.

20 PRESIDING JUDGE FULFORD: Witness 555, again, have you any
21 difficulties with him giving his evidence via the video link?

22 MS MABILLES: (Interpretation) Yes, we do find this difficult. We have
23 conducted investigations into 555 and we would like him to come and testify here.
24 We believe that this is important.

25 PRESIDING JUDGE FULFORD: Thank you. I assume that everybody

1 still agrees that Witness 38 can give his evidence via the video link. I see you nod.

2 Thank you.

3 Right. VWU, how quickly do you anticipate that 321, 555 and 316 can
4 be brought to The Hague? Not necessarily as a job lot; you may want to break those
5 down individually.

6 MR WALTENBURG: Mr President, your Honours, as soon as the three
7 witnesses are made available, handed over to us by the Prosecutor, we will start
8 preparing them. I think --

9 PRESIDING JUDGE FULFORD: Well, let's work on the basis that that's
10 today; that if they're made available to you today --

11 MR WALTENBURG: I don't think they will be. I think logistically it
12 will take a few days for the Office of the Prosecutor to make them physically available
13 to us, but we can meet today as a follow-up meeting with the Office of the Prosecutor
14 to discuss exactly how soon that can happen. As soon as that is done, as soon as they
15 are reintroduced to the Victims and Witnesses Unit staff on the ground, we would
16 look at whether they need another pre-travel medical check to travel. If there's been
17 anything in their health situation that we need to look at before they travel. We will
18 need to resubmit their visas; that we can do today. What Mr Sachdeva said, we need
19 to double-check. I don't think their visas are still valid, so I do think we have to
20 submit visas for all three of them. That usually takes seven to ten days with the
21 Dutch authorities and, of course, we'll start working on the travel arrangements
22 straightaway as well.

23 So I think the time window -- let's assume that they are physically made
24 available to us in the next one to two days, add to that that ten days for a visa and
25 then the first one can start flying.

1 PRESIDING JUDGE FULFORD: Thank you. In terms of familiarisation,
2 if the Chamber agrees with what has been suggested as regards reading previous
3 statements, and in the case of 321, reading all or part of his evidence to date, can that
4 be commenced whilst they and he are in the DRC?

5 MR WALTENBURG: I believe so, your Honour. Again, we will discuss
6 the practicalities with the Office of the Prosecutor if they can make that material
7 available to us but in principle, yes.

8 PRESIDING JUDGE FULFORD: Thank you. Now, Registry, there are
9 certainly two witnesses who can be dealt with via the video link. How quickly can
10 we send a team to the DRC to set up the facilities so that 38 and 581 can give their
11 evidence in that way?

12 MR WALTENBURG: I've been requested to answer on behalf of
13 Registry. From our experience on previous video links it has taken about seven,
14 seven, eight days to organise a video link from Bunia. I don't believe we've had any
15 video links from Kinshasa yet but I understand that that is also technically possible
16 now.

17 PRESIDING JUDGE FULFORD: Right. Well, it looks as though that bit
18 of the proceedings is going to come on line first. So the Registry must immediately,
19 and working as fast as possible, put in place all the measures that are necessary for 38
20 and 581 to give their evidence in that way. And the Chamber must be notified at the
21 earliest possible time as to what the likely convenient date is or dates for that
22 evidence to be given. Now, that must be done, please, as soon as possible.

23 (Trial Chamber confers)

24 PRESIDING JUDGE FULFORD: Now, Mr Sachdeva, we're not going to
25 try to micromanage this. It really doesn't need for me to say that the evidence in this

1 case must restart as soon as is humanly possible. The delays are very substantial.

2 Now, there is a degree of critical liaison which needs to take place
3 between the Office of the Prosecutor and the VWU, and you need to establish when
4 you're going to be able, as it were, to hand the witnesses over to Mr Waltenburg so
5 that they can be brought to The Hague. Please have that conversation, or at least
6 begin it, as soon as we rise this afternoon and come back to us before the end of the
7 week, of course engaging the Defence to the extent that it's necessary with a proposed
8 timetable for setting out the dates when the witnesses you anticipate will be able to
9 give evidence. Is that acceptable.?

10 MR SACHDEVA: Certainly, Mr President, yes.

11 PRESIDING JUDGE FULFORD: Now, on the issue of disclosure, of
12 course you're right to look at the Rome Statute provisions and establish whether or
13 not a request falls within the Prosecution's obligations. On occasion, in a way that's
14 been wholly responsible, the Prosecution has made disclosure on a courtesy basis.
15 We would ask you, please, to look carefully at the requests now being made by
16 Maître Mabilie and whether or not they strictly fall within your obligations under the
17 framework. Can you please see whether out of courtesy it is possible for you to meet
18 with the request. Otherwise, there are likely to be delays, particularly for 321, whilst
19 we resolve a disagreement between the Prosecution and the Defence that may
20 actually be an unnecessary disagreement.

21 MR SACHDEVA: Certainly, Mr President, we will do so. If I may just
22 add one issue.

23 If I recall, one of the items that the Defence have requested is, in our
24 submission, subject at this stage to litigation; in other words, in respect to the internal
25 reports or internal investigator's notes, and therefore our initial response to the

1 Defence will be that it's been ruled upon by your Honours.

2 PRESIDING JUDGE FULFORD: Fine. We are going to shower the
3 parties with decisions over the next two or three days. Hopefully, the answer will
4 therefore be revealed in pieces of paper which will be landing on your head,
5 Mr Sachdeva.

6 MR SACHDEVA: I'll look forward to it, Mr President.

7 PRESIDING JUDGE FULFORD: Thank you.

8 As regards familiarisation, the witnesses can reread their statements and
9 any relevant interviews. 321 can be shown the transcript of his evidence to date. I
10 don't at the moment in my own mind have a sense as to how substantial the transcript
11 is. It may be that you can reach agreement with the Defence as to particular portions
12 of the transcript which is shown to him which is acceptable to both sides. We leave it
13 to you to liaise with the Defence to ensure that a sensible and fair way of proceeding
14 is agreed.

15 MR SACHDEVA: Yes, Mr President.

16 PRESIDING JUDGE FULFORD: Thank you very much. And the
17 Chamber has reviewed transcript T-82, which at the moment is confidential and
18 ex parte, and has decided that page 1, line 1, through to page 6, line 9, that that
19 portion can properly be redesignated as public because there is nothing within that
20 particular part of the transcript which requires either confidential or ex parte status.

21 We need to set a new deadline for observations or submissions on the
22 new 15 victims' applications to participate in the proceedings. Ms Massidda, could I
23 ask for your assistance on this? Would you have any sense as to how long would be
24 reasonable for those submissions?

25 MS MASSIDDA: Thank you, your Honour. I would say ten days at the

1 maximum, your Honour.

2 PRESIDING JUDGE FULFORD: Does anyone have any contrary
3 submissions to make? No? Then we'll say 4.00 p.m. on 22 October for observations
4 on those applications.

5 Maître Mabilie, you have raised the issue of the Chamber's order 2432
6 which deals with the numbering of evidence and the change from MFI designation to
7 EVD. We didn't receive any submissions prior to the order and so the order was
8 made. Do I take it that, in fact, you wish to make submissions on the redesignation?
9 Now, it's probably better for this to be done in writing but what do you want to say to
10 us about it?

11 MS MABILLE: (Interpretation) In fact, I requested that we speak about
12 this today to apologise to the Chamber because, indeed, we did receive that
13 document; that we did not study perhaps as carefully as we should have done and,
14 therefore, today we did send in some additional comments requesting that the
15 Chamber re-examine the order for a very simple reason. The document redesignated
16 certain MFI evidence as EVD but, as we looked through the list, we realised that the
17 orders handed down by this very Chamber, which stated that these documents
18 should not bear an EVD number, in fact because of this new order these documents
19 were thereby admitted into evidence.

20 We therefore went through the entire list. We examined them
21 one-by-one, and on the basis of your own orders, and checking that a particular
22 element because of a particular order could not be redesignated as an EVD.

23 We should have looked more carefully at all of this at the time -- at the
24 point in time when this was sent to us for observation. We hadn't made any
25 comments and therefore all of the MFI documents ended up with an EVD number,

1 whereas some of them should not have been in that category of EVD. And therefore
2 we've made this submission, and indeed we express our apologies because we were
3 not sufficiently careful in reading the information that you sent to us, and that
4 explains the error that we made, that is, not making the comments in due time when
5 we should have.

6 PRESIDING JUDGE FULFORD: Do I take it, therefore, you've made a
7 filing? Right. We'll consider that in due course and of course, Mr Sachdeva, if you
8 wish to get back to the suggestions that are now being made, you're entitled to do so.
9 Thank you.

10 Maître Mabilie, you had raised the issue of disclosure from the
11 Prosecution, and I think that was in the context of the information provided to you
12 last Friday about 143. Now, I think we've now dealt with that, unless there's anything
13 else that you wish to say at this point in time.

14 We would encourage a sensible conversation between the Prosecution
15 and the Defence as soon as we have risen to see whether an understanding can be
16 reached. And of course, the Chamber will deliver the outstanding decisions, if they
17 are in any way causing an obstacle, over the next two or three days. Is there anything
18 else you'd wish to say now about it?

19 MS MABILLE: (Interpretation) I would simply say that our list is quite
20 a full list and it does not only deal with 143 but other aspects, other elements that we
21 want the Prosecutor to disclose, which are particularly important for us for future
22 cross-examinations. We are convinced that indeed the Prosecutor is going to respond
23 to our requests as soon as possible. And since we are talking about scheduling today,
24 I did want to mention this point to you because we need to have those disclosures in
25 order to accelerate things, and this is indeed important in order to hear the witnesses

1 that remain to be examined and cross-examined. But, indeed, I will definitely speak
2 to the Office Of The Prosecutor, hoping to solve any issues we may have, and if we do
3 have problems, we will consult the Chamber.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FULFORD: All right. Maître Mabilie, what we're
6 going to do is, in the first instance, to leave it to the parties to resolve these differences
7 in relation to disclosure. However, if you have not resolved them by midday on
8 Wednesday, we will sit at 2.00 p.m. so that oral argument can take place, followed by
9 a ruling.

10 Now, please try and sort this out between you, but if it looks as though
11 you are not going to reach a satisfactory conclusion, please inform us so that we know
12 whether or not we are going to need to sit at 2.00 p.m. on Wednesday.

13 Maître Mabilie, the next issue is you have raised the possibility of a
14 presentation, I think, of a further request for admission of documents. Do I take it
15 that this is to be the subject of a further filing?

16 MS MABILLE: (Interpretation) Yes, Mr President. We intend to make a
17 new filing with 200 documents, and amongst those 200 documents there are new --
18 there's new information regarding election cards regarding some of the witnesses
19 who have already come to testify here.

20 PRESIDING JUDGE FULFORD: Well, we'll consider it when we see it.
21 Mr Sachdeva, I think it would be unfair at the moment to ask whether you're going to
22 need the statutory length of time to respond, but once you've seen this request, could
23 you please, by email to Ms Guhr, indicate whether or not you would be able to deal
24 with the request within a shorter period of time to that which is set out in the
25 regulations.

1 MR SACHDEVA: Certainly, Mr President.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 The parties and participants should know that in September, during
4 September, there was a meeting with various representatives of the Registry, during
5 which it was agreed that for an unspecified period, there would be a trial during
6 which the Registry would carry out routine comparisons between the French and
7 English transcripts at the end of each day, the hope being that by carrying out this
8 comparison exercise when the edited version of the transcript is effected, a more
9 reliable document will have been provided.

10 The consequence of this trial is that the edited version is likely to be
11 with you somewhat later than is currently the case. But it seemed to us that it was a
12 good idea to try this out, at least for a period, to see whether a more satisfactory
13 product that would assist the parties and the Bench could be produced.

14 So, we'll see how it goes, but feedback from the parties and the
15 participants, please, particularly if you note difficulties whilst this is happening. So,
16 please don't sit in silence. Tell us if you think there are problems.

17 Maître Mabilie, you've asked us to consider a book.

18 MS MABILLE: (Interpretation) Mr President, your Honours, the
19 Defence was rather displeased to learn that a book was published in French
20 10 August 2010, during the summer recess. The title in French is Un lézard au Congo,
21 literally, A Lizard in the Congo. This book was written by Mr Gil Courtemanche.
22 Upon reading this book, we realised rather quickly that he was calling into question
23 the rights of the accused and the entire judicial process, including the Judges of the
24 Chamber.

25 We, therefore, carried out some research and we drew the conclusion

1 that Mr Gil Courtemanche was a consultant with the ICC, that he had a contract from
2 September 2008 -- or, rather, April 2008 until November 2009, and during the period
3 that he was under contract for the Office of the Prosecutor, that he in fact wrote this
4 book.

5 This -- well, the fact that he worked as a consultant for the Office of the
6 Prosecutor and, in fact, he explains himself that he worked very closely with Mr
7 Ocampo, for whom he drafted numerous speeches, and that in addition this book
8 talks not about Mr Lubanga but about Mr Kabanga and that this individual is the first
9 accused before the ICC and that the charges levelled against him are exactly the same
10 as those levelled against the Accused. And this, in addition to a whole range of
11 information provided in the book that suggests that the author is indeed writing
12 about our case, is a problem for us.

13 The Defence intends to file submissions, your Honour, in order to ask
14 the Chamber to admit certain extracts of the book, as well as certain radio and -- radio
15 extracts and press articles that we will be submitting to the Chamber.

16 In its application for a stay of proceedings in fact, the Defence intends to
17 prove that repeatedly the Prosecution has not respected its duty to be impartial, that it
18 has, and still does, provide disinformation and propaganda which harms seriously
19 the rights of the accused. Therefore, we intend to file observations in order for certain
20 extracts of this book to be admitted into the case, and that we have an opportunity at
21 the point in time when we express our final arguments, that we be able to use this
22 book, which is of an aggressive nature. And I must say, when I say "we," we were
23 literally traumatised by the terms used in this book. And we do hope that the Office
24 of the Prosecutor can explain to us that they accept that one of their closest
25 collaborators be allowed to write such a book while that person was working for the

1 ICC. So it is on this basis that I ask for your advice, your Honour.

2 PRESIDING JUDGE FULFORD: Well, Mr Sachdeva, do you want to
3 expand now or do you want to wait until we've received Maître Mabilles's filing?

4 MR SACHDEVA: Mr President, I'm happy to briefly respond.

5 PRESIDING JUDGE FULFORD: Well, I think you should have the
6 opportunity, if you want to.

7 MR SACHDEVA: With respect to the Defence, we see this as a
8 catastrophic waste of Court time. Your Honours have just ruled that we need to get
9 moving with the agenda and now the Defence are bringing issues that relate to a book
10 - clearly, a work of fiction - that, of course, has no bearing on your Honours' duties
11 and obligations under the Statute, and we just cannot understand why this is now
12 being raised at a moment when we really need to get this trial back on track.

13 It is a work of fiction. We cannot control what someone does in their
14 own private capacity, if he wants to write a book and make up stories, and then that
15 person do so. But the process here in this Court is laid down in the Statute. Your
16 Honours are going to make sure that that is the case, and nothing that this person
17 may write in fiction in a book can jeopardise what we have to deal with in this Court.

18 So, in our submission, yes, the Defence can waste Court time and file
19 these submissions but we do not -- we submit that it should not be -- it should not
20 take Court time when we have to move on with this trial. May it please the Court.

21 PRESIDING JUDGE FULFORD: Thank you, Mr Sachdeva. Right. We
22 understand the position, therefore, of both sides. We'll wait to hear from
23 Maître Mabilles and any response from the Prosecution.

24 In a moment, Mr Walley, in a moment.

25 Yes, Mr Walley.

1 MR WALLEYN: (Interpretation) Thank you, your Honour. We have
2 just discussed on this side of the table with the representatives of victims, and I was
3 able to read the book over the weekend. I was not aware of the existence of this book.
4 I agree with what the Prosecutor has just said. Why should we waste our time?
5 There have been hundreds of books published and articles published on this trial. It
6 seems to me that there are many more worthwhile things to deal with rather than
7 this, which is just a novel, a novel by an author who is not particularly kind either to
8 Mr Lubanga or to the Court, or to the victims, for that matter.

9 If you read to the end of the book, Maître Mabilille, the victims
10 themselves don't play a very nice role and, therefore, it would seem to me that we
11 should concentrate on the heart of the matter and not bother with a novel.

12 PRESIDING JUDGE FULFORD: Mr Sachdeva, I don't think we've even
13 pencilled in a date by when an agenda should be established for witnesses. There
14 may be a disclosure hearing on Wednesday and there are to be rapid consultations
15 with the VWU.

16 Would it be reasonable if we were to say by 4.00 p.m. on Friday of this
17 week that there is an outline agenda for the next few weeks in terms of the attendance
18 of witnesses and their evidence?

19 MR SACHDEVA: Indeed, Mr President. We had understood that that
20 was ruled upon by your Honours, that by 4 o'clock -- or by Friday, at least, we should
21 be able to provide an agenda for the next few witnesses, yes.

22 PRESIDING JUDGE FULFORD: I wasn't sure whether I'd made that
23 order or not, Mr Sachdeva. That's why I had a conversation with Ms Guhr. 4.00 p.m.
24 Friday, please, the best you can in relation to where we're going.

25 MR SACHDEVA: Absolutely, Mr President, yes.

1 PRESIDING JUDGE FULFORD: Thank you. Anything from anyone
2 else?

3 MS BENSOUA: Mr President?

4 PRESIDING JUDGE FULFORD: Ms Bensouda.

5 MS BENSOUA: If I may, I just wish to inform that the Prosecution
6 will be assisted by counsel in the abuse of process litigation. He will be joining us.
7 He is called Tim Owen.

8 PRESIDING JUDGE FULFORD: All right.

9 MS BENSOUA: Thank you.

10 PRESIDING JUDGE FULFORD: Yes, I know Mr Owen very well,
11 Ms Bensouda.

12 There is one final thing then from us. Before we parted in July, the
13 Chamber gave notice to the Prosecution in relation to a warning. In our judgment,
14 now that the issue has been fully considered and resolved by the Appeals Chamber,
15 resulting in an unequivocal statement of the position, it is now, in mid-October,
16 unnecessary to take any further steps in relation to that indication of a warning.
17 Therefore, certainly as far as we are concerned, nothing more will be said or done
18 about it.

19 Good. Thank you. We may or may not meet on Wednesday afternoon,
20 depending on the indication we get from the Defence. And I'm sorry to be
21 repetitious, but can everybody please do everything they can to get us back to hearing
22 witnesses as quickly as possible?

23 Thank you. We'll rise.

24 THE COURT USHER: All rise.

25 (The hearing ends at 3.02 p.m.)