

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Germain Katanga and
5 Mathieu Ngudjolo Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
7 Judge Christine Van den Wyngaert
8 Status Conference
9 Wednesday, 9 March 2011
10 (The hearing starts in open session at 2.02 p.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. The accused are
13 with us. Good afternoon. Good afternoon to everyone.
14 This status conference has the objective of preparing in the best possible way the
15 presentation of the case of the two Defence teams, their cases - each one has worked
16 well - and we're going to also try to work, well, this afternoon and tomorrow as well.
17 So the Chamber received on the 4th and 7 March within the deadline that was set the
18 submissions of the Defence teams which have provided their list of witnesses, the
19 order of witnesses, the summaries of the facts with the themes or issues that the
20 witnesses will address, and the documents that each of the teams envisages
21 producing.
22 The Chamber had also received yesterday on 8 March submission number 2763 of the
23 Prosecutor, and it notes that this states that the summaries transmitted by the two
24 teams do not respond, in its opinion, to the requirement of exhaustiveness requested
25 by the Chamber in its decision relating to Rules 78 and 79(4) of the 14 September 2010.

1 We should recall that in its decision the Chamber had written "as exhaustive as
2 possible."
3 The Prosecutor states that these summaries mention issues or subjects but do not
4 contain the description of facts which does not enable it to appropriately prepare its
5 cross-examinations, and these points lead it to call for a more complete disclosure and
6 also to call for the testimony of the first witness to be set two weeks after this new
7 disclosure.
8 Taking into account the filing on the submission yesterday on 8 March, this status
9 conference will be divided into several parts. We shall start by gathering the oral
10 observations of parties and participants on the Prosecution's submission. That will
11 be the first part.
12 Then we shall examine the proposals of the two Defence teams on the one hand the
13 number of hours that they intend to devote to the main examinations and then the
14 order that it proposes for the testimony of their witnesses. That will be the second
15 part.
16 In a third part, the Chamber shall once again mention the need to arrive at an
17 agreement with regards to the facts in accordance with Rule 69 of the Rules of
18 Procedure and Evidence. So even if all this may be somewhat academic, we are
19 going to go into the first part. This status conference does have to be structured, and
20 this first part deals with what we could call the criticism or the remarks of the
21 Prosecutor, having taken into account -- or having read the summaries of the Defence.
22 Now, before giving the floor successively to the legal representatives, to Counsel
23 Denis and (inaudible), who represent Counsel Luvengika and Counsel Gilissen as
24 well, before giving the floor to the legal representatives and also to the two Defence
25 teams so that each person can reply to the Prosecutor if they wish to do so, the

1 Chamber would ask you to follow this very attentively:

2 Now, we would like to stress several points. Where it concerns the exhaustive
3 nature of the facts mentioned in the summaries, the Chamber itself has highlighted on
4 reading the summaries that were provided, that the facts listed in some of these
5 summaries - which are few in number - would benefit from being further detailed.
6 This is the case of the summaries relating to witnesses D03-P-0044, D03-P-0066,
7 D03-0077, D03-P-0480.

8 The Chamber furthermore has also stated that the summary provided by Witness
9 D02-P-0196 is taken exactly from that concerning D02-P-0192. It thinks, Counsel
10 Hooper, that it would be useful to provide to the Prosecutor some additional
11 precision to these two summaries, such that it is exactly stated in what way one
12 provides something additional over the other. Once again, these two summaries
13 have been taken exactly, so what we need to see is, with the additional details, if one
14 of these two summaries has something which is greater in value.

15 Now, the same remark can be said, at least partially, where it concerns the summaries
16 of the two witnesses, D02-P-0155 and D02-P-0259. Where it concerns the four
17 detained witnesses, we will call them the "detained witnesses" during our status
18 conference -- where it concerns the four detained witnesses, the Chamber notes that a
19 certain number of details provided to the Prosecutor relate to what the witnesses will
20 say and therefore to the facts.

21 However, it would appear that some of these facts should be even more detailed,
22 which should be carried out by the 14 March, on Monday, at 12 o'clock, and this
23 request for additional detail is valuable for Mr Kilenda where it concerns the four
24 detained witnesses who are common to the two Defence teams; that is to say. For
25 the Ngudjolo team, D03-P-0011.

1 I would repeat, for the four detained witnesses, even if where it concerns Counsel
2 Hooper's team, the summaries do contain already certain precisions with regards to
3 the facts, it appears to the Chamber that additional clarifications should be given
4 thereto. This is the same recommendation which is made to Counsel Kilenda, and
5 for this to be done by Monday, 14 March, at 12 o'clock at the latest.

6 Furthermore, with regards to the precision of the facts, it is necessary to come to the
7 issue of the -- of the list of issues in the summaries, and this is something that has to
8 be addressed before this is done. And I'd like to repeat, the list of issues addressed
9 in the summaries should be complete before we start the presentation of the Defence
10 cases. This means that the Prosecutor and the Chamber have to have all the themes
11 or issues that shall be addressed by the two Defence teams.

12 Until now, that is to say Friday evening to this morning, the Chamber has carried out
13 its analysis of the testimony envisaged from the point that all the themes were
14 mentioned in the summaries. If that is not the case, it calls upon the two Defence
15 teams to complete the list of themes or issues by 14 March -- Monday, 14 March, at
16 12 o'clock. You have understood the distinction between the facts and the themes or
17 issues.

18 Now, the Chamber notes with interest that in the submission of the Prosecutor
19 received yesterday, number 2763 - and namely, paragraph 12 thereof - the Defence of
20 Germain Katanga communicated with -- has disclosed a signed declaration for each
21 witness. Now, if this is the case -- if this is the case, then this must be done as fast as
22 possible and it would call upon Counsel Kilenda to do the same. The Chamber
23 would like to recall, however, that in its decision of 14 September 2010 it clearly put
24 an alternative statement or summary.

25 This therefore obviously does not prevent a Defence team which would wish to do

1 both, to do both, but we would like to remind you that this was an alternative. If
2 Counsel Hooper wants to go beyond that, he may do it but please do so quickly, and
3 if Counsel Kilenda wants to take the same path, then do so, but quickly taking into
4 account the dates on which the Defence case presentation is envisaged.
5 So now, with regards to this first part which is related to the submissions of the
6 Prosecutor received yesterday, but for which the Chamber would first of all like to
7 give you some information about, we are now going to take your comments.
8 Prosecutor, I'm not giving you the floor to the extent that your submission is brief. I
9 think you want to take the floor, but take it briefly. I'll just remind you that your
10 submission is brief. It's clear, and I think that we have all understood what you
11 wished therefrom. We are listening to you.

12 MR MACDONALD: (Interpretation) Thank you. First of all, I'd just like to say
13 good afternoon to you. In my case it is some months now since we last saw each
14 other, other than perhaps crossing each other in the corridors of this Court. Very
15 briefly, there is something that I would like to draw your attention to as well, and
16 despite our submission 2763, it perhaps was not as clearly mentioned in order to
17 make the Defence teams be able to reply to it, but essentially it is what I would call the
18 biographic details of the witnesses, and I am convinced that the Chamber will
19 remember paragraph 59 and 60 of its decision 2388, and it refers to this -- it refers to
20 this -- but the Prosecution in order to make it possible to carry out its investigation,
21 and only by way of example, because I don't want to go into lots of different examples,
22 there are some, but to mention one which does illustrate this issue.

23 This is one of the issues and it's the identification of the witnesses themselves. I
24 think that the Chamber indicated their addresses, and I understand that it's perhaps
25 difficult but the locality is welcome, the region is welcome, but also when we refer in

1 what we call these issues to the names of persons, there is never information or there
2 is very little information that is given in that regard.

3 So there is also a place and, with regard to these two aspects, the identification of the
4 witnesses themselves and the biographical details and addresses as well, but there are
5 also the witnesses that are mentioned in these issues.

6 So if you would allow me, where it is the witness, one example that I'd like to give,
7 we don't want to make presumptions. The Chamber doesn't presume either. And
8 here I am referring to the disclosure of Counsel Hooper, Witness D02-P-0148, I shall
9 not mention the name of that witness, but because people, as you know, your Honour,
10 in Ituri, they are known under different names, witnesses of the Prosecution have
11 testified and referred to certain people under different names. I think that the
12 transcript might have got stuck; I don't know.

13 PRESIDING JUDGE COTTE: (Interpretation) Well, it says, "car les gens" in the French
14 transcript and it's stuck there. Counsel Macdonald, you weren't with us during the
15 testimony of the witnesses. There's a new system for transcripts which has come
16 into being and that might mean that there is a slight difference with regard to what
17 was said. The quality of the transcripts is better in real-time but that comes at a price,
18 and that is a slight time lag.

19 MR MACDONALD: (Interpretation) Certainly, I remember the implementation of
20 this new system. Thanks for reminding me. Now to finish taking into account that
21 we are in open session here, and taking into account that there are people who are not
22 known to the public yet, some of them probably will never be, the witness D02-P-0148,
23 we presumed that that person is a parent or a relative of Kondro. Why don't we just
24 say that, why do we hide that?

25 This is the feeling of the Prosecution that for certain witnesses there is a game of cat

1 and mouse going on and certain things are avoided saying, whereby clarity would
2 bring about proceedings which are carried out with diligence, and also with regards
3 to the investigations of the Office of the Prosecutor. Thank you very much.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor for this oral
5 additional information which you provided in addition to your submissions of
6 yesterday. The legal representatives, the two Defence teams, will therefore have the
7 opportunity to take the floor themselves.

8 The Chamber would like to make two comments, however. The decision relating to
9 Rule 78 and 79(4) which it issued on 14 September 2010, is imminently present in its
10 mind, that is to say especially paragraph 59 and 60 thereof, where it is an issue of the
11 situation and the personal situation.

12 Now, with regards to this decision, the Chamber would also note and it would
13 provide you, or it would let you take the floor for this, that in the documents which
14 were provided by Counsel Hooper and Counsel Kilenda, that is to say in the list of
15 witnesses and not in the summary parts, each time there is the date of birth, and for
16 some there's also a clarification with regards to it, whether it is a man or a woman.

17 Now, there are a certain number of clarifications which have already been given, each
18 has the concern at the state of the proceedings where we are, substantive proceedings,
19 to not play such a game of hide-and-seek and as such it is very important that the
20 maximum of information be faithfully provided and that there be the greatest
21 transparency possible, and this is in the interest, this is in the interest of the Chamber.

22 This is an -- this is our fundamental driving point. We want to seek the truth and in
23 order to do so we need the fairest possible means to do so. Everybody has to play
24 their role fully in the place that they occupy.

25 Now, Counsel Goffin, which one of you would like to speak about the Prosecutor's

1 submissions? Counsel Denis, please, we are listening to you.

2 MS DENIS: (Interpretation) Thank you, your Honour. I will spare everyone from
3 going into the elements that the Chamber has already highlighted, reference
4 particularly with regards to its decision 2388, I have to state there were certain
5 concerns, even if we had to see the information that was communicated.

6 Now, we had certain concerns with regards to the fact that some of the summaries
7 did not meet the objective which was aimed for by the Chamber which would be to
8 enable an effective development of the proceedings, make it possible for everybody to
9 know the evidence with a view to preparing in advance.

10 Now, a few moments ago you gave some examples and if you would allow me, your
11 Honour, I would also like to draw the attention of the Chamber to two other examples
12 which are of concern to us in particular.

13 The first example, and this is something I would like to draw from the list provided
14 by the Defence of Mr Katanga, number 9 on the list, which has the number
15 DRC-D02-P-0176. In the last paragraph we are told that this witness will give details
16 with regards to figures in Bogoro, and I won't mention the names of them, it's not
17 useful to do so here.

18 It would seem to us that it would be useful for the Defence to be able to provide us
19 with a description, as exhaustive as possible, to take up the terms of your decision. I
20 think that to date it should know what these details are with regards to these
21 personalities or figures from Bogoro that the witnesses can provide us with.

22 The second example that I would like to give, I would like to draw the attention to the
23 list of witnesses of Mr Ngudjolo, number 15, which has the number DRC-D03-P-0410.

24 This is a witness who shall provide information with regards to the testimony of
25 another witness who has already appeared before this Chamber. We are indicated

1 the anticipated content but the remark that I would like to make is that I note that we
2 are indicated eight hours as the length of time for testimony. Eight hours to speak
3 about one meeting and the situation which prevailed in Bogoro before the attack.
4 Well, without wishing at all to get involved in the projections of my honourable
5 colleagues, I do have certain concerns with regards to the time-frame here.

6 PRESIDING JUDGE COTTE: (Interpretation) Counsel Denis, I'm going to respect
7 the five-second rule but I'm also going to interrupt you and then you can continue
8 thereafter. Here, for the Chamber, we are not substituting the explanations that the
9 two Defence teams are going to give but you anticipated something with what will be
10 the agenda of this status conference with regards to the duration, the estimated
11 duration of the examination-in-chief, mentioning the case of Witness number 15 in the
12 list, but in reality, P-410 of Mathieu Ngudjolo.

13 Now, if we just recall -- if we ignore the time that we are talking about at the moment,
14 let's just remind ourselves that here, this is a person that you know better than anyone
15 else who, according to what we have learnt a few days ago, is said to have transferred
16 the information according to which an attack could take place in Bogoro.

17 So it's therefore possible to think, perhaps not for eight hours, but one might think
18 that, as far as Counsel Kilenda and Professor Fofé are concerned, that it is about
19 challenging what the witness who you have just mentioned has brought as
20 information with regards to this rumour, and also with regards to modalities of its
21 transmission.

22 So the Chamber has not seen, where it concerns this Witness P-410, it has not seen an
23 absolute need in the case in point to require from the Kilenda team that it provides
24 additional information.

25 Now, where it concerns witness of Counsel Hooper's team with the number

1 D02-P-16 -- 176, the Chamber has the intention -- or with regards to the summary in
2 Counsel Hooper's transmission, it -- well, it has seen the name that was mentioned
3 and also that this witness will provide details with regards to the names of the
4 Prosecutor's witnesses who, unless I'm mistaken, that's number 132, 161, 166, 233 and
5 249, as well as the V19, V18, and necessarily, subject to any reservations, the Chamber
6 considers that if we refer to all the transcripts of hearings concerning these witnesses,
7 according to -- well, it does seem that their credibility is going to be questioned and
8 the Chamber thinks that there is something here which will make it possible for the
9 cross-examination to be done under conditions which are reasonable.
10 Everything can be better but, when we are in the framework of what is reasonable,
11 this does seem sufficient to us.
12 I did interrupt you, but that was to -- in order to make you be able to continue now.
13 (Pause in proceedings)
14 I beg your pardon. I am very much aware of the participants and the fact that the
15 hearing is being given in open session, so we will not provide any identifying
16 information. We have not provided any names. We may refer to numbers, but the
17 use of numbers is such a fussy matter, if we can use an actual word - such as
18 "detained witness" - we will proceed in that manner. Maître Denis.
19 MS DENIS: (Interpretation) Thank you. I'll conclude on one point that was
20 mentioned by you yourself, your Honour, and also by Mr Macdonald. In your
21 ruling, you also said that the situations and the personal background of witnesses
22 should be indicated. We also thought it might be a good idea to have more
23 systematic items of information. You mentioned the birth date, but it might be
24 useful to have more information about the witness's ethnic origins or *profession.
25 That might be relevant for the preparation, the preparation for upcoming testimony.

1 I thank you, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Maître Denis. We've
3 taken note of your points, and I believe Mr Kilenda and Mr Hooper have taken note
4 of that. Counsel, please proceed.

5 MS GOFFIN: (Interpretation) Thank you. Good afternoon, your Honours. I will
6 be brief, particularly in light of the comments made by the Chamber a few moments
7 ago. I just wanted to say that I share the concerns expressed by Maître Denis when it
8 comes specifically to the interests of child soldiers and, in light of the documents that
9 have been provided today by the Defence, there is one particular difficulty, difficulty
10 in preparing for upcoming testimony, and this may -- may hinder the smooth
11 functioning of the proceedings.

12 I wanted to give two examples, and they were the examples that were mentioned by
13 the Court, by the Chamber, a few moments ago; namely, Defence witnesses from
14 Katanga 172 and another number. In light of the descriptions that were provided,
15 they seem to be interchangeable witnesses to some extent and very much -- there's a
16 lack of information about their background and their personal histories, as well as the
17 specific tasks that may -- they may have carried out or duties they may have
18 performed at the time, and this is in regard to a Prosecution witness.

19 Re 155 and 259, indeed, we have two summaries that seem to be virtually
20 interchangeable except for one paragraph and, once again, there's a lack of
21 information about these people's situation and their personal background. So these
22 are two examples. These are the most flagrant ones when it comes to the interests of
23 child soldiers, but they are not the only ones.

24 There's also a problem, and really the amount of information is insufficient,
25 particularly in light of -- particularly in light of the requirements of Ruling 2388

1 mentioned earlier.

2 So there you have it. Your Honours, I will conclude on that point and I thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Ms Goffin, for those

4 remarks that were provided, in addition to earlier remarks from Ms Denis.

5 Mr Hooper, in light of the filing from the Prosecution, in light of the two series of

6 remarks made by Ms Goffin and Ms Denis, what's your viewpoint? What additional

7 information could you provide? I specify that the Chamber has not decided one way

8 or another. We have made a number of observations and these observations are

9 intended to ensure that our discussions are as transparent as possible. Please

10 proceed.

11 MR HOOPER: Good afternoon, Mr President. Well, first of all, I'm reassured by

12 the knowledge that no one in this courtroom has lost sight of the fact of who is the cat

13 and who is the mouse in these proceedings.

14 I've heard -- we've seen the -- of course and read the Prosecution's written

15 submissions yesterday and we've heard again -- or we've heard further this afternoon

16 from my friend in respect of that matter and, in particular, of course we've fully taken

17 on board your own observations and we will react wholly appropriately to those

18 observations. I think that's all, in fact, I need say, I hope, in respect of that.

19 In respect of the victim representatives' observations, one wonders whether they are

20 proposing to conduct investigations into Defence witnesses, as we would find that

21 wholly a step too far. One need only reflect, for example, whatever the modalities of

22 this Court may be, that in the Lubanga case when it came to Defence disclosure the

23 Defence were not, in fact, ordered to disclose even summaries to victims'

24 representatives, which I raise really to demonstrate, as it does, I think, the markedly

25 different roles that victims representatives play in these trials, as opposed to the

1 Prosecutor, and I hope they don't lose sight of that.

2 I don't think there's anything further I can usefully add. Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Well, on behalf of the Chamber, I
4 will merely ask you, Mr Hooper, with regard to a specific request from Ms Denis
5 regarding -- well, this wish to benefit from additional information regarding the
6 profession and/or the ethnic origin of the witnesses that you are planning to call, do
7 you object to that or do you feel that you are in a position to provide such information
8 without any major problems?

9 MR HOOPER: Absolutely no objection to that, and indeed a recognition of it being
10 an oversight that we did not provide some of that information which I think would
11 have been more in accord with this Chamber's decision 2388. So we will provide
12 that information and we'll do so as soon as possible.

13 PRESIDING JUDGE COTTE: (Interpretation) Very well. And if -- and this is with
14 regard to paragraph 12 of the OTP's application, if some statements may to your mind
15 be disclosed, do not hesitate to do so. Anything that will contribute to -- and on
16 either side. I think we all realise where the cat and the mouse are but, in any event,
17 anything that will help the proceedings must be encouraged. Mr Kilenda.

18 MR HOOPER: So I -- excuse me.

19 PRESIDING JUDGE COTTE: (Interpretation) I'm sorry. Please proceed.

20 MR HOOPER: It's a matter which your Honour's observations just then reminded
21 me. In respect of statements, this was seen as an ideal. We're still seeking to see
22 what we can do in that respect.

23 The word that your Honour used earlier was "quickly," that if we're going to do it, to
24 do it quickly, and it's the quickly bit that has been something of an obstacle because
25 the actual mechanics of it as we in fact realised and anticipated were going to be not

1 straightforward but they've proved to be a little less straightforward, not least of all
2 because of the responsibilities that have fallen on the shoulders of our person of
3 resource in the Congo in respect of helping WVU in respect of organising the
4 shepherding of witnesses. That's proved to be quite a problem. It's a matter, quite
5 a separate matter that I'd like to come back to a little later today, if I may. Thank
6 you.

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

8 Mr Kilenda, we see that you have no further observations. In any event, not for the
9 time being. Mr Kilenda.

10 MR KILENDA: (Interpretation) Thank you. Good afternoon, your Honours. I
11 won't be very long, like Mr Hooper, my learned friend. The Ngudjolo Defence team
12 has carefully read the Prosecution's application and when you read our filing
13 of -- number 2756, you can see that it reads "exécution avec le decision"
14 implementation -- or following the decision regarding -- a decision regarding
15 disclosure of evidence under 54 -- under 78 and 79(4).

16 While I'm standing, I believe that our team has complied with this ruling in good faith;
17 we have hidden absolutely nothing. Often when we spoke before you, we have
18 said - always said - that our Defence team has nothing to hide. Today we certainly
19 will not be hiding any information that would be useful for these proceedings.

20 Now, when I read paragraph 60 of your ruling, ruling 2388, we thought we saw your
21 Honour's perfect linguistic rationality. You weighed your words very carefully, and
22 I'll quote from the ruling, "Furthermore, in order to guarantee effective operations
23 and quick functioning of the trial and to avoid any adjournment or delays, the
24 Chamber orders that the witness statements be disclosed that the Defence wishes to
25 use for the witnesses to be called or a summary of the main points to be looked at

1 during each witness's testimony."

2 These summaries include a description that - and it says that these descriptions

3 should be as exhaustive as possible - full descriptions regarding the facts that

4 witnesses will testify to, including any relevant information concerning the witness's

5 situation and personal background. And I think from a linguistic point of view this

6 is entirely logical and this is what we have done by disclosing all

7 information -- information that we have made available to all parties and all

8 participants.

9 In the Prosecution's application, we read that our summaries are poor. This is what

10 they say. And some are only two or three lines. The Prosecution says that this is in

11 contrast to the number of hours, and I believe Professor Fofé will be speaking to this

12 point, the number of hours that we have provided for each witness.

13 We believe that what counts is not so much the time -- correction, the length of the

14 summaries but rather their quality. In this particular case, we opted to focus on

15 credible witnesses who will be coming before the Court to tell the Court the points

16 that they have been -- to tell them about the points that they have been called for.

17 The Prosecution has been working on this file for several years. The Prosecution has

18 a certain series of arguments. The Prosecution is familiar with these arguments.

19 They made their position clear in their opening remarks, and when we read, for

20 example, that Witness 14 is the biological father of another witness, and will give

21 testimony regarding the situation of this other person during the time of the alleged

22 infractions, and what does the Prosecution not understand here? What are they

23 having difficulty understanding?

24 With regard to the request from Ms Catherine Denis, Ms Denis would like us to

25 provide some information about the ethnic origin and the profession, and so on and

1 so forth. Well, we can only make reference to the Chamber's ruling, including -- and
2 it says, "all relevant information that the Defence has at its disposal concerning the
3 situation and personal background of the witness."

4 We believe, your Honour, that -- well, we don't want to downplay the importance of
5 this preliminary -- these preliminary points that you have made at the beginning of
6 this status conference. We believe that we have implemented the order of the
7 Chamber in good faith and we are doing our utmost to ensure that any information at
8 our disposal be provided to the Chamber, the parties, the participants, so that the trial
9 will proceed smoothly.

10 I also have one particular concern about a statement. It is true that up until now we
11 have announced no intent to disclose certain items, but that's not impossible or out of
12 the question. The short deadlines that you have requested for disclosure have been
13 problematic in terms -- particularly with regard to our own problems in gaining or
14 gathering information from witnesses. Now, Professor Fofé right beside me may
15 have a few additional remarks, but I believe we have complied with your ruling. We
16 have carried it out in good faith and we have done all our utmost for a speedy trial.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. I think we
18 can leave it at that. You know very well that the good faith of the Defence teams is
19 certainly not being questioned here. We merely request, if you are in a position to
20 do so at this time, with regard to the four witnesses I mentioned earlier, have you any
21 objection to providing additional details to the Prosecution?

22 I remind you this is 44, 66, 77 and another. Have you any major problems with that,
23 given that the Chamber will be giving a ruling on this first part of the status
24 conference tomorrow, once we move on to the second part. Have you any major
25 objections?

1 MR KILENDA: (Interpretation) No objections.

2 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Very well. That is just
3 perfect. We will now move on to the second part of our agenda. This is not
4 necessarily the most important point, but I believe this was something very much of
5 concern to the Prosecution. Briefly.

6 MR MACDONALD: (Interpretation) Yes, briefly. This is something that has been
7 mentioned by the two Defence teams and they have come back to that point, namely,
8 the statements. The deadline was 7 March, Monday, including for the four detainees.
9 What we received -- that is what we have received. And now we are being told from
10 the Katanga team, both in writing and orally, that there may be some statements.
11 I understand that the Chamber has said as quickly as possible. The first witness is to
12 give testimony on the week of the 21st and we will have comments, and during the
13 second part of that week, in light of disclosure made and the necessary preparation.
14 However, these statements have to be disclosed quickly. Well, more than quickly.
15 Immediately, right now. And it's odd that witnesses have been announced and there
16 may be meetings with these witnesses to identify the various topics that they will give
17 testimony on, and they have not taken the time to provide statements.

18 I'll give an example. I think you'll recall, your Honour, I don't -- I don't want to go
19 back to the debate on 159, the ruling has been issued, but in any event Mr Hooper
20 came in with a statement from the father and the -- no, correction, the father. That's
21 one example of a statement that certainly is more exhaustive than the issues that were
22 disclosed last Monday in their filing.

23 If there are any statements, signed or not, the time has come to disclose them because
24 the deadline was 7 April.

25 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, we will not go back to

1 the ruling of 4 September regarding -- in which it indicates as clearly as possible that
2 this is an alternative, an alternative, a statement or a summary. The statements were
3 provided within the time set, and you responded very quickly, in writing and orally,
4 and you expressed your concern to obtain more information.

5 The Chamber will issue a ruling tomorrow regarding the whole matter of whether, in
6 light of the observations that the parties have just made, whether the Chamber is of
7 the opinion that the requirements imposed were complied with completely, or
8 partially.

9 If it is only partial disclosure or compliance, the Chamber will announce what other
10 measures will have to be taken by the parties and participants.

11 We will now move on to the second part of the status hearing. The Chamber has
12 heard arguments from Mr Hooper and Mr Kilenda. The Chamber sees that in
13 relation to the initial forecast the number of witnesses called has been reduced, but
14 the number of hours of testimony is very high.

15 Indeed, Mr Hooper had allowed for a total of 122 hours and Mr Kilenda thought he
16 would need 200 hours, and this comes to a total of 322, 322 hours, if we add these two
17 figures.

18 With regard to the special nature of this case, although it is limited to a single attack
19 that occurred at one place, on one single day, this trial does involve two accused
20 belonging to separate organisations, and the role, the exact role of the two accused
21 has to be clearly set out within these two organisations in light of this.

22 At first glance, if we use as our working assumption - and this is just a working
23 assumption - that the Prosecution will have the same number of hours for
24 cross-examination, this would mean a grand total of 644 hours. If we assume three
25 actual hours of hearing per day, because often we have not exactly dead time but

1 other things that need to be taken into account, such as a witness giving a solemn
2 undertaking or procedural matters, et cetera so, if we assume this, and if we assume
3 three hours of hearing per day, and if we -- this means 214 days. And if we assume
4 four days of hearings per week, this means 54 weeks. And since there are in actual
5 fact 41 weeks during which the Court sits, because of course there's the judicial
6 recesses that occur or other reasons for suspense, so if we assume 41 weeks per year,
7 this total amount of time would represent one year and four months, not taking into
8 account the time allocated to the legal representatives and to the Chamber to ask their
9 own questions. And this is just the Defence's case. The Chamber does have the
10 possibility of perhaps calling witnesses ourselves before the trial comes to an end.
11 So we really have to consider these numbers, and they are based on a working
12 assumption or hypothesis. In a few days the Defence will begin their case, and I
13 think there's no need to really stress this point, obviously, the Chamber wishes to
14 allow the Defence to make full use of their rights.

15 All the same, the Chamber must remind everyone of Regulations 43 and 54(e) of the
16 Court and I will read out from 43: "Considering under the Statute and the
17 Regulations of evidence and procedure, the Presiding Judge determines, in
18 determination with other Judges of the Chamber, the various arrangements made for
19 hearing witnesses and the order in which they give testimony as well as the -- so as to
20 make the questioning of witnesses and the presentations of evidence fair and effective
21 for the determination of the truth." The regulation also sets out this is to avoid
22 delays and ensure the effective use of time.

23 I'd also like to read Regulation 54(e): "At a status conference, the Trial Chamber may,
24 in accordance with the statute and the rules, issue any order in the interests of justice
25 for the purposes of the proceedings on, inter alia, the following issues," and then

1 subsection (e), "the number and identity, including any pseudonym of the witnesses
2 to be called."

3 These two regulations give discretionary power to the Chamber, and we have a duty to
4 implement those powers in respect of the rights of the accused. This means that the
5 Chamber is subject to a quadruple obligation. We have to ensure the respect of the
6 rights of the Defence. We have to ensure the respect of the rights of the Defence.

7 We have to avoid all delays and guarantee optimal use of time. The Chamber has to
8 ensure that the proceedings, which are public, have to be legible, coherent and
9 understandable. The Chamber has to ensure that the trial is fair.

10 You will recall that, based amongst other things, under settled jurisprudence of the
11 various Chambers of the International Criminal Tribunal for the Former Yugoslavia,
12 the Chamber had demanded that the Prosecutor should reduce his initial proposal of
13 300 hours of examination to 120 hours. The Prosecutor was able to do that and used
14 that time to present their case.

15 This reminder, and given -- also given the requirements that the Chamber have
16 recalled, we would like to make a certain number of suggestions regarding the
17 reduction of the number of hours devoted to the direct examination of your witnesses,
18 and we are sure that this is something that is feasible. We would also like to make to
19 you a certain number of suggestions regarding the order of appearance of your
20 witnesses.

21 Let us begin with the number of hours devoted to the direct examinations. The
22 duration -- or, rather, the intended duration of examinations by Mr Hooper range
23 between 12 hours, in the case of one witness; to one hour, in the case of two witnesses;
24 and between the two, we have six hours, five hours, four hours and two hours. With
25 regard to Mr Kilenda, that duration ranges from 20 hours to four hours. However,

1 there is a witness who is scheduled to be examined over a period of 40 hours.

2 The Chamber notes that, with the exception of Witness 250, whose testimony was

3 fraught with incidents, the direct examination of the Prosecutor never exceeded nine

4 hours and, except we are mistaken, those nine hours were used up in the case of

5 Witness 280. This is an observation and an observation only, but which should

6 inspire the work related to the reduction of hours that the Defence teams necessarily

7 have to carry out.

8 Over the past 48 hours, the Chamber carried out a detailed and systematic analysis of

9 your proposals and this lead us to the following observations: For witnesses that are

10 common to the Defence teams, we would like to point out that a detained witness,

11 who is a common witness - and that is D02-P-0236 who, at the same time, is

12 D03-P-0011 - for that witness, Mr Hooper intends to use 12 hours, while Mr Kilenda

13 intends to use 20 hours.

14 Secondly, for the father of 279, Mr Hooper has planned to use four hours; and

15 Mr Kilenda, eight hours. The same applies for the father of 280, Mr Hooper plans to

16 use four hours; and Mr Kilenda, eight hours. It is indispensable to reduce the times

17 anticipated, given that the Defence of Mr Mathieu Ngudjolo could even refrain from

18 examining those two witnesses in light of the results obtained by Mr Hooper or, at the

19 very least, that team could limit itself to what is directly related to their client. We

20 call on you now to reflect on this point.

21 The Chamber also points out that there are risks of repetition with regard to some of

22 the witnesses. Let us remember the position adopted by the Prosecutor at the

23 request of the Chamber with regard to Witnesses 166, in light of the testimony of 233,

24 and specifically 238, who was permanently withdrawn. You will remember that in

25 light of Witness 233's testimony, the testimony of Witness 166 was significantly

1 reduced in duration.

2 The Chamber also points out that in order to challenge the credibility of Prosecution
3 witness number 28, Mr Hooper plans to call at least seven witnesses, and three of
4 them will only testify to that witness. We, therefore, wish you to reflect on this issue.
5 Is it indispensable to call so many witnesses to testify to the same theme? You will
6 really have to draw up an order of priority very quickly for submission to us, and
7 even propose withdrawal of certain witnesses.

8 The same applies to the witnesses called to challenge the credibility of Witness 267.
9 Mr Hooper intends to call at least four witnesses to testify to the issues of
10 demobilisation and child soldiers. Three of those witnesses will testify mainly on
11 those two issues. This means that for witnesses related to the credibility of 28, what
12 has been said about that witness is also applicable to Witness 267. We would remind
13 you that for two of those witnesses we received absolutely identical summaries.

14 The same applies for the challenge of the credibility of Witness 250. Five witnesses
15 are to be called; three by Mr Kilenda and two by Mr Hooper. Once again, it is
16 possible to draw up an order of priority. And, furthermore, we should point out,
17 Mr Kilenda, that one can wonder about the necessity to call both the father and the
18 mother of Witness 250. You really do have to reflect on the absolute necessity of
19 calling the mother.

20 Lastly, the same applies to the challenge of the credibility of Witness 279. There are
21 four witnesses who will testify about him, and there is one of those witnesses who is a
22 common witness; therefore, a joint decision by the two teams is quite feasible.

23 The Chamber proposes the following. At the closure of this hearing, please reflect
24 upon that, and tomorrow at 2 p.m., at the beginning of the next hearing, you will tell
25 us your opinion about these proposals. In light of the observations that you make

1 tomorrow at 2 p.m., after having consulted in your teams and between the
2 teams - and that is only a suggestion - the Chamber will hand down a ruling based on
3 Regulations 54 and 43.

4 So these suggestions have been made to you. You have to work very quickly on
5 them so as to be able to give us your observations tomorrow. It is in light of those
6 observations that we will quickly hand down a ruling.

7 We were, therefore, talking about the necessary reduction of the number of hours
8 devoted to each witness, not to hamper the -- or, rather, to muzzle the Defence, but in
9 order to respect the obligation for fairness and the respect of the Defence -- on the
10 respect of the rights of the Defence, without any prejudice to the accused persons.

11 The Chamber analysed the filings that you submitted. We analysed them in detail
12 and we analysed also all the themes that you mentioned. This made it possible for
13 us to note that the 23 witnesses of Mr Hooper and the 18 witnesses of Mr Kilenda can
14 be divided into a limited number of categories that we defined as follows:

15 Witnesses challenging credibility, and those are the most numerous; witnesses in
16 positions of responsibility, or responsibility witnesses; and then the four detained
17 witnesses, because their logistical situation is very specific. There is another special
18 category, which includes the expert that Mr Kilenda wishes to call, and the
19 investigator or resource person who will be called by Mr Germain Katanga's defence.

20 Then there is, lastly, the accused. Mathieu Ngudjolo will testify and possibly
21 Germain Katanga. The decision has to be taken quickly.

22 The Chamber is fully aware that some of these witnesses can actually feature in
23 several of the categories. We simply tried to make a choice in light of what would
24 seem to be the core of their testimonies; that is, based on the summaries that you have
25 submitted, because the Prosecutor and the legal representatives, as well as ourselves,

1 will depend on those summaries.

2 There are a few observations that we would like to make on those categories that I

3 have just mentioned. To begin with, Mr Hooper or Mr O'Shea should tell us, as

4 early as tomorrow afternoon, whether their Defence team intends to call Germain

5 Katanga as a witness or not, because the Chamber needs to apply Regulation 43 of the

6 Regulations of the Court while in possession of all the necessary information, so it is

7 no longer possible for calling that witness to be only a possibility. The list of

8 witnesses has to be closed as soon as possible.

9 Also, tomorrow Mr Kilenda has to explain to us the reasons that have prompted him

10 and the Defence of Mr Mathieu Ngudjolo to call a ballistics expert. In any case, he

11 will tell the Chamber whether that expert is going to come to testify on all the three

12 expert reports submitted by Dr Baccard or on only one of those reports.

13 We were not able to determine on the basis of the filing whether that expert would

14 testify on the three reports or only on one.

15 In any case, Mr Kilenda will explain the reasons for calling that expert.

16 Now, there is another category: The resource person of the Defence team of

17 Germain Katanga. The Chamber notes that he is -- or that person is at the same time

18 a resource person, a member of the Defence team, and an investigator, and lastly, a

19 witness. So he is - he or she - is wearing three caps. This by itself prompts the

20 Chamber to consider that it is more than advisable for that resource person to be the

21 first witness to testify, and not the last. And this testimony should begin as early as

22 the week of 21 March.

23 In that case, this resource person, who is a witness and an investigator, would find

24 themselves in the same situation as the head of investigations of the Prosecutor, who

25 was the first to testify at the beginning of the Prosecution case.

1 So, except there is a serious objection from you, Mr Hooper, the Chamber, through
2 the Registrar, intends to request VWU to immediately and urgently take any
3 necessary measures for the appearance of this witness. Once again, the Chamber is
4 of the opinion that this witness should be the first to testify.

5 With regard to Mr Kilenda, the Chamber has realised that you decided not to call
6 your own resource person. Is that your final position?

7 MR KILENDA: (Interpretation) Yes. So far, this is the final decision.

8 PRESIDING JUDGE COTTE: (Interpretation) You cannot continue to have
9 optional situations. If you cannot tell us today, you have to tell us the final decision
10 tomorrow. And if you decide to call that person, he will have to testify immediately
11 after Mr Logo. In other words, the two investigations will -- or, rather, the two
12 investigators will start the Defence testimonies.

13 Now, regarding the four detained witnesses. Their situation is very specific. We
14 are all aware of that because of their imprisonment. There are problems related to
15 their transfer to The Netherlands and guarding them once they have arrived at
16 The Hague.

17 But the truth has no price, and if they can contribute to uncovering the truth, then the
18 Court will put in place all the necessary measures. The fact remains that for those
19 various reasons, their arrival here will, despite a certain number of problems, has to
20 be immediate. They have to testify as a matter of emergency and they cannot be
21 called back.

22 The Prosecutor has the names of those four witnesses since last 24 May, and in that
23 case, given -- or, rather, after the testimony of Germain Katanga's Defence team, and
24 also possibly after the testimony of Mr Ngudjolo's Defence team, it would be from
25 28 March at the earliest that this witness could testify. And Mr Prosecutor, this

1 means you have at least one month in that case, which will probably be confirmed,
2 the four Defence -- or, rather, detained witnesses will testify as from 28 March. So,
3 Mr Kilenda, you have to prepare your examination immediately after that of
4 Mr Hooper because, once again, these witnesses cannot be called to appear twice.
5 There is another category; witnesses who are called to challenge credibility. There
6 are many of them, and in order for the proceedings to be open and coherent - that is
7 one of our obligations - it is indispensable to put them in a single category. They
8 have to be heard one after the other in a coherent manner which will make it possible
9 to avoid repetitions. This means that the responsibility witnesses who are only
10 dealing with responsibility will not be scheduled between Mr Kilenda's witnesses and
11 Mr Hooper's witnesses, which means that the credibility witnesses of Mr Kilenda will
12 be called to testify immediately after those of Mr Hooper.
13 Madam Court Officer, if you can distribute the proposal of the appearance order that
14 was handed over to you before the hearing, the parties and participants can then
15 familiarise themselves with that document. Thank you.
16 In the document that will be handed over to you, based on the choice of categories
17 done by the Chamber - and I remind you that these are choices that do not
18 underestimate the fact that these witnesses can appear in several categories - but you
19 will realise that there is an order which is proposed, and the witnesses of the Defence
20 team of Mathieu Ngudjolo, D03, are underlined in black so that they can be seen
21 clearly and everyone can understand at what time they will be called to testify.
22 So, take your time to look over that proposal for the order of appearances, and we are
23 going to revisit that issue tomorrow. And I summarise, for credibility witnesses, the
24 Chamber has an obligation to ensure that the testimonies are clear, so we have to
25 group those witnesses together. You have the responsibility witnesses, then the

1 credibility witnesses, and there is an obligation that the credibility witnesses of
2 Mr Kilenda should appear immediately after Mr Hooper's credibility witnesses.
3 Then there are the responsibility witnesses. Those of Mr Hooper, as agreed, and
4 then those of Mr Kilenda.
5 We can point out that the work of the team of Mr Kilenda will not be disrupted, given
6 that 12 of the 18 witnesses, that is two-thirds, will be heard after the witnesses of the
7 Defence of Mr Katanga.
8 After that, there is the expert witness, and with regard to the defence of Mr Ngudjolo,
9 the Chamber believes that it is agreeable for that witness to testify last, as proposed.
10 And if Mr Hooper decides to call Mr Katanga, he will testify just before Mr Mathieu
11 Ngudjolo.
12 We will now move on to part 3 before giving you the floor. Part 3 relates to
13 agreements in the area of evidence. The Chamber has expressed severally its wish to
14 see the parties reach agreements on factual issues pursuant to Rule 69 - if I'm not
15 mistaken - of the Rules of Procedure and Evidence.
16 The last time I raised this issue, and this was during the status conference of
17 29 November 2010, despite the reiterated requests, very few agreements have been
18 reached whereas, quite obviously, the parties should be able to agree on a higher
19 number of facts. Do not forget that we have just completed the entire Prosecution
20 case.
21 The Chamber therefore appeals to the parties to meet quickly, to discuss together the
22 facts on which there is no longer any real disagreement, so as to reach such
23 agreements.
24 The Chamber plans to organise another status conference during which the parties
25 will indicate the conclusions that they have arrived at, and that status conference

1 should take place immediately after the testimony of the four detained witnesses.

2 This concern by the Chamber is in line with the Chamber's wish, given that a certain

3 number of facts do not seem to be disputed, to give us the possibility to focus on the

4 key issue of the criminal responsibility of the two accused persons.

5 We are asking you to submit a new list, Mr Prosecutor, before 23 March 2011, at 6 p.m.

6 It is indeed a Wednesday, Mr Prosecutor.

7 MR MACDONALD: (Interpretation) We would like to ask for more time. We

8 have just received the disclosure, and I'll come back later to explain to you why we

9 need more time to update the lists that we sent to the Defence more than one year ago,

10 when they came with five or six agreements.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Wednesday, 30 March,

12 4 p.m. at the latest. This adds one week to the time-frame.

13 If you want to make a summary of things as they currently stand, the Chamber

14 tomorrow will issue a decision, a short decision certainly, taking into account the

15 observations that everybody has made today, with regards to the Prosecutor's

16 submission, a submission which was received yesterday, with regards to the

17 exhaustive nature of the summary provided by the Defence teams.

18 Tomorrow it would wish to know if Germain Katanga will testify as a witness. It

19 would like to know tomorrow if the expert witness will also testify; and, if this is the

20 case, having explained the reasons for coming, if he will speak about one of the expert

21 reports or the three expert reports. The Chamber would also like to know and, as far

22 as the Chamber is concerned, the situation does seem to be very necessary, if Counsel

23 Hooper has a significant objection to his resource person testifying first.

24 It would like to know tomorrow if the resource person of Mathieu Ngudjolo's team

25 will testify or not. The Chamber shall also decide tomorrow if the four detained

1 witnesses shall come immediately after the first witness, who could be the resource
2 person of the Defence team of Germain Katanga but, once again, where it concerns
3 these four detained persons, there are few other alternatives.

4 It would also tomorrow like to receive your observations with regards to the
5 suggestions, both to save time, to group the witnesses together and also to drop
6 certain witnesses, we shall listen to you with a lot of attention and, once again, the
7 Chamber thinks in particular of the mother of 250. Is it essential that both parents
8 testify? The witnesses could repeat themselves in their challenges of the credibility
9 of 28, 250, et cetera.

10 Taking into account the different observations that it will have received, I would
11 repeat here the Chamber shall issue a decision which intends to base on Regulation 83
12 and on 43.

13 Now, some of you would like to take the floor for additional clarification. Counsel
14 Hooper, it would seem to me that you wish to take the floor.

15 MR HOOPER: If I may. First of all, in terms of the total number of hours that the
16 Defence have indicated that would be necessary to take its witnesses through their
17 evidence in-chief, I'm fairly confident that we can, in practice, reduce that.

18 In terms of my own assessments, when I presented them to the team, as you may well
19 have expected, Ms Menegon, Wagner and Buisman almost immediately doubled my
20 estimates, Really, perhaps, borne of experience. It's a difficult task, but between my
21 probably overoptimistic assessments and those that have found their way on to that
22 document, I think certainly, at the very least, there's a median course. So I'm
23 optimistic that, for our part, the total of 122 is very much a worst case assessment.

24 But, as you know, I've been wrong about my estimates in the past.

25 Secondly, at present, I regard all, or nearly all, those witnesses as important witnesses

1 for our case. We've had to make choices. We could have brought a dozen young
2 children from Aveba who may have said that they were force demobilisees. We
3 could have produced other witnesses to speak on the same issues and as helpfully, we
4 hope, as those that we've chosen. So we would, with respect, watch with concern
5 any judicial attempt to further cut down those choices. We will reflect on our
6 choices and see if there is a way perhaps to diminish the numbers that we have.
7 I am concerned that there appears to be a --
8 PRESIDING JUDGE COTTE: Pardon.
9 MR HOOPER: I'm sorry.
10 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, I would ask to
11 apologise because I was the one who interrupted you. I would just like to say that
12 you have the night and tomorrow morning to be able to reflect and say where you are.
13 Are we in agreement on that? Perfect.
14 MR HOOPER: We go to Kinshasa, leaving at 5 o'clock tomorrow morning and we
15 come back on Thursday of next week. That's the very shortest time that we've been
16 able to go. Originally, the very helpful people at travel here had us booked back a
17 day earlier. We're taking an earlier flight. We arrive here on Wednesday morning.
18 Then I have certain probable duties in London that I have to attend to, too. So I
19 won't be here tomorrow. And the issues that have been raised today are important
20 ones which I think should be addressed in the presence of lead counsel. So I'm
21 concerned at the -- obviously, your Honour didn't appreciate that that was the
22 position but that, I'm afraid, is the position and I don't see a practical way of delaying
23 it at present.
24 I have a -- if I can just touch on a few concerns. I am concerned. We represent --
25 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, I'm once again

1 interrupting you. If I've understood you well, tomorrow morning you're leaving.

2 And when exactly will you be coming back?

3 MR HOOPER: I get back -- I'm due to come back today week, so that's the

4 Wednesday.

5 PRESIDING JUDGE COTTE: (Interpretation) Yes.

6 MR HOOPER: I think the plane gets in at 6 or 7 in the morning on Wednesday.

7 However, if we meet with the usual difficulties that we've met with in Kinshasa - and
8 it's quite possible we will - then we're going to have to extend our stay. And there's
9 no night flight on the Wednesday. The next night flight is on the Thursday. So the
10 earliest I'd be back, if we took another effective two days, would be Thursday night,
11 arriving here Friday morning.

12 Perhaps I can come back to the issue of timing on another matter as well, or perhaps

13 I can -- yes. Can I just briefly touch on just a few matters?

14 I represent Germain Katanga, and for my viewpoint, I am in an -- his trial is being
15 conducted in front of, of course, you, the Judges. There happens to be another trial,
16 that of Mathieu Ngudjolo, going on at the same time. That wasn't our request or our
17 wish. It was done for convenience sake. But I don't represent him and I don't have
18 access to his witnesses, except the very rare cases when they've fallen in common
19 between us. And in dealing with my witnesses, as it were, that they also nominate
20 on their list, I may very well not have discussed issues concerning the second
21 accused.

22 So I don't see the trial as a melange and I don't see witnesses of credibility that I want
23 to call necessarily usefully intermingled with witnesses for our co-accused, because
24 we are separate trials that happen, for convenience sake, to be tried together. So I
25 haven't had time, and we haven't had time, to reflect on this question of mixing

1 witnesses together, witnesses, for example, who I've got no idea really what they're
2 going to say.

3 In respect of calling Jean Logo as the first witness, I really cannot see my way to doing
4 that at the moment. I saw him more as the last witness, as a helpful sweeper-up,
5 really, of material. There's been photographs, for example, that haven't been
6 properly identified, or items that haven't been identified. He could assist in doing
7 that, particularly if he's been the person who's been taking the photographs or
8 collecting the material. Plus, he has some personal knowledge of the geography and
9 things like that. So I felt that he would be more usefully employed really at the end
10 of the Defence case, of our case.

11 And I don't see him talking about very much more. I certainly don't see him, of
12 course, talking about factual issues in this case. That's not -- it wouldn't be his role.

13 And he's quite different, in my submission, to the person we heard from the
14 Prosecution, who, as far as I could recall, knew very little about the case and was here
15 to talk about the generalities of conducting an investigation at the ICC but knew very
16 little, as far as I can recall, and certainly was asked very little about the actual case
17 itself.

18 One of the difficulties is that, in order to call Jean Logo first, I'm going to have to have
19 the time to go through photographs and material and the like, and to sort all that out
20 and perhaps put it into a statement which I can provide the Court and all the parties
21 with. I can't see that I've got the time, frankly, to do that, between now and Monday
22 week.

23 Calling Germain Katanga. Germain Katanga, of course, has the right to call
24 witnesses, and that's what we're doing. He has a right against self-incrimination and
25 he has a right to give evidence in his own case, or not. He has no duty to do so and

1 there's nothing in the rules to determine, if he chose to do so, when he should choose
2 to do so and at what point in the trial. So, a week before the trial, I'm being told that
3 the Court itself has decided that such and such should be the case, and I'm left in the
4 position today of having really little time to reflect on the position, given that we're
5 requested - and I ask the Court to reflect on this and perhaps reconsider it - to give an
6 indication by tomorrow, let alone to take the opportunity to advise Germain Katanga
7 in respect of that. Because my view is this, that he's got absolutely no duty to give
8 evidence.

9 It's a very big question in all trials as to whether an accused gives evidence or not.
10 Very many trials, they do not. He's calling witnesses who become in this regime
11 witnesses of the Court, but it's my submission, at the very least, that those witnesses
12 who are called in the course of his case, he should have the opportunity to see their
13 evidence, and I should have the opportunity then of being able to advise him as to
14 whether he need go into the witness box at all, or whether he needs to make a
15 statement at all, or whether, given his total right to silence and given the burden of
16 proof in a case such as this, he can sit back and just say to you, the Judges, "Well,
17 really, have the Prosecution proved this case?" And I would very much hope that
18 that is not a decision I have to take tomorrow and is not a decision I have to take
19 before this case, Defence case, commences, and is a decision that I can reserve and
20 advise on in the light of the evidence that we call.

21 The evidence that we call may be good enough, good enough not to have me advise
22 Germain Katanga what to do. Whatever his own choice may be in this, whatever his
23 choice may be in this, he would, I hope, look to me for advice before making that
24 decision. And in my submission, in cases of this kind and this complexity, that is an
25 accused right to make in the light of all the evidence and not in the light of anticipated

1 evidence.

2 There's no rule that he has to give evidence. There's no rule when he has to give
3 evidence. And there's no rule as to when he has to indicate he should give evidence.
4 So I'd ask the Chamber to, with respect, to reconsider the imposition that's placed on
5 the Defence in that respect and to allow us to indicate, not tomorrow or next week,
6 but as I submit is appropriate in the light of all the evidence in a complicated case.
7 Can I come to the question of the witnesses in the DRC? And you know, and I think
8 everyone knows that that's where I'm going tomorrow, and for the reason that I'm
9 going there.

10 I want to say right at the outset that the Victims and Witnesses Unit at this Court has
11 been extremely helpful. We've had a number of discussions with them, and they've
12 done their utmost to assist us to assist you in getting witnesses here.

13 We've commenced our discussions in good time and we've made our witness
14 requirements, as it were, known in good time, but there have been difficulties and
15 significant difficulties.

16 The first witness on the list, for example, and in respect of the order of witnesses, I
17 submit there often is a reason why witnesses are called for a particular time, not just
18 in terms of Defence framing the case, which they have every right to do, in my
19 submission, but also in terms of the availability of witnesses.

20 For example, we've got witnesses here who can't be away at certain times. We've got
21 witnesses who are students with exams, who can't be here at certain times, and so we
22 have difficulties in fact in arranging witnesses.

23 The VWU, quite understandably, don't want to have 20 witnesses sitting in a hotel in
24 The Hague. They rely on us to indicate what we think is the likely amount of time a
25 particular witness will take, and that's a very hazardous thing to indicate, as we all

1 know, but we've done our best.

2 They have Jean Logo introducing, essentially Jean Logo, introducing or acting as the
3 contact point between VWU and these witnesses. Approximately, they like three or
4 four at a time. The consequence of this is that we can't look ahead beyond three or
5 four witnesses because the system doesn't permit it.

6 Take the first witness on the list. All these witnesses require passports from the DRC.
7 The DRC in the last month or so changed its rules as to how you apply for a passport.
8 It used to be VWU could do a lot of the waiting and the legwork, as it were, in getting
9 a passport.

10 Now I understand from VWU that the DRC authorities have requested that people
11 applying for passports should themselves be present throughout the process. The
12 process, we were told, would take two to three weeks. Middle of last week or so, we
13 got an information that the DRC had run out again, because you may remember it
14 from an earlier point, had run out of passport paper. But paper has now arrived,
15 we're told.

16 Witness number 1 has been in -- and he's a student, he's studying second year
17 university, as far as I recall, he's been in Kinshasa for two weeks. Much longer, I'm
18 told: Three weeks, waiting for a passport. He's with another witness and they are
19 fed up. We're at risk of losing these witnesses, we the Defence are at risk of losing
20 these witnesses, and I can't blame them because if somebody asked me to be a witness
21 in a case, and kept me in Kinshasa for three weeks, I might very well decide not to
22 continue as a witness.

23 They've been in Kinshasa and there's been a problem even getting them pocket
24 money of a few dollars a day. They've had no funds, nothing at all, and Kinshasa is
25 not a place where you want to be with no funds. And I'm talking here two or three

1 dollars a day.

2 So, Witness number 1 I understand has gone back today from Kinshasa and returned
3 to Bunia. He was meant to stay in Kinshasa in order to get the direct plane from
4 Kinshasa, or a plane anyway, from Kinshasa here to The Hague. We may not have a
5 witness on the 21st or, as I understand, he was due to come the 22nd. I don't think
6 I'm going to be able to produce Jean Logo because he's running around acting as the
7 intermediary for these people and, in any event, I'm ill-prepared to call him.

8 So who are the next witnesses? They're the four detainees. I'm not sure what the
9 position is with them but they were due, I understood, to be brought here in a Belgian
10 military aircraft next Wednesday, the 15th. Is that right, the 15th? Yes. And
11 obviously that takes a time to arrange. Because I'm going --

12 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, I'm going to
13 interrupt you just for a second. Please excuse me, court reporters and interpreters.
14 You are addressing the issue of the four detained witnesses. This is a question that
15 you've had for a long time. It's also been a question for the Chamber for quite a long
16 time. In accordance with what we have understood, and also taking into account the
17 constraints, the logistical constraints that the transport of these detained persons
18 represents, everything should be done so that they are able to testify before the
19 Chamber on the 28th or the 29th of March. I would give the floor back to you again
20 but you have to be aware that, as of today, the case of the Defence teams must be
21 ready, the case of the Defence teams must be ready, and we can't once again go into
22 delays which are unknown.

23 This Chamber has an obligation with regards to diligence. I will now allow you to
24 continue with your remarks.

25 MR HOOPER: Well, thank you for that indication because if they can be got here,

1 then that certainly eases our concerns. My concern is that we were not going to get
2 them here or they weren't going to be got here and understandably, you, the Chamber,
3 would be very concerned not to have witnesses.

4 They are our pre-Easter witnesses, if I can put it like that, so we're counting on them
5 to be here, I think we all are, and what I'm indicating is that there's not a pack here to
6 shuffle because of the nature of things. We're going to have to have witness 1
7 followed by those four witnesses, or we're going to be empty handed when they come
8 and, as I've already indicated, the first witness may very well -- well, I think he's gone
9 back to Bunia. He hasn't gone back to Bunia with a view to not coming as a witness
10 but he's gone back to Bunia, I understand, saying, "You tell me when you want me
11 here because I've had enough of waiting. And when it's ready, I'll come back."
12 And I think that's a wholly reasonable attitude to take.

13 I see the time. I won't say --

14 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, I'm going to
15 interrupt you. We're going to suspend to take up our status conference in a
16 half-an-hour. Counsel Kilenda, we have understood that Counsel Hooper will not
17 be with us tomorrow afternoon, and therefore this means that he would have to
18 take -- he won't be able to take his position then as lead counsel and we also don't
19 underestimate the constraints that there are linked to going to the Democratic
20 Republic of Congo at a time which is perhaps not the best for his Defence team.

21 At the same time, the Chamber doesn't want to get mixed up in the organisation of
22 the working time of the Defence teams. This is all done late but we can't do anything
23 about that. We have just tried, as far as we are able to do, to facilitate everybody's
24 work through cooperation as envisaged under the Statute and the Rules of
25 Procedures and Evidence.

1 We would just like to point out there are a certain number of considerations that we
2 have been listening to with a certain degree of attention but the difficulties that there
3 might be in getting a witness to come, that's something that we're taking into account.
4 We mustn't forget that from the time that somebody does appear on a list of witnesses,
5 which is provided to the parties and to the Court, this witness normally has to be at
6 the disposal of the Court, rather than the Court being able to be at the disposal of the
7 witness. We have the feeling that the question of passports was one of the issues of
8 the VWU to deal with, so a certain number of points can be said, but I do think that
9 we have to really look at what we want to achieve.

10 Now, Counsel Kilenda, Professor Fofé, would you like to speak at 4.30 today, or
11 would you prefer to have time to speak tomorrow at 2 o'clock about the different
12 issues that we have addressed?

13 MR KILENDA: (Interpretation) Thank you. We think we can address all these
14 points today, so when Counsel Hooper has finished, if we could have the floor.

15 PRESIDING JUDGE COTTE: (Interpretation) Well, whatever happens we will be
16 back tomorrow to issue an oral decision with regards to the submissions of the
17 Prosecutor. Prosecutor? And then afterwards, we really must suspend because we
18 have reached two hours.

19 MR MACDONALD: (Interpretation) We would also like to take the floor, your
20 Honour, in order to give you clarification with regards to certain important points
21 with regards to the proceedings and also with regards to the Defence.

22 PRESIDING JUDGE COTTE: (Interpretation) Perfect. We are therefore going to
23 suspend and we will be back at 4.30, perhaps not for very long. The session is now
24 suspended.

25 (Recess taken at 3.58 p.m.)

1 (Upon resuming in open session at 4.32 p.m.)

2 THE COURT USHER: All rise.

3 PRESIDING JUDGE COTTE: (Interpretation) We shall now resume the

4 proceedings. Please be seated.

5 Mr Hooper, you were hit by the gong, so to speak, and you had to interrupt. Now

6 you may resume. You wished to speak to a few things, the number of hours, and

7 we've understood that the Katanga Defence team was not entirely opposed to the idea

8 of reducing the time, the 122 hours, despite the various recommendations from your

9 colleague. And you say, though, that number was a maximum and you deplored a

10 particular -- the joinder of the trial, but the joinder of the trial did occur and, in any

11 event, as I have said earlier, this trial is quite special. There are two accused persons

12 who belong to two different organisations and we must determine the exact specific

13 role played by each one of these people within each one of these organisations.

14 You mentioned a few difficulties in response to this announcement that there may be

15 a -- you say that there may -- you don't quite see the point of -- or the relevance of

16 having witnesses mixed together.

17 The Defence teams will be coming one after another and we will not be mixing up

18 witnesses in a hasty manner. Each team shall provide its own defence in its own

19 way. You also spoke of Jean Logo, and when he may give testimony. You also

20 reminded the Chamber that Mr Katanga has no obligation to give testimony, nor does

21 he have an obligation to make a statement.

22 You also said that certain witnesses may or may not be available and we may have to

23 run after them, so to speak. They may be in Kinshasa or Bunia, or elsewhere, and

24 you said it won't be an easy task. And, indeed, all parties and participants have

25 dealt with these difficulties in the past. You also mentioned passport issues, so that's

1 where we were. You may now proceed.

2 Professor Fofé may be speaking, the Prosecution, and also Ms Goffin and Ms Denis.

3 Mr Hooper, please resume, if you wish to do so.

4 MR HOOPER: A number of the matters, Mr President, you will know really were
5 only first discussed this afternoon. I'm not going to revisit, I think, the matters that
6 I've touched on already but I do so on the assumption that there will be time
7 tomorrow to revisit some of these issues after further reflection. I won't be here, but
8 Mr O'Shea will be dealing with those matters.

9 Let me, though, return just briefly so that you're more fully in the picture in respect of
10 Jean Logo's role at the moment. He's working with VWU at their and our request,
11 introducing witnesses to VWU and acting as the go-between, between us, the
12 witnesses and VWU.

13 We're hopeful that if we get statements, signed statements, that they will be done
14 through -- they will need translation into Swahili in at least six or seven cases.

15 Obviously, he has to be present. He's undergoing a course and still undertaking, I
16 should say, investigations, both into Prosecution witnesses, victims, and I say that
17 because when you consider the number of victims that we have altogether in this case,
18 and the sorry history of them, in our submission, it is a matter of concern that does
19 need looking at.

20 He also has a function that we hoped he was going to discharge, and that is in respect
21 of various loose documents, photographs and documents, that he can at the end of
22 our case provide the chain of custody in respect of that and deal perhaps with
23 particular matters that may have arisen in the course of the Defence evidence as well.

24 And we don't want to call him twice. In any event, he's not available to be called
25 because he's needed by VWU, and there's nobody else who can perform that role.

1 We've only one person in Congo.

2 In terms of the other matters, I stress this is not a joint Defence between Germain
3 Katanga and Mathieu Ngudjolo. One of the difficulties of appearance and public
4 appearance is that calling witnesses in a particular order may have a method about it,
5 but it directly affects the integrity of the individual case, and we strongly oppose it.
6 I don't know of any other trial at any of the various ad hoc institutions and, of course,
7 there's precious little precedent here, that has sought to melange the witnesses in that
8 way.

9 PRESIDING JUDGE COTTE: (Interpretation) Let us not speak of mixing up, so to
10 speak, we need to take some time to look at these matters and see the logic we are
11 trying to follow, but there is no question for the time being of mixing up or being a
12 source of confusion. I just wanted to make that point clear, to remind you of that.

13 MR HOOPER: All right. The problem is, perhaps, that appearances matter as well.
14 And I must stress, I don't know what Ngudjolo's witnesses are going to say. I don't
15 know. I think in a case like this, the nature of a case like this, it might be easy for
16 everyone, particularly outsiders, perhaps, to see this as a, in some way, a joint defence.
17 It is not a joint defence.

18 As I say, I'm not going to repeat and revisit matters. I hope these matters we will
19 reflect on them overnight, to some extent, obviously, other demands, but tomorrow I
20 hope we can address some of those matters.

21 I reiterate our concern about Germain Katanga having to disclose his position, other
22 than in good time, and good time in our submission doesn't arise now; it will arise
23 much more towards the end of what we hope is our unique, discrete defence and not
24 before.

25 So I think that's all I wish to say this afternoon. Thank you, Mr President.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. The
2 Chamber is entirely aware, entirely realises that a great deal of information and many
3 suggestions were made, and all the various parties and participants require some
4 time to take stock of this information and suggestions, and to reflect upon matters.
5 This is why we have provided for two status conferences.
6 And once we are entirely aware of -- well, we are now aware of your very demanding
7 schedule and your travels to the Congo tomorrow. The Chamber wanted you to be
8 able to attend at least one of these two status conferences, and you have been able to
9 make the initial position of your team known.
10 We do hope to obtain from your co-counsel tomorrow additional information about
11 the reduction in time, as much as is possible, because we need to make this very clear,
12 if you could please confirm whether, indeed, the arrival of Mr Logo is absolutely
13 impossible, as we had thought it might be. Please don't forget that if you come back
14 on the 16th, and if Mr Logo were called to give testimony not on the 21st but, rather,
15 on the 23rd, the Wednesday, familiarisation could be done if he were to go back with
16 you.
17 Clearly, once he is here, there would be no investigation, but sooner or later he will
18 have to pause. Mr O'Shea will speak to all of these issues tomorrow, but I think it's
19 important to have everything out on the table so that we know what we're dealing
20 with, because we will have to issue an order regarding witnesses and I am very much
21 aware of this concern about mixing up. We certainly don't want any mix-ups. The
22 two accused are side by side, but each accused person has his team. We're very
23 much aware of that.
24 Now, whether or not we should reveal the whole issue of whether Mr Katanga will be
25 testifying or not, perhaps Mr O'Shea will explore that area tomorrow - perhaps

1 not - but we have certainly taken note of your reticence and your questions in this
2 regard. Thank you, Mr Hooper.

3 Professor. Professor Fofé, you may proceed.

4 MR FOFÉ: (Interpretation) Good afternoon, your Honours. Thank you for this
5 opportunity to address the Court. I would like to begin by informing the Chamber
6 of our response to certain suggestions from the Chamber, and I will begin with the
7 discussion that has to do with the couple, D03-P-0100, D03-P-0110. P-0110.

8 Now, we have carried out our consultations, or we've conferred within the team and
9 with the accused person, and we think that we are in a position not to call P-0110.

10 Now, the second point that we would like to draw to the Chamber's attention is as
11 follows. It has to do with our resource person. We do not intend to call our
12 resource person. Third point, with regard to the expert, your Honours, I do believe
13 that you noted that this expert that -- no, rather, number 17, the document that sets
14 out the various issues or themes. This is a confidential annex. We have been in
15 touch with the three people in question who had begun some proceedings to be
16 placed on the list of experts here at the Court. Only a few hours ago, actually -- no,
17 actually, to be more specific, the day before yesterday, it was only then that names
18 were placed on the list of experts. And so consequently, at this particular stage in
19 the proceedings, we are not yet in a position to confirm to the Chamber that one of
20 these experts or the other will come to give testimony before the Bench. We cannot
21 provide such confirmation at this particular stage in the proceedings.

22 With regard to the number of hours for examination of our witnesses, once again, we
23 have listened carefully to the Chamber's suggestions and we think, reasonably
24 speaking, that the number of hours for each witness could be divided by two. It
25 could be divided by two. And we are open to the various observations from the

1 Chamber subsequent to this effort, subsequent to these efforts by the Defence .

2 As for the point that we consider to be essential - namely, the suggestion regarding

3 the order of appearance of Defence witnesses, as made by the Chamber - we believe

4 we are in a position to tell you, your Honours, with all due respect, that this

5 suggestion is difficult for us to consider, as our learned friend has just said.

6 Mr Hooper, you said and you, indeed, stressed that the two Defence teams are

7 distinct and separate entities. Each team makes its case in its own way. We have

8 selected our witnesses carefully - we have several - and we chose the witnesses in

9 light of the relevance of the testimony to the arguments to be presented by the

10 Ngudjolo defence team.

11 Now, during the appearance of these witnesses, I think you will see a form of internal

12 logic emerging with regard to this order of appearance, a certain logic shall emerge.

13 We are of the opinion, your Honours, that it would be a good thing if the Chamber

14 were to remain compliant with the orders that were issued on 1 December 2009, and I

15 make reference to instructions 1665, ruling 1665, particularly paragraphs 33 to 42.

16 These provisions are a good representation of the way that the Defence case should be

17 administered, particularly point (c), means of Defence, mention is made of

18 Mr Katanga's means and then the means of Mr Ngudjolo, and we are of the opinion

19 that these instructions are, indeed, relevant, and your Chamber's instructions have

20 been taken into account.

21 So there you have it, your Honour. That is what I wished to add in light of

22 Mr Hooper's remarks. I would also like to point out, and you made this point

23 yourself at the beginning of this status conference, some witnesses - three

24 actually - are being called by both Defence teams: D03-P-0011, our witness;

25 D03-P-0116 and D03-P-0140.

1 It can be reasonably hoped that in the case of these three witnesses, our team will be
2 in a position to examine them after examination-in-chief by the Katanga Defence team,
3 is that not so? So, after examination-in-chief by the Katanga team, we will be able to
4 move forward so that they will not have to travel twice to The Hague.

5 So there you have it, your Honour. I believe I've covered everything. And, of
6 course, Mr Kilenda and the other members of the team were monitoring my remarks.
7 I don't believe I've forgotten anything that is essential. Thank you very much, your
8 Honour.

9 PRESIDING JUDGE COTTE: (Interpretation) The Chamber thanks you,
10 Professor Fofé, for those additional items of information and the suggestions that you
11 provided, as well as the observations that you've just made. If you forgot anything,
12 in any event, you still have tomorrow to make additions to today's remarks.

13 The Prosecution. Mr Prosecutor, did you wish to address the Court? If so, please
14 proceed.

15 MR MACDONALD: (Interpretation) Thank you, your Honour. There are a few
16 points that I would like to touch upon with the Chamber but I'd like to start with one
17 last point that was just mentioned by Mr Fofé when he made reference to an expert.
18 Now, just to avoid any confusion, in light of correspondence sent to us by Mr Kilenda
19 yesterday, we were informed that the Defence team had made its decision and had
20 chosen one of the three experts, and on the basis of that, well, the choice had been
21 made.

22 So, I'd just like to know, has the Defence team taken one or two steps backward?
23 And furthermore, when we were informed, your Honour, that this expert had been
24 chosen, we cross-checked with witness Baccard, Dr Baccard, our own expert, to find
25 out a little bit more about this person's expertise, and he told us the following.

1 Indeed, this person is a specialist in weapons and ballistics, but his knowledge is such
2 that he has never examined any victims who have suffered gunshot wounds, because
3 he is not a doctor and he is not a forensics expert. So the Chamber may wish to
4 explore this in greater detail when dealing with point number 2 of this status
5 conference.

6 PRESIDING JUDGE COTTE: (Interpretation) I'll just interrupt you for a moment,
7 Mr Prosecutor. Now, it is true that when Professor Fofé spoke a few moments ago of
8 an expert and said that of the three people you had made an option, and that the
9 names were put on the list only two days ago and you weren't sure which one of the
10 three would be called, I really didn't ask the question again, the question that I had
11 asked at the very beginning of the status conference; namely, and exactly, what are
12 the grounds for insisting upon bringing in a ballistics expert?

13 In any event, if this expert were to give testimony on the three witnesses who are the
14 subject of expert testimony, I think you should tell us so tomorrow. That can wait
15 until tomorrow, so let us do so.

16 Prosecutor, please continue. Mr Macdonald, please proceed. Professor Fofé will
17 add further comments to explain the need for bringing this expert in. We will not go
18 into the qualifications of this expert. I think the Defence team, if they decide to bring
19 in this expert, they, of course, they will ensure that he has the necessary expertise,
20 because we would not want to waste any time, and Professor Fofé shall also explain
21 whether the expert will speak to one of these witnesses or three of them. So there
22 will be a bit of a challenge, so to speak.

23 MR FOFÉ: That was simply to take note of that obligation, Mr President, and we'll
24 come back to that tomorrow.

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

1 moving on to something else?

2 MR MACDONALD: (Interpretation) Still on that issue, I should have mentioned
3 it before. We work on the basis of what the Defence tells us, and we do appreciate it,
4 and we were told that it was to discuss all the reports on -- the expert reports of
5 Dr Baccard on Witness 287. Maybe tomorrow we will have clarification on whether
6 it will be on all the witnesses or only on 287, but I thought the issue had already been
7 decided upon. Your Honour, I would like now to move on to a few more points that
8 we believe are important for the Chamber.

9 To begin with, we have listened to the suggestions made by the Chamber. We are
10 fully aware that on several occasions the Chamber has made it a duty to remind the
11 parties and participants that we are driven by a duty of diligence. We are fully
12 aware of that and through the presentation of our evidence, using even less time than
13 the time provided by the Chamber we, the Prosecution, have always tried to work in
14 light of that obligation. I believe I have to slow down.

15 However, I think it is important to draw to your attention the fact that despite our
16 having received the names of the four detained persons one month ago, the
17 Prosecution feels that the disclosures, based on the decision of the Court recently in
18 an ex parte decision, there were issues regarding the disclosures of those four
19 detained witnesses. Let us look at the first of those witnesses.

20 PRESIDING JUDGE COTTE: (Interpretation) The common witness.

21 MR MACDONALD: (Interpretation) Yes, the common witness; I do not remember
22 all the numbers. We also interviewed those people and we also have OTP numbers
23 for them.

24 Now, the joint witness, for example, to illustrate, when we received that name,
25 I believe that in the DRC Ituri situation we have more than 25,000 documents, so we

1 started carrying out our research and since that time the Prosecution has reviewed
2 about 100 documents.

3 Many of them had already been disclosed, but we had to revisit them. That is just
4 based on the name of -- the names of that individual, first name, post-name, surname
5 and the various ways of writing that person's name. We had to review those
6 documents, some of which are just one page, but some of which are several pages.
7 Sometimes the name is just mentioned in a document in passing and it does not add
8 anything; in fact, most of the time that is the case, but we needed to do that,
9 Mr President, for the four witnesses. So we have to disclose about 19 or 20
10 documents this afternoon and in the coming days, tomorrow or Friday, we are going
11 to have to disclose additional documents.

12 I know that the Defence has claimed that we have enormous resources; however, the
13 people who are reviewing this information are members of the Prosecution team in
14 this particular case, because they are the ones who know the facts and who know
15 what is relevant or not for the purposes of disclosure. And, in the final analysis, I
16 have to look at the documents that are relevant for disclosure. I am the one who is
17 finally responsible for the decision that has to be taken. This necessarily takes a
18 certain amount of time.

19 For the four people concerned, I would like to inform the Chamber that there are
20 seven documents under Article 403. The decision was notified to us yesterday. We
21 do not believe that it will cause problems regarding the lifting of restrictions, but we
22 have to follow up the file in order to possibly disclose those documents.

23 While we are doing that, your Honour, we also have to prepare our
24 cross-examinations for witnesses who are very important.

25 THE INTERPRETER: Interpreter's correction, it was Article 543.

1 MR MACDONALD: (Interpretation) It is true that we have interviewed these
2 witnesses, but it was along time ago. That was more than three years ago, and
3 specifically four years ago, based on the knowledge of the case that we had at that
4 time. But apart from the themes on which those witnesses will testify to we have no
5 idea, in light of the number of hours devoted to them, even if they have been divided
6 by two, we have no idea of the rest of what that witness will talk about.
7 We have a concern to proceed with diligence, but we also need to do our work well.
8 We need to prepare adequately and we need to avoid improvisation during the
9 cross-examination, because there is no place for that.
10 Also, when we received the themes, we have to investigate them we have to
11 cross-check, because we have a duty towards the Chamber to support it in its work
12 for the ascertainment of the truth.
13 I will give you an example: Witness 269, we had the case of that witness and the
14 famous school identity as well as the circumstances under which that card was issued
15 for the purpose of the case.
16 That said, in light of your comments on page 4 of the transcript of the previous
17 session, for the four detained witnesses you stated that the information may be little,
18 and that it is the obligation of the Defence to provide additional information. We are
19 going to receive that information on Monday, 2 p.m. noon.
20 Also, I should like to point out that there are four detained witnesses that are going to
21 come. I fully understand the concern of the Chamber to proceed with those
22 witnesses as a matter of urgency, but on Monday the Prosecution will also receive
23 additional information for other witnesses.
24 Despite the fact that the Chamber has stated that there are common categories for
25 Defence witnesses, we cannot analyse those testimonies in a vacuum. Those

1 testimonies are part of the body of the evidence, but we are aware that those
2 testimonies can be put in the specific categories that you have identified.
3 Furthermore, the Chamber has proposed a variation of the order of appearance of the
4 witnesses. This necessarily has an impact on the preparation of the Prosecution. At
5 this particular time, we could have made assumptions regarding the list of
6 Defence witnesses, but right now we do not know.
7 On Friday we received that notification, and ever since then we have been working on
8 the issue every day. Right now, we have to carry out research under our system in
9 order to decide on the documents that have to be disclosed or not, and which are
10 relevant for the cross-examination of the Prosecution, and also to carry out research in
11 the field, if necessary.
12 The Prosecution needs the necessary time to prepare ourselves without coming back
13 to decision 388 -- 2388, but it is also certain that in the light of the proposed changes,
14 the requests for admissibility and the additional information that we are going to
15 receive, in all fairness, and out of respect for the spirit underlying the Chamber's
16 decision, we need to have a reasonable amount of time to prepare ourselves.
17 I do believe that Mr Hooper was probably indirectly making that request, even
18 though not in as many words but, given the number of hours and number of
19 witnesses proposed, it is my submission that, in the light of the new elements that are
20 going to be provided on the 14th, and taking into account the logistical difficulties
21 mentioned by Mr Hooper, the analysis and disclosures, and considering the little
22 information received by the Defence, we would need one week. I believe it is not
23 excessive, it is reasonable, and it is also reasonable for us to begin with the four
24 detained witnesses. We begin with the common witness and continue with the
25 others.

1 I believe that if we look at the totality of the proceedings so far, and what is to come, it
2 is not those five days that will prejudice our duty of diligence.

3 Mr President, those were the main points that I wanted to mention to the Chamber
4 today. When you are going to withdraw, I believe you are going to sleep on it, but I
5 also believe that you should also bear in mind the points that have been raised by the
6 Prosecution and that is because the objective of the Prosecution is to proceed, to be
7 ready, and to avoid any delays so that we should start off on the right footing.

8 And to conclude, this is something I wanted to come back to, I would like to talk
9 about the issue of admissions. Frankly, we are surprised by the request made by the
10 Chamber. And why is that so? Unfortunately, I do not have the number of the
11 filing on this issue, but I remember that it was about May 2009 we requested from the
12 Defence - and I believe that we even informed the Chamber by submitting an annex
13 of all the proposals that the Prosecution had presented to the Defence - and there
14 were columns in which they could indicate whether they accepted or not, but that
15 was during the presentation of the Prosecution case, and at that time it was up to the
16 Defence to accept the proposals of the Prosecution, or not.

17 Certain issues were disputed, but if the Defence go back to those issues in light of the
18 case that has been presented so far, they can review those decisions and decide
19 whether they are ready to admit those facts, but the Prosecution does not feel that it is
20 up to us to come back to that exercise right now. If we have to do the job well, we
21 will require additional resources because we will have to go back to all the testimony
22 and to look at all the themes, certain themes that we are going to be provided with
23 only on Monday.

24 The Prosecution is making a suggestion here, a proposal. Maybe the Chamber can
25 reflect on it. You have made a request and you asked us to comply by 30 March, but

1 we believe that the Chamber can review this point. I believe that we are at a stage
2 where it is up to the Defence to request the Prosecution to agree to admission of facts
3 because it is the presentation of the Defence case.

4 Be reassured, your Honour, that the Prosecution is prepared to accept many facts for
5 purposes of diligence, but it is incumbent on the Defence to tell us which facts those
6 are. In fact, when Mr Hooper was talking about the variation of the order of
7 appearance of witnesses, he referred to the very little information or inexistent
8 information of Defence witnesses.

9 I believe my main point is to say that it is difficult at this stage for the Prosecution to
10 propose admissions. It is up to the Defence. And I would like to reassure you,
11 once again, it is clear that we are open to proposals.

12 The issue of the credibility of witnesses, for example, it is up to the Chamber to make
13 a ruling, but regarding factual and historic facts related to Beni, Kinshasa and others,
14 the Prosecution is very much open to any proposals and to any possible agreements.

15 I have not looked at the admissions that we proposed, but there were some of them
16 on those themes. Even if it concerned only the presence of Ugandans in Bogoro or
17 not, maybe those issues are different from one team to the other. I had made a
18 statement on that issue and I would like to reiterate that we are prepared to reach
19 agreements.

20 I was a bit too long, your Honour, and thank you for having listened to us. I believe
21 that it is important, we need to start off on a good footing for this second phase of the
22 trial, which is just as important as the Prosecution case. And those witnesses can be
23 exculpatory or incriminatory. They can even provide testimony that can actually be
24 incriminating, and it is our duty to identify those elements and for that we need to be
25 prepared. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor.
2 Before giving the floor to Ms Denis or Ms Goffin, if they wish to take the floor, at the
3 end of this status conference I would like to point out that the purpose was to allow
4 all the parties to express themselves, and you have already done so at great length.
5 That is a very good thing.
6 The Chamber would also like to tell you that that respect of the obligation of diligence
7 that have been frequently referred to is only the implementation of a legal obligation
8 pursuant to Article 64, which stipulates that the Chamber should ensure that
9 proceedings are carried out diligently. No jurisdiction can be satisfied with seeing
10 accused persons detained provisionally for too long, and it is for that reason that we
11 would try to ensure that that obligation of diligence is respected, even if that requires
12 very serious efforts on your part, including the Prosecutor, Defence counsel and legal
13 representatives. Whichever the country, and particularly in an international
14 criminal jurisdiction, the trial has to be as short as possible. So, when we are talking
15 about diligence, it is not an assumption, it is a reality.
16 The Defence of the two accused persons has to be carried out in the best way possible.
17 We have to be sure about that. But the two accused have to know their fate one day
18 or the other. We have to remember that the instruments governing us include
19 regulations that, amongst other things, make it possible to regulate the order of
20 appearance of witnesses, the duration of the questioning, and this means that the
21 Chamber's proposals today were simply in compliance with the texts governing this
22 Court.
23 However, we have listened keenly to your observations - we are going to listen to
24 others tomorrow - and this concerned the reduction of times for the examination of
25 Katanga's witnesses, the possibility of hearing witness Mr Logo from the week of the

1 21st, and if it turns out that it is not possible for us to sit during that week so as to
2 allow all the parties to be better prepared, we will tell you, and then we will begin
3 with the four detained witnesses. So the purpose was just to clarify all that.

4 Ms Denis, do you have any comments? Ms Goffin, please.

5 MS GOFFIN: (Interpretation) Thank you, your Honour. I do not want to come
6 back to the issues that were discussed by the two Defence teams, except to say that a
7 variation of the order of appearance of witnesses also has an impact on the legal
8 representatives regarding their preparation. However, I wanted to seize this
9 opportunity to briefly revisit the issue of agreements on evidence and admissions.

10 I would like to point out to the Chamber that the decision number 2681 which was
11 recently handed down was within the framework of an ex parte proceeding that we
12 were not a party to, and we believe that the Chamber was of the opinion that the legal
13 representatives should have access to such documents in order to participate usefully
14 in the proceedings. And so we are requesting access to those documents. And we
15 also would like to know why that ex parte -- those ex parte proceedings were carried
16 out.

17 The Prosecutor also talked about ex parte proceedings regarding the four detained
18 witnesses, and we do not have access to the documents relating to that. And in light
19 of what has been said, I would like to reassure our learned friends on the
20 Defence teams that the legal representatives are fully aware of their role of the
21 proceedings and our wish is simply to be in a position to that enables us to follow the
22 proceedings but also to participate in the proceedings in a useful manner, in the
23 interests of the trial and diligence. Thank you.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Ms Goffin. I did not
25 note the ex parte decisions that you referred to. I do not know whether it is in the

1 transcripts. Maybe the lists are in the documents; otherwise, you will need to notify
2 us of the specific discussions that you would like to have access to.

3 Before giving the floor to the Defence teams, we are in a status conference, but they
4 always have the right to have the last word. But before we do that, we would like to
5 summarise the facts.

6 The Prosecutor talked about the proposed changes. We simply want to point out
7 that last November, and on several other occasions, possibly last July, and even from
8 the very first status conference that we organised at the end of November 2008, I said
9 a short while ago that it was not an oversight on our part, but if it turns out that a
10 certain number of facts are no longer disputed, we will be able to focus on the core
11 issues, particularly the issue of the liability of the two accused. So we will not hand
12 down any ruling regarding who will take the initiative; we believe that both the
13 Prosecution and the Defence teams are mature enough to be able to take decisions
14 and make observations to the Chamber.

15 Mr Hooper, do you have any observations before you take your flight to the DRC?

16 MR HOOPER: Not many. The first one is that we'd emphasise, in summary, what
17 we submit is the right of an accused to freely agree whether to give evidence in his
18 own case, on his own behalf or not, in the light of all the evidence. And perhaps
19 that's even more important on a scheme such as this where the defendant gives
20 evidence after all the evidence, including that for co-accused. But those matters will
21 again be addressed I anticipate tomorrow by Mr O'Shea.

22 Secondly, I did say this kind of scheme has never been done before. Of course, I'm
23 aware that Mrs Margaret Thatcher used to say the fact that a thing has not been done
24 before is a very good reason often for doing it, but I don't always agree with that
25 political standpoint. And I say this because it was a surprise to us, but I want to

1 assure the Court that we will go away and approach this with an open mind and look
2 at that and come back, as you know we will, tomorrow to address it.

3 And what I'd hope is possible is if such a scheme is to be followed, that it's done
4 consensually with the Defence, as opposed to being imposed upon us. And I suspect
5 there that there is room here, I can see the obvious logic that lies within such a scheme
6 and, for our part, you know, our anxieties about some of its implication and we will
7 come back to that tomorrow.

8 We're not going to get a great opportunity to discuss things, because there are various
9 things that are going to take place in the next few hours, but -- and we will be on a
10 plane much of tomorrow, so it's difficult to liaise with the rest of the team, but I'm
11 sure if there are any shortcomings in that regard they will be brought to your
12 attention tomorrow, but -- and that's all. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel Hooper.

14 Without it being essential to mention Margaret Thatcher, for whom we have the
15 greatest respect, of course, because she has affected part of our professional lives, we
16 are very much aware that the Defence is always willing to show its goodwill. We
17 take good note of that.

18 You know that when the Chamber intends to decide, it decides. But every time that
19 it can reach consensus it tries to achieve that. So we are very pleased to hear that
20 you have an excellent co-counsel who tomorrow, in a very short way, shall present
21 the fruit of your reflections to us and we will take the greatest possible account
22 thereof.

23 But we would wish you a very profitable trip to the DRC, useful for Katanga as well
24 as the Chamber. Counsel Kilenda.

25 MR KILENDA: (Interpretation) Thank you, your Honour. Tomorrow, Professor

1 Fofé shall go back to the case of the expert with greater precision such as to shed light
2 on that for the Chamber. But I would just like to refer to the agreements with
3 regards to the facts just to say that we haven't heard the proposal of the Prosecutor in
4 order to take initiatives, the 21st of February, we had taken one initiative which was
5 not accepted but we're not going to be discouraged by that, we are going to go back to
6 the Prosecutor, and if he comes back, for example, three witnesses won't come.

7 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda, you are
8 appreciated by the Chamber. You shall force me to give him the floor back.

9 MR MACDONALD: (Interpretation) But I am going to mention in this case the
10 credibility of the witnesses. Well, it's up to the Chamber to decide. When it comes
11 to the presentation of the evidence of the Defence, for example, when it comes to the
12 admission that a witness has lied, the bed has been made, our case is there.

13 We have also mentioned our position with regards to 159. Things are clear.

14 Having said this, if we come to facts, questions which are factual, whether they are
15 historic or others, contextual with regards to responsibility, well, this is something
16 that can be done, but with regards to the credibility of the witnesses, this is up to the
17 Chamber to decide on that.

18 PRESIDING JUDGE COTTE: (Interpretation) I shall give you the floor back,
19 nevertheless, to you Defence teams. Do you have any observations to make after
20 this last exchange on the part of the Prosecutor? No?

21 MR KILENDA: Well, the Prosecutor, your Honour, you know very well; he decided
22 not to base himself on the statement of a witness and it was in this sense that we, in a
23 clear way, have tried to obtain his agreement with regards to the facts. We're not
24 going to define what a fact is here. We're not going to define the facts but there are
25 agreements with regards to the facts and I can confirm to you that if he accepts then

1 three witnesses won't come. That's it.

2 PRESIDING JUDGE COTTE: (Interpretation) Very well. We shall remain with

3 that. And it's all been pointed out to us that we are speaking far too quickly and we

4 have to slow down.

5 Thank you very much to those who have assisted us, interpreters, court reporters, and

6 technicians as well, and everyone else. We shall be back at 2 o'clock for the status

7 conference. This status conference is now suspended.

8 (The hearing ends at 5.37 p.m.)

9 CORRECTION REPORT

10 The Court Interpretation and Translation Section has made the following correction

11 in the transcript:

12 *Page 10 line 24

13 "...the witness's ethnic origins or religion." is corrected by "the witness's ethnic

14 origins or profession."

15