

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 Thursday, 10 March 2011
10 (The hearing starts in open session at 2.01 p.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Now, the accused are
13 with us. Good afternoon, gentlemen. Good afternoon, everyone.
14 Before resuming the status conference, which it is in many ways a working session, the
15 Chamber wishes to respond to the application from the Prosecution regarding
16 submissions from the two Defence teams, and this is regarding Ruling 2388 of
17 14 September 2010 regarding implementation of Rule 78 and 79(4). In a ruling dated 17
18 September 2010, and in order to ensure that the trial runs smoothly and effectively, the
19 Chamber ordered the Defence teams to disclose to the Prosecution 15 days - at least 15
20 days before the beginning of their case - either the statements from witnesses that they
21 were planning to call or a summary of the main points touched upon by each witness in
22 his or her statement.
23 The Chamber specified that these summaries will include a description of the facts that
24 each witness will speak to, as detailed a description as possible, including any information
25 that is relevant that the Defence has regarding the situation and the

1 personal background of the said witnesses.

2 In filings 2756, 2759 and 2760, dated 4 March 2011 and 7 March 2011, that is to say within
3 the deadlines set by the Chamber, the two Defence teams did carry out this disclosure.
4 They decided to file summaries, thus complying with this requirement, although I will be
5 making a number of remarks in this regard.

6 Now, on 8 March 2011, the Prosecution brought Application 2763 before the Chamber,
7 stating that the summaries provided by the two Defence teams were not exhaustive
8 enough, in light of the level of exhaustiveness required by the Chamber in its ruling on
9 Regulation 78 and 79(4) dated 14 September 2010.

10 Furthermore, the Prosecution said that the summaries spoke of various themes, or topics,
11 but did not contain an actual description of the facts and thus the Prosecution would not
12 be able to prepare their cross-examination.

13 The Prosecution asked for a more fulsome disclosure and that the testimony of the first
14 witness be scheduled two weeks after this second disclosure.

15 During a status conference called to prepare for the Defence case - a status conference held
16 yesterday, on 9 March 2011 - the Prosecution made oral remarks maintaining their
17 position. The Prosecutor particularly stressed and made reference to paragraphs 59 and
18 60 of the decision of 14 September. He particularly stressed the need to receive more
19 information about the background of the witnesses as quickly as possible.

20 The legal representatives of victims also said, basically, that some of the summaries
21 provided were not complete enough, in their view, and that it would be a good idea, in
22 their opinion, to have additional information, particularly about the profession and the
23 ethnic origin of witnesses. The legal representatives also said that some of the summaries
24 seemed to be redundant.

25 Both Defence teams reminded all that the ruling of 14 September 2011 provided a choice

1 for them, an alternative; either they could opt for disclosing statements or disclosing
2 summaries. The Defence teams stressed that they did all they could to comply with this
3 requirement as properly as possible.

4 With regard to the complaint to the effect that the summaries were not exhaustive
5 enough, the Chamber stated during the status conference that we, too, had noticed, after
6 reading the summaries disclosed, that the various facts set out in some of these summaries
7 were scanty and that more information would be a good thing, and that was the case in
8 particular for the summaries from the Ngudjolo Defence team regarding witnesses
9 D03-P-0044, D03-P-0066, D03-P-0077 and D03-P-0480. Today the Chamber wishes to
10 stress that during the status conference held yesterday, Mr Kilenda agreed to flesh out
11 these summaries.

12 Secondly, the Chamber stated yesterday that we had noticed that, with regard to the
13 Katanga Defence team, the summary provided for Witness D02-P-0196 was exactly the
14 same as the summary for Witness D02-P-0192.

15 Thus, it is necessary to receive more information so that all parties will be able to
16 determine whether one of these two witnesses might be in a better position to provide
17 more information than the other, or different information, one from the other.

18 The Chamber also noticed that the situation was -- might be much the same for two other
19 witnesses, D02-P-0155 and D02-P-0259.

20 Today, the Chamber wishes to note that during the status conference that was held
21 yesterday, Mr Hooper said that he was willing to provide the additional items of
22 information. Thirdly, with regard to the four witnesses who are currently in detention in
23 the Democratic Republic of the Congo, who will be appearing at the request of Germain
24 Katanga. Now, please note that one of these witnesses has also been called by the
25 Ngudjolo Defence team.

1 In regard to these four witnesses, the Chamber has also noted that although the
2 summaries do contain some details about the fact, particularly what these witnesses are
3 expected to say, further -- more information could be provided so as to have a more
4 balanced and more useful discussion.

5 The Chamber also saw yesterday, during the status conference, that both Defence teams
6 did not make any objections in this regard.

7 Four: With regard to the request to obtain more information about the profession and/or
8 the ethnic origin of witnesses, as well as information about their backgrounds, the
9 Chamber took note yesterday that the Defence teams did not make any objections in this
10 particular regard.

11 Thus, the Chamber wishes to confirm that the deadline that was set during yesterday's
12 meeting, and we request that the two Defence teams provide this additional
13 information - additional information just mentioned - by Monday, 14 March 2011, at noon
14 at the latest.

15 Furthermore, as the Chamber clearly stated yesterday, we wish to confirm once again that
16 if the Defence teams believe that they are in a position to provide both a statement and a
17 summary for some witnesses, thus going beyond the requirements found in the ruling of
18 14 September, they should do so as quickly as possible, making all possible efforts to carry
19 out this disclosure.

20 Thus, as we said just before reading out this ruling, we will resume our working session
21 which we had to set aside yesterday, or postpone yesterday. We will begin with remarks
22 from Mr O'Shea, and then the Ngudjolo Defence team will be following on.

23 I believe that the simplest way of going about things would be to do what we did
24 yesterday, that is to say, first Mr O'Shea on the reduction in the number of hours.

25 Mr Hooper said yesterday that you would be thinking about that in a relatively short

1 period of time, that short period of time between yesterday afternoon and today, early
2 afternoon. We remind you that, thanks to the transcript, we have been able to confirm
3 our memories, particularly page 28 of the French transcript. Mr Hooper hinted that a
4 reduction in the number of hours was possible, or could be considered, and page 29, line
5 1, he even stated that his team would think about whether it might be possible to reduce
6 the number of witnesses as well.

7 Once you make your observations on the reduction in the number of hours, we will ask
8 you to continue your thoughts, the thinking that you began yesterday, and please tell
9 us -- or perhaps you even have suggestions about the possibility of grouping a number of
10 witnesses, bringing them together, witnesses that you would like to call and those that the
11 Ngudjolo team would like to call.

12 This would allow the Chamber to have as much information as possible from you and
13 then the Chamber will be able to make the best possible ruling in light of Regulation 43 of
14 the Court. Mr O'Shea, please proceed.

15 MR O'SHEA: Yes. Good morning, Mr President, your Honours. I will address the
16 two issues which you have just highlighted, starting with the question of the number of
17 hours allocated to the Defence witnesses for Mr Katanga.

18 Indeed, there's always a degree of artificiality in this exercise of trying to predict the
19 length of witnesses, and we appreciate that and we know the Chamber appreciates that.

20 As Mr Hooper said yesterday, it was a matter on which there had been internal discussion
21 within the team, in any event, and we have reflected on the matter over night and we will
22 continue to reflect on the matter as things progress.

23 My understanding is that on our original estimates we were looking at a totality of
24 122 hours for all the witnesses. Without me going into precision witness-by-witness I
25 will give you a new total number, which I hope will provoke a smile on your face, and

1 that number would be 90 hours.

2 So on the basis of our review of the witnesses over night and in the light of what your
3 Honours have said, also taking into consideration with regards to the common
4 witness - the fact that there will be two teams questioning those witnesses - we have
5 managed to come up with that figure which we believe is a reasonable estimate at this
6 stage of the proceedings.

7 It could be further modified as we progress, seeing how -- you know, how the trial
8 progresses but I hope that on that particular score we've managed to satisfy your Honours
9 that we've tried hard to meet your Honours' expectations.

10 On the second matter, and I will have good news and bad news today - and I'm just glad
11 that I start with the good news on both scores - on the second issue of the overlapping
12 witnesses, I won't use the word "melange," which Mr Hooper used yesterday, I will use
13 the word "overlapping." On the question of the overlapping witnesses, as an option, it's a
14 very difficult thing for a barrister from the English jurisdiction to contemplate. It really
15 goes against the grain of what we're used to and, indeed, in what we've seen in national
16 and international jurisdictions.

17 However, we did keep a promise to your Honours that we would look at this document
18 very carefully. Recognising that your Honours have obviously put some time and
19 thought into it, it deserved time and thought on our part. For my part, I can certainly see
20 that your Honours have made a great effort to see how the trial can be run in a logical
21 manner and how the witnesses can succeed in each other in a way, which is going to assist
22 your Honours to understand the evidence and to follow the evidence in the most coherent
23 manner possible.

24 I congratulate your Honours in your ability to synthesize the information which was
25 provided to you in this respect, and we understand that. We do hope, of course, and I

1 assume - I think correctly - that from your Honours' point of view this is a proposition
2 that your Honours understand, that the order of the witnesses is primarily a matter of
3 discretion for the team because there are matters which your Honours will not know
4 about, which have to be taken into account, such as Defence strategy, such as the amount
5 of time spent on one theme or another.

6 Perhaps the summaries do not always tell the full story of how significant each of the bits
7 of the summaries are. Also, of course, there are practical considerations that we are
8 aware of that your Honours might not be and so, for those reasons, we would of course
9 invite your Honours, as I think your Honours have done in any event, to allow us the
10 primary discretion with regard to the order of our witnesses.

11 Looking at the proposition which your Honours have put forward, we are at this stage,
12 having imagined that we are sitting on a beach with the sun shining and expanding our
13 minds over the issue, we've managed to accept that this could be a workable solution,
14 what your Honours have proposed.

15 I say that within the context of a principle that we see as a basic principle, which we think
16 is reflected in the jurisprudence, the principle that an accused in a single trial will be
17 treated in the same manner as an accused in a joint trial or, in this case, an accused in a
18 joint trial will not be prejudiced by virtue of the fact that he has been joined.

19 So within that frame work we think that we can at least consent to this notion which your
20 Honours have put forward with some, if I may use the French term "à ménagement." As
21 I said, there are certain practical considerations that we need to take into account, and I
22 think what I will do is I will allow your Honours to come back to me on the specifics of
23 those practical considerations, so that I don't talk too long right now.

24 Basically, there are certain witnesses we have to take into account their personal
25 considerations and their particular situations, and then there are other witnesses for

1 which we have Defence preparation concerns.

2 The witnesses for which we have Defence preparation concerns are, first of all, the
3 investigator, Jean Logo, and we will discuss that later, I think. Secondly, the witnesses
4 relating to the credibility of Witness 267. And thirdly, Witnesses 134 and 136. So when
5 the opportunity arises, I will come back to your Honours with the details of those
6 difficulties and also my proposed solution for it.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea. You'll have to
8 provide us with more information. First of all, with regard to the number of hours, we
9 heard what you said and there may be a bit of a smile on my lips. You speak of calling
10 witnesses and hearing them over 90 hours, but you did provide one reservation and you'll
11 have to explain that.

12 You said that that number could change as the trial progresses. We realise that is always
13 a bit of a theoretical exercise, determining the number of hours, but we have set a rule for
14 ourselves; namely, that we set this during the Prosecution's case. This rule has to be
15 followed quite carefully.

16 So I think everyone has to realise that once the Chamber makes a decision about the
17 number of hours granted to each Defence team, this is a decision that, unless something
18 totally out of the ordinary occurs, this should not lead to any extension over that initial
19 number of hours.

20 As for the common witnesses, or this possibility of overlapping testimony, I would like to
21 make sure that I've understood properly. In a few moments you can respond - not in a
22 few days, we need the information now - so that we can issue an order setting out the
23 conditions in which the presentation of the two Defence cases will be done. You'll have
24 to get back to me on this point during the actual conference.

25 MR O'SHEA: Yes. There are quite a number of details that I need to come back to,

1 because we also and WVU also needs clarification on certain details. I just thought it
2 appropriate to give your Honours the broad-brush reaction to begin with and, perhaps, let
3 other people speak before I go into the precision, because the precision, you know, may
4 take a few more minutes to explain.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well. And let me be clear that we
6 would like to ask you to give us your position, if you have perhaps modified it or
7 fine-tuned it, on the possible appearance of Mr Katanga as a witness.
8 Yesterday we understood, thanks to the very useful discussion that occurred, that
9 Mr Katanga was in no way obliged to give testimony, and he did have the opportunity to
10 make a statement, and that you were expecting -- and you wrote this, you were keeping
11 the option open, and that you might call him as a witness depending on how the
12 testimony of the various witnesses unfolded.

13 We understood that there was a difficulty that would have to be looked at more closely,
14 and if you could provide us additional information in this regard on your position that
15 will be most useful, once again, so that we can glean as much information as possible, so
16 that we will be in a position to issue a ruling that will be legally well-founded and also
17 acceptable to all of you.

18 MR O'SHEA: Yes, Mr President. There are two issues that you opened up these
19 proceedings with, which I have directly addressed, one is the number of hours and the
20 other is the question of the overlapping witnesses. There are, of course, two other
21 questions, the third which is interrelated with the second. The two other questions are,
22 first of all, the order of the witnesses, the precise order of the witnesses - which requires
23 me to give a little more detail - and then the other issue is the question of the testimony of
24 Mr Katanga, which requires me to give a bit of explanation as well.

25 PRESIDING JUDGE COTTE: (Interpretation) Let us be very clear, in a few moments

1 you will be talking about the possible appearance of Mr Katanga or legal issues that you
2 see -- you were asked yesterday to provide us with notice today, and then you shall
3 discuss the possible arrangements - the *à ménagement* - that could be made, for example,
4 the witnesses who will attest to credibility of 267. You also mentioned 134 and 136.

5 You also mentioned Mr Logo and his situation.

6 If, for reasons that you set out, he is not in a position to come and testify first, we will have
7 to determine which witness will lead off, and we'll have to make sure that that person is
8 on standby. So please go over these points, one-by-one, in a few moments.

9 We'll now ask Mr Kilenda, Professor Fofé, or the two, to address the Court, and we'll ask
10 them if they have anything else to tell us, anything in addition to what we heard from
11 them yesterday.

12 MR FOFÉ: (Interpretation) Good afternoon, Mr President. Good afternoon, your
13 Honours. Our team believes that we are in a position to give the Chamber two series of
14 clarifications:

15 First of all, the proposal by the Chamber on the order of appearance of the Defence
16 witnesses, and secondly, the issue relating to the appearance of an expert witness.

17 I will begin by the Chamber's proposals relating to the order of appearance of Defence
18 witnesses. Yesterday, we touched briefly on our position regarding this matter, and I
19 would like to give you a more detailed response in three parts. To begin with, when we
20 analysed the Chamber's proposals, we realised that there is no problem regarding Witness
21 D03-P-00 --

22 PRESIDING JUDGE COTTE: (Interpretation) And we will refer to him as "the common
23 detained witness."

24 MR FOFÉ: (Interpretation) Yes, indeed, Mr President, that is when it comes to that
25 common detained witness. There is also no problem when it comes to Witness

1 D03-P-0236. The same applies to Witness D03-P-0340.

2 PRESIDING JUDGE COTTE: (Interpretation) So as to understand well, the first case is
3 the father of 279, and secondly, the father of 280.

4 MR FOFÉ: (Interpretation) That is indeed correct, your Honour. That was the first
5 point. That is the point of agreement.

6 The second point relates to the problems that the Defence would have with the other
7 proposals of the Chamber. Witness D03-P-055, as well as witness D03-P-0100,
8 D03-P-0125, and the others; that is D03-P-0410, P-0505, and all the others, 033, 44, 88, 22,
9 99, 66, 77, 480, and 707.

10 Before I continue, I would like to point out that D03-P-0110 was withdrawn yesterday by
11 the Defence, so this second series of witnesses raises a problem for us, your Honours,
12 because if we proceed in the manner that has been proposed by the Chamber, there is a
13 risk of a regrettable gap, or disruption, of the presentation of the Defence case of Mathieu
14 Ngudjolo.

15 The fact of the matter is some witnesses will speak to several aspects of the Defence case
16 of Mathieu Ngudjolo, and I will give you examples. Witness D03-P-055, this witness is
17 not coming only to challenge the testimony of 250, he will speak to other issues. That
18 was just an example.

19 I would also like to stress, and that is probably the last point, that is point 3 of that first
20 question, I would like to stress that the strategy of our Defence team is not necessarily the
21 same as that of Germain Katanga's team. Each Defence team has its own strategy. In
22 the final analysis, and in a nutshell, we are insisting on the fact that the two accused are
23 distinct, and you're fully aware of that, your Honours, and that Mathieu Ngudjolo has the
24 right to present his case fully and distinctively.

25 We therefore pray the Chamber to implement rigorously and faithfully its decision 1665 of

1 1 December 2009, of which paragraphs 33 to 42 govern the presentation of the Defence
2 cases. That was what I had to say about the first issue, your Honours.

3 I do not know whether the Chamber would prefer that I continue with the second issue,
4 or whether we have to discuss the first issue first of all. I am at the disposal of the
5 Chamber.

6 PRESIDING JUDGE COTTE: (Interpretation) Please proceed with the expert witness, if
7 you wish.

8 MR FOFÉ: (Interpretation) Thank you, your Honour.

9 Mr President, your Honours, as you very well know, the process of calling an expert
10 witness is different from that of calling an ordinary factual witness. A party cannot be
11 certain of producing an expert witness unless that party has already received and
12 analysed the expert report. It is only after that that the party can objectively determine
13 whether it is necessary to call the witness before the Chamber or not.

14 Yesterday, we explained to the Chamber that the three expert witnesses who were
15 considered by the Defence were registered on a list of experts of the International
16 Criminal Court only on Monday, 7 March 2011. It is for that reason that in Annex 2
17 confidential of our filing 2756 of 4 March 2011, at point number 17, we mentioned three
18 names.

19 The next stage of that process would involve approaching one of the three experts who
20 fulfils all the conditions necessary to faithfully produce the challenge to the conclusions
21 reached by the Prosecution expert regarding witnesses P-132, P-249, and P-287.

22 Regarding the relevance of that contradiction or challenge to the expert evidence, we
23 would like to remind you, your Honours, of our application number 2141 of 28 May 2010.
24 In paragraph 5 of that application, we stated as follows, and I quote: "By this application
25 the Defence is requesting a decision of the Chamber designating an expert in ballistics and

1 forensic medicine, or two experts, one an expert in ballistics and another in forensic
2 medicine, for the purpose of analysing the forensic reports produced by Witness P-288.
3 Following the various audiences, the hearings of Witness P-418, would happen on the
4 date to be fixed by the Chamber, to give an opinion on the expert reports produced by
5 that Prosecution expert witness."

6 And in paragraphs 10 and 11, we make the following submission, and I quote once again:

7 "In light of those additional reports, the Defence has certain questions relating, amongst
8 other things, to the reliability of the report. The Defence would like to know, for
9 example, the reasons why Dr Baccard wrote his forensic reports on Witness P-287 when
10 he did not have with him the x-ray of the knee that was commissioned by himself.

11 The Defence is also wondering whether it is possible for someone to carry around for
12 several years splinters of a bullet in her body without running any risk for losing their
13 lives. And paragraph 11, and I quote, "In the opinion of the Defence, such issues - just
14 like all the other operations carried out by Dr Baccard on the three witnesses by the
15 witness in question - deserve to be examined by another objective expert who would be in
16 a position to tell the Chamber, the parties and participants, the medical/legal observations
17 made and give observations on the conclusions made by the Prosecution expert witness."

18 Our application was based on Regulation 44 of the Rules of the Court.

19 In answer, the Chamber handed down its oral decision during the hearing of 23 June 2010,
20 which is included in transcript 160-Conf, French, 23 June 2010. And I will repeat, because
21 I can see the Prosecutor has certain difficulties.

22 In answer to that Defence motion, the Chamber handed down an oral ruling in the
23 hearing of 23 June 2010, and that is in transcript number 160-Conf-FRA-ET, 23 June 2010,
24 page 1, lines 14 to 25, pages 2, 3 and 4, as well as page 5, line 1.

25 At point 8 of that decision, you stated as follows, Mr President, your Honours, and I

1 quote, point 8: "The Chamber is of the opinion that the continuation of his
2 cross-examination by Mr Kilenda will make it possible for him to obtain all the
3 clarifications that he wishes to have and he could also respond to the conclusions of
4 Dr Baccard and even challenge them within the framework of the presentation of the
5 Defence case either, if necessary, by seeking technical assistance or, if he feels it is
6 necessary, give separate instructions to an expert registered on the Registry list that will
7 be called to testify during the Defence case.

8 "Whatever the decision taken and pursuant to Article 8(3) of the Professional Code of
9 Ethics, the Defence of Mathieu Ngudjolo can communicate to the person in question
10 Dr Baccard's reports as well as the relevant excerpts of the redacted public version of the
11 hearing transcripts.

12 "Lastly, the Chamber would like to point out that regarding the calling of an expert, only
13 the travel costs and living costs of the witness will be taken up by the Registry. As for the
14 costs related to the technical expertise, this will be taken from the budget allocated to the
15 Defence."

16 It was within this framework set out so clearly by the Chamber that the Defence team of
17 Mathieu Ngudjolo is operating. In the final analysis, the expert that we will final
18 designate, taking into account the opinion of the Prosecution yesterday - that is, relating to
19 expertise in ballistics and forensic medicine - that person will be called upon to make
20 observations on the conclusions and observations of the expert called upon to comment
21 on Witnesses 132, 249 and 287.

22 The Defence of Mathieu Ngudjolo needs to call that expert to cross-check the expert report
23 of that witness and the concrete conclusions made by the Prosecution expert. That said,
24 apart from the issue of the budgetary resources of the team, which is real and has right
25 now been referred to the Registry 2, the Defence will determine whether it is necessary to

1 actually call the expert before the Chamber only after analysing that expert's report.

2 Mr President, your Honours, thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. The
4 Chamber will begin by reacting on your intervention before handing over the floor back
5 to Mr O'Shea. This means that we will address ourselves to you again later on.

6 Regarding the last point - that is, calling an expert - we have understood that there will be
7 only one expert, but you have three possibilities. The Chamber is fully aware of the oral
8 decision of last June. We have not forgotten that at that time you made a request to call
9 an expert to challenge the Prosecution expert.

10 We wanted you today to tell us about the relevance of calling an expert witness to come
11 and challenge the quality and reliability of the expert reports produced by Dr Baccard.

12 We are not going into a detailed discussion of this point, but it is true that we are still
13 wondering about the absolute necessity on coming back on an issue which seems to be
14 important but which did not seem to us to be a very crucial matter in this case.

15 That said, we understand that, for the time being, you will maintain on your list an expert
16 witness, and also that there are material issues; that means, you do not exclude the
17 possibility of withdrawing that witness.

18 MR FOFÉ: (Interpretation) He can be withdrawn or maintained, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, he is on that list, but it is important
20 for us to make that list permanent so that we know what we are dealing with.

21 During the presentation of the Prosecution case, we saw that it was possible to withdraw
22 witnesses. We discussed the necessity of calling 166. The Prosecutor maintained him on
23 the list and told us that he could not decide immediately and, pursuant to Rule 68, he
24 wanted to call that witness later, and we told him, no, you were not agreed also.

25 They claimed that he will come and testify very briefly, and that is what happened.

1 There is another witness who was also finally withdrawn. I mentioned that yesterday.
2 Is it 258? Please assist me.

3 MR MACDONALD: (Interpretation) It was 238.

4 PRESIDING JUDGE COTTE: (Interpretation) We are now at the point where we
5 believe that there will be an expert, possibly, but not right now.

6 Regarding the order of appearance, we have to be sure that we fully understand your
7 intervention of a short while ago. You told us that some witnesses that you intend to call
8 will not limit themselves to challenging the credibility of Prosecution witnesses. It is also
9 true that yesterday we told you that the categories that we defined were, more or less,
10 clear for certain witnesses who are clearly coming to challenge the credibility of certain
11 Prosecution witnesses. We also told you that we were aware that some witnesses could
12 speak to several issues.

13 So we note that because the choices we made could actually be disputed or slightly
14 modified. However, as you have fully understood, our concern is to try to get from you
15 as clear and comprehensible proceedings as possible, not only for us, the Bench, but also
16 for the public which is following up the proceedings and which has to understand the
17 trial on the merits.

18 According to you, with regard to the three common witnesses, the father of 269, the father
19 of 280 and one of the detained witnesses, you will have no difficulty coming immediately
20 after Germain Katanga's examination. You told us that yesterday; you told us that today.
21 Now, regarding D03-P-0055 or D03-P-0100 who are all related to Witness 250, it goes
22 without saying that you can call them when you wish but it would not have been
23 unreasonable that the witnesses, challenging credibility only, should be heard
24 immediately after the credibility witnesses of Mr Hooper. We are going to talk about
25 later based on what Mr O'Shea says.

1 However, when the time comes, everything has to be as clear as possible and, if it is
2 possible for you to have a group of credibility witnesses and a group of responsibility
3 witness whenever possible, we can do that instead of mixing up the two.

4 We are probably going to come back to that after Mr O'Shea would have made his
5 comments. I think the simplest thing would be to allow Mr O'Shea to address the Court
6 now. Thank you, Professor Fofé.

7 MR O'SHEA: Just on that last issue, your Honour. We would invite the Chamber to
8 exercise caution with regard to viewing certain witnesses as credibility witnesses and
9 other witnesses as culpability witnesses. Some of the witnesses -- many of the witnesses
10 which we intend to call are witnesses who are in a position, because of their location and
11 because of their experience, in a position to talk on different subjects, and in many cases
12 on - directly or indirectly - on the responsibility of Germain Katanga. So I just make that
13 preliminary remark in the light of what was just said. And it also has a bearing, of
14 course, on the very impressive work which the Chamber and the Chamber staff has done
15 in terms of analysing what would be a logical order to the witnesses.

16 If I may begin with that question of the order of the witnesses, if it pleases your Honours,
17 the difficulties which I have highlighted concerned first of all Mr Jean Logo. Now, with
18 regard to our person of resource, your Honour described yesterday how he was wearing
19 three different hats. The difficulty is that one of those hats, he cannot actually pass on to
20 anyone else, and that is, of course, the hat of assisting us getting the witnesses before your
21 Honours.

22 The process of interviewing, taking witnesses through the practicalities of coming to The
23 Hague, is not as simple as one would imagine, sitting in The Hague. One has to take into
24 account the difficulties of the country, the region, the necessity of having a person who
25 speaks the appropriate language, and of course having a person there who has the trust of

1 the witnesses.

2 The effect of taking our resource person - our only person in the DRC - away to The
3 Hague now, the practical effect would be to stop completely the preparations of Defence
4 witnesses from the side of the VWU. Because both we and the VWU depend upon him
5 very heavily for the smooth progression of the exercise of bringing these witnesses here.
6 The International Criminal Court, of course, is an institution, with institutional difficulties.
7 Yes.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel O'Shea. With
9 regards to Mr Logo, if you so wish, please try to go to the heart of the matter. If you
10 really have three, four, five different reasons which make you think that his presence for
11 the proper functioning of the defence of Germain Katanga is currently indispensable in
12 the Democratic Republic of the Congo, then the Chamber will deliberate rate on that, but
13 it will understand as well, where it's able to understand. So there could be difficulties in
14 the field as a resource person and in order to facilitate passports, et cetera. That is
15 something that we are aware of. We're far from that, but we do understand that nothing
16 is simple. We're in The Hague, but we are talking about very complex regions here. So,
17 please tell us very quickly, if you wish so to do, what reasons there are which are the
18 reasons you don't want him to come, and quite simply that, and then we will be able to
19 listen to you and then continue. It's just to make it possible for you to save time and for
20 us to -- perhaps to save time as well. I'm not trying to set out anything in advance here,
21 but it's just to help us get through this.

22 MR O'SHEA: And I can -- that is, in fact, the first problem, and it is a very significant
23 problem, and it implies a delay of maybe two, three or more weeks in the progression of
24 the Defence case, I would submit.

25 The second problem is that we are not prepared for Mr Logo. And, of course, we have

1 the right to prepare. And at the same time, we don't want a delay in the trial. You'll be
2 aware that Mr Hooper is on mission at the moment. He'll be back from mission shortly,
3 but the plan is that we're going to start the trial this month. So, in our submission, it's not
4 realistic, if the witness order is going to be changed. And we've exercised, I would
5 submit, a great deal of latitude on our side in changing the very core of our instincts, to
6 comply with the Chamber's wishes in regard to the issue of overlapping witnesses, but
7 with this particular point, it just wouldn't be practical for us to prepare for this witness,
8 Mr Logo, at this stage because we're not prepared.

9 We're quite happy for number 1 on the list to continue to be number 1 on the list - or not.
10 But preferably, perhaps in the light of the need to progress, maybe number 1 should
11 remain number 1.

12 Number 1 on the list, which --

13 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, I'm just going to
14 interrupt you here. Please allow me to interrupt you. I hope that the five-second rule
15 was respected there by myself.

16 Number 1, so you've just told us that he was on the list and was number 1. Now, if the
17 Chamber abandons the suggestion of having Mr Logo come in the first place, then he is
18 still currently number 1 at the moment, who is on the list before the four detained
19 persons. And it appeared to us yesterday, listening to Counsel Hooper very attentively,
20 and it was on page 32, I think, of the transcript 33, 21 to 24, that number 1 was a student
21 and his position as number 1 was made due to practical reasons linked to his studies.
22 Now, I don't know what the Chamber will decide on the order of testimony - it will take a
23 decision very quickly - but what has to be said is that we need very quickly to know when
24 we start our work, and it's meant to start on 21 March; perhaps the 23rd. It here is a
25 matter of knowing whether number 1, and apparently this is the case, is able to come as

1 envisaged, in first position.

2 We have hearing days which are envisaged. Perhaps they have to be used. So, with
3 regards to number 1, normally, subject to whatever the Chamber says, he is still number 1
4 as far as you're concerned.

5 MR O'SHEA: The information that I have, he's waiting for a visa, so he has the passport
6 and is waiting for a visa. And as your Honour has quite rightly pointed out, he has
7 exams in June, and in those circumstances it's appropriate that he should be called early.
8 And that brings me to 136. Number 1 on the list is, of course, 134. May I invite your
9 Honours to turn to your own document Proposition d'ordre de comparution des témoins
10 de la Défense, because for the moment this has become my working document on the
11 basis that we are prepared to make a form of a concession.

12 Now, with regard to that, your Honours will see that there is a section there which is
13 entitled Contestation du témoin 28; that is number 1 on the list.

14 Immediately above that, there is Contestation du témoin 28, 219, 250 and 279. Witness
15 136 is in a similar position to Witness 134. He also has exams in the month of June that
16 he must study for, so in his case too, the earlier he comes to The Hague, the better. And
17 we of course know, as lawyers, that with all the best plans in the world, the more down a
18 list you leave a witness, the greater the risks for that witness because of the imponderables
19 in a trial. So we would also like that witness to be early. So that leaves 134 and 136, on
20 the basis of your Honour's proposition, being witnesses that, in theory at least, should be
21 moved up, and of course 134, of course, is already moved up.

22 And then, your Honours have a title, immediately under the main title "Témoins
23 crédibilité," your Honours have a title, "Challenge of Witness 267," and under there, your
24 Honours have 196, 192, and 155.

25 Now, 196 and 192 are the two witnesses that your Honours mentioned in your decision of

1 this morning, where you noted that, as far as you can see, they seem to be dealing with
2 exactly the same thing and is this not something that we can address to see if there's a
3 difference between the two, or not.

4 Now, it is planned that I will go to the DRC during the month of April, preferably during
5 recess, and one of the reasons why I'm going to the DRC is in order to interview the three
6 witnesses which are listed there, 196, 192, and 155, because these are witnesses which
7 have been interviewed -- or at least two of them have been interviewed by the team, but
8 not by counsel.

9 So, we wish to -- we wish, or I wish, to interview these witnesses in the light of your
10 Honour's decision, see to what extent there is a difference between them and indeed see if
11 perhaps one of them might be dropped. Okay. So the basic picture there is that the
12 witnesses listed under "Challenge of Witness 267," so I recognise, of course, the very
13 impressive attempt to sequence the topics here. And I'm trying, as much as possible, to
14 preserve that wish. And my suggestion - my suggestion - would be to swap the heading
15 Challenge of Witnesses 28, 219, 250, 279, in other words, 136, swap 136 with the
16 subheading Challenge of Witness 279 -- 277, the three witnesses which I say it is my
17 intention to interview during the judicial recess.

18 You see, if I go and interview those witnesses during the judicial recess and they appear
19 immediately after the judicial recess, I risk running into problems because they will be
20 making preparations to travel and they will be needed by WVU. So if we were to make
21 that straight swap between those two little groups it would not be as perfect an image of
22 sequence of topics that your Honours have had in mind, but it would be -- it would be, in
23 my submission, near enough taking into account the practical difficulties.

24 So that, basically, addresses what I would invite your Honours to take into account with
25 regard to an order for the order of witnesses. Our preference, of course, would be that

1 your Honours leave us the task of setting the exact order of the witnesses. If your
2 Honours are going to make a decision, a decision which provides a discretionary
3 framework would be a preference to us; but at least I've highlighted the specific practical
4 problems that I'm aware of at the moment which require attention on the basis of the
5 document which your Honours have provided.

6 Coming, then, to the issue of Mr Germain Katanga -- before I go on to that issue, perhaps
7 your Honour does have some queries on the first point.

8 PRESIDING JUDGE COTTE: (Interpretation) No. These aren't clarifications; it's just a
9 concern. I have to be very clear. I think I'm clear, but it's important that everybody
10 understands.

11 Firstly, thank you, thank you to your team for the suggestions that you have made and the
12 dialogue that you have accepted to participate in, in order to try to rationalise an order,
13 the presentation of these different witnesses.

14 I think, as the rest of the Chamber have understood, that the witness who's first, this is
15 134, could come in first position as envisaged; that is to say, very shortly, in a very short
16 time, and probably 23 March. I also have understood that you would not necessarily see
17 any obstacle -- even if you would prefer to keep your list as it has been established, you
18 would not be against 136 going back up; but, on the other hand, it is a sensitive subject
19 when it comes to having the three witnesses under 267 being called too early because two
20 of them -- there is redundancy with regards to -- you're going to go to the DRC yourself
21 and you're not ruling out that perhaps one of the two will not necessarily be called here; is
22 that correct?

23 MR O'SHEA: Your Honour has completely understood.

24 PRESIDING JUDGE COTTE: (Interpretation) Good. So we will allow you to continue.

25 Now, counsel, it seems very complex but I think it's very important that this Court, which

1 does have quite a unique status - it's neither totally common or civil law - it's very
2 important that this Court makes the effort to have working methods which perhaps other
3 Chambers might follow, perhaps they won't, but which are all led by the concern to work
4 as well as possible. We are listening to you for the situation of Germain Katanga.

5 THE INTERPRETER: The interpreter corrects "282" as "267."

6 MR O'SHEA: Yes. With regard to the situation of Germain Katanga, I'll begin by
7 expressing my appreciation of the position of the Chamber. I fully understand that, first
8 of all, the Chamber has a right and a duty to control its proceedings. I also understand
9 that the Chamber wishes to have organisation and clarity in its proceedings. So I move
10 forward on that premise.

11 If the question is put to us, "Will Germain Katanga testify," if the question is put to us
12 today, we cannot truthfully give an answer "yes" or "no." The Chamber can force us to
13 do so, but it would be an artificial exercise, in my submission. It's such a significant
14 question and it's a question upon which, up until today, we have advised Mr Katanga that
15 it is a matter that he can consider in the light of all the evidence.

16 Yesterday the proposition that we give an answer the following day has, as it were,
17 changed the goalposts for Mr Katanga rather rapidly. From a practical point of view,
18 even if your Honours wanted an answer rapidly, it could not be today because lead
19 counsel is not here, I have not had the opportunity to go to the prison between yesterday
20 and today, and this is a question which cannot be addressed without proper consultation
21 with Mr Katanga himself.

22 That notwithstanding, we would urge that there is in fact no absolutely necessity to have
23 an answer to that question immediately. It is reasonable, in our submission, that if he has
24 the right to silence - which he does, which is protected under the Statute, the right not to
25 be compelled to testify - and if he has a right to make an oral statement - which he also has

1 under the Statute - it follows, in our submission, that he cannot be forced one way or the
2 other.

3 He can -- the Chamber can expect from him, within reason, to allow the proceedings to
4 follow in a logical and orderly manner and that, as I said, we appreciate; but in order for
5 proceedings to follow in a logical and orderly manner, it is not necessary, in our
6 submission, to artificially address this question now.

7 The witnesses for the Defence can come forward and then the appropriate time for
8 Mr Katanga to testify cannot arrive until these other witnesses have finished their
9 testimony. I mean, it could in theory, but that's not the plan which the Chamber has
10 followed.

11 So, for the time being, we have the evidence of these other witnesses who are coming
12 forward, and it's as much in the interest of Mr Katanga to hear that evidence in order to
13 make his decision as it is for your Honours and everybody else in the courtroom.

14 Of course, once those witnesses have given their evidence we as counsel will diligently sit
15 Mr Katanga down and say, "Right, now is the time to make a decision, because the Court
16 needs to know, and the parties need to know and the participants need to know, what
17 your decision is whether you are going to testify or whether you are not going to testify."

18 We know what the issues in the trial are. We know what the allegations coming from the
19 Prosecution are. So when Mr Katanga gets into the witness box, we know what issues he
20 has to address. So it would be reasonable, in my submission, if at the end of the Defence
21 witnesses, taking into account a need to give reasonable notice to the Prosecution,

22 Mr Katanga can then make his decision and a date can be set for his testimony.

23 And in the light of this uncertainty, it might be appropriate in this case that Mr Katanga
24 testifies last in the case. That's a matter for your Honours. But those would be our
25 submissions on that particular issue.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel O'Shea. Things
2 have to be very, very clear. The Chamber has never intended to constrain or to force
3 Germain Katanga to be a witness and testify as such. We know very well that we cannot
4 force him to do so.

5 You will remember the requirements of the right to silence. You also know the
6 possibility that there is to make a statement. We are all aware of that. Swearing under
7 oath is something else. However -- or testifying under oath is something else, but the
8 Chamber just wanted to obtain for 7 March a list of witnesses.

9 As far as it has been able to note, the Defence of Mathieu Ngudjolo had the accused that it
10 represented as a future witness, and the Chamber wished yesterday to obtain from you
11 some clarifications which it considered to be urgent given that, once again, it's 7 March
12 that the list of witnesses has to be, well, wound up, if I can use that expression, subject to
13 the reservation that there could be an expert witness, for example, who might not be able
14 to come or perhaps there might be a witness who is going to challenge 267 who might be
15 redundant and, therefore, wouldn't come.

16 But, however, I understand your hesitations and we have had heard them. We've heard
17 the fact that you are not very clear with regards to this issue. With regards to the
18 urgency that there is in the preparation of the Defence case with the lead counsel, who has
19 had to go very quickly to the Democratic Republic of the Congo, you would wish to
20 reserve yourself some time. We are going to discuss that between ourselves and then we
21 will tell you what we think.

22 What has to be remembered here is that -- subject to whatever our deliberations are, what
23 has to be remembered is if in future Mr Katanga should testify as a witness under oath, for
24 you there will be -- in the time that's allocated to you, perhaps there will be some
25 re-balancing that needs to be conducted between the time which is given to each of your

1 witnesses, but that is the alchemy, if you like, of the Defence work.

2 The Chamber certainly does not intend -- even a civil lawyer can understand this, we
3 don't intend to dictate to the Defence the way in which it's going to work. We agree on
4 that, don't we? Very well.

5 So, thank you, we have received from you clarifications with regards to the situation of
6 Germain Katanga and we have received clarification -- I'll give the floor back to you about
7 Jean Logo. We have also received clarifications with regard to the possible modification
8 or limited modification of the order of calling certain witnesses. So what else do you
9 have to tell us?

10 MR O'SHEA: It's just one --

11 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, do you wish to intervene?
12 On which of these points?

13 MR O'SHEA: It's on that point --

14 MR MACDONALD: (Interpretation) Germain Katanga.

15 PRESIDING JUDGE COTTE: (Interpretation) Another point. Please, go ahead.

16 Counsel O'Shea, please finish and then I'll give the floor to the Prosecutor.

17 MR O'SHEA: Yes. On the point of Germain Katanga's testimony, I think it's important
18 to also understand, your Honours - and Mr Hooper said this yesterday, but I think it's
19 worth repeating - that when we reach the end of the Defence testimony, the end of the
20 Defence witnesses, looking at how the Defence witnesses have performed before your
21 Honour -- and none of us know what is going to happen, with the best will in the world,
22 but it may be that when we get to that stage it may be that we make a strategic decision or
23 Mr Katanga makes a decision that there is absolutely no need for him to add anything. I
24 think it's important to bear that in mind.

25 So whatever planification is made, there is always that juncture point, and that's why I

1 submit that that is the appropriate point. There is always that juncture point when the
2 Defence can turn around and say, well, there's no need for the accused to testify, having
3 heard these witnesses.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea. Now, before I
5 ask the Prosecutor to address the Court, might you have any other observations regarding
6 today's topics? Just to organise the next half hour because we will try not to go past two
7 hours, since everyone has a great deal of things to attend to.

8 MR O'SHEA: I've dealt with the principal points. There is a motion which is coming,
9 which is probably in the interests of the Chamber to hear about, with regards to the
10 possibility of witnesses seeing Mr Germain Katanga while they are in The Hague. So
11 that motion will be on its way. So I want to mention that.

12 I'd like to just ask Ms Menegon if there's any other small points that I should raise before I
13 sit down. Of course, of course after their testimony. But there will be a motion on its
14 way on that issue. There's nothing else I have in mind at the moment but something
15 might spring to mind, but I'll keep quiet, as much as possible.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, we will be very attentive to that.
17 Mr Macdonald, I'll remind everyone that we do wish to conclude at 4 p.m., and the
18 Chamber would like to have a few moments to speak before everything draws to an end.

19 MR MACDONALD: (Interpretation) Thank you, your Honour. With regard to
20 Mr Katanga's possible appearance as a witness, basically, I believe that there may be a
21 middle path. In light of the remarks that were made and also in light of the Chamber's
22 practice regarding the fact to perhaps withdraw witnesses, I do believe that the Chamber
23 should adopt the attitude that Mr Katanga will testify, include him on the list.
24 Now, I believe the idea is that he will testify -- that the Defence would like him to testify
25 after hearing all the evidence, but there is the other obligation, namely, disclosure of

1 statements or summaries, and I'm sure that that is the concern of the Chamber in light of
2 decision 2388.

3 I wish to reassure the Chamber there may be a middle path, a compromise, so to speak,
4 with regard to Mr Katanga; that is, he could be placed on the list and the Defence could be
5 ordered, at least two weeks before the expected date of his testimony, to provide a
6 statement, or an exhaustive summary, if possible be disclosed to the parties and
7 participants, and then I believe we would respect his right to remain silent. We would
8 also respect this duty to ensure diligence that we all have and also notification to the
9 parties, and if the accused -- so that preparations can be made.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor.

11 MR MACDONALD: (Interpretation) Well, of course, the Chamber will make its
12 determination but this is an option.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I am interrupting you right
14 now. The Chamber was expecting you to rise and we were expecting you to make the
15 suggestion, this option to reconcile the different points.

16 Now, Mr O'Shea, what do you think of all this? A few moments ago, we were speaking
17 about an expert witness currently on the list who would be dropped. You mentioned the
18 possibility of witnesses challenging 267. Now, what do you think of this suggestion that
19 has just been made by the Prosecution with that specific point that he made, namely, that
20 the summary, or the statement, would be naturally disclosed 15 days before -- before the
21 testimony, unless you wanted to do that earlier, but at least 15 days before the testimony
22 of Mr Katanga, if -- if he were to testify? What do you think of this suggestion?

23 MR O'SHEA: I would submit that when we reach the last Defence witness, there will be
24 sufficient time to deal with that. If Mr Katanga testifies, Mr Katanga will testify on all the
25 allegations in the charges against him. So it's not going to be hard for us -- if we're

1 required to give such a resume, it's not going to be hard for us to have it ready. I have a
2 question mark in my mind as to whether we should be required to provide that, but if we
3 are required to provide that, it can be provided at the appropriate time.

4 I don't think that that necessitates rushing Mr Katanga into a decision, when that decision
5 realistically depends on how the Defence witnesses will pan out.

6 My learned friend's solution is a solution, but it's an artificial solution. I mean,
7 Mr Katanga can be placed on the list and then later withdrawn, if necessary, but it's an
8 artificial solution.

9 I would suggest that the appropriate time would be once the Defence witnesses have
10 testified, then your Honours can put Mr Katanga on the spot, and say, "Right, now make
11 your decision. We've been kind with you. We've given you plenty of time to decide.
12 Now decide." And that would be fair enough, and in my submission it wouldn't be
13 necessary to put him in that position until that appropriate time arrives.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea. Let us be clear:
15 There is no trap here from the Chamber at the current stage of the proceedings. Once
16 again, there is no question of forcing an accused person to appear and give testimony. If
17 Mr Katanga were to be placed on the list of witnesses, in our view, I think it would go
18 without saying that it would be like the case for Mr Ngudjolo, at the very end of the list,
19 unless you wished a different order, a different order than the order that we have
20 provided for Mr Ngudjolo.

21 So, this is the solution we had in mind. For the sake of clarity, for the clarity of the list,
22 the witnesses of the two Defence teams might have one of the accused people testify, and
23 at the very end, you may not have the accused person give testimony. Your Honour.

24 JUDGE DIARRA: (Interpretation) Just to make things easier in terms of scheduling, if
25 at the end you say that you are going to insert a witness and we haven't provided for a

1 witness at that time --

2 THE INTERPRETER: Inaudible.

3 PRESIDING JUDGE COTTE: (Interpretation) You are correct, Judge Diarra, and at the
4 same time, the Katanga Defence team has been notified, and if they were to decide to call
5 Mr Katanga, there might be an adjustment made at that time. In any event, the
6 Prosecution has made a suggestion, a possible solution, which we are now discussing.

7 MR MACDONALD: (Interpretation) With your leave, I'm sorry but our email system
8 seems to have crashed but I did send an email saying that I wanted to speak to a
9 particular -- a number of particular useful points and bring something before the
10 Chamber.

11 PRESIDING JUDGE COTTE: (Interpretation) Please proceed very quickly.

12 MR MACDONALD: (Interpretation) I'd just like to mention the following, your
13 Honour. Of course, we have acquainted ourselves with your Ruling 2711 regarding our
14 application to have a discussion with P-250. I would just like to inform the Chamber had
15 there are some difficulties for witnesses who are not within the protection programme,
16 233, 266, et cetera, or other witnesses who may not be within the witness protection
17 programme, and the Prosecution is of the view that, according to Article 68 - and this is
18 mentioned in our filing - we are still responsible for their safety.

19 I wish to reassure everyone, we are not in contact with these people to discuss the facts of
20 the case, but from time to time - and this is something that we did not raise in our
21 filing - but, from time to time, witnesses may call us for reasons of security because we are
22 responsible for their safety and security.

23 They get in touch with us, and it really doesn't matter how they contact us, and then we
24 get back to them. Of course, we have to provide for an interpreter. We have a
25 conversation with them. And once we have to respond, we respond, and the unit is

1 always advised if there are any safety problems.

2 Just to inform the Chamber of that. It's not that we are making -- it's not that we are
3 having conversations about the facts, but unlike 250, in which case we asked for formal
4 leave, formal permission from the Chamber, there are times where we have informal
5 contacts with witnesses who have already appeared. 233, for example, I think you will
6 remember, and the legal reps are aware of this as well, there was the whole issue of a
7 victim who may find himself involved in the process and this person is not a victim of
8 Bogoro.

9 We spoke to the VPRS unit of the Registry, and we were able to get the contact
10 information. And sometimes witnesses call us. They are not necessarily safe and they
11 pass on information to us which we keep, or move forward to other units. I wish to
12 inform the Chamber of this, so I'd like to reassure you as well.

13 For any matter, anything that has to do with -- that doesn't have to do with safety, other
14 issues relating to witnesses who have already given testimony and who are not part of the
15 programme, of course, clearly, we will ask for permission from the Chamber, with carbon
16 copies to the other parties or providing a notification of the various methods used to
17 contact.

18 PRESIDING JUDGE COTTE: (Interpretation) Very well.

19 MR MACDONALD: (Interpretation) Furthermore, I wish to announce that it is
20 possible, in light of the information already received and information that may come in,
21 that it is possible that in some cases - and this was requested in the case of
22 Mr Lubanga - that the Prosecution may ask for leave from the Chamber and make filings
23 to speak once again with witnesses who have already given testimony, to verify alleged
24 information found in documents that were disclosed last Friday, with a view to preparing
25 ourselves properly for cross-examination of upcoming witnesses. And in our filing

1 regarding contacts with 250, we made reference to the ruling from the Trial Chamber, but
2 once again, I make reference to Ruling 2192 from Trial Chamber I.

3 Furthermore, your Honour, I do understand that the Katanga team responded by way of a
4 filing, 2751, to the last report from the unit regarding P250, and the Prosecution does not
5 intend to respond to this filing which seems to be more of a wish or a reminder from the
6 Katanga team for -- about possible contacts with 250. So, please do not be worried, your
7 Honour, we are entirely aware of our obligations when it comes to protection and for
8 anything that has to do with safety of 250, Witness P250, the unit is in charge of dealing
9 with such security issues.

10 Furthermore, your Honour, there's the infamous eCourt protocol to discuss, and what is
11 that? This infamous protocol? Of course, the whole system for managing the exchange
12 of evidence amongst the parties and the Chamber, through the Registry, forwards
13 originals, and in English, we call it uploading. That is to say the loading of the evidence
14 into the system.

15 The Prosecution has a practice of always providing this information on DVD or CD-Roms.
16 We have provided, we have provided a DVD for each disclosure with the evidence, so
17 that they can place the information on their own system, similar to eCourt, Ringtail and
18 then, after that, the Defence places in Ringtail the information they wish to use, and the
19 same practice was implemented and, furthermore, when the Defence disclosed evidence
20 they also provided the Prosecution with both eCourt references, and DVDs, with the same
21 evidence so that the Prosecution can, in turn, upload that information onto the Ringtail
22 system. So we are asking for the same reciprocity, despite the fact that the Defence does
23 not have any DVDs, to burn the information. If the Lubanga team can do that, I am quite
24 sure that the Ngudjolo or the Katanga team can do the same with the assistance of the
25 Registry, or the unit that provides computer assistance, particularly with regard to eCourt

1 and Ringtail.

2 Why am I saying this? Well, because --

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, please speed up so that
4 Ms Denis and her colleague will have the opportunity to say at least that they have no
5 observations.

6 MR MACDONALD: (Interpretation) Very well.

7 PRESIDING JUDGE COTTE: (Interpretation) But I have actually no, no way out when
8 it comes -- no leeway when it comes to time. Here, we have only two hours, so please
9 conclude and this shows that the rules that we spoke about a few moments ago, namely,
10 that the Chamber needs to advise, that you need to advise the Chamber of issues in
11 advance, because I do remember the ruling made regarding Witness 250, but you have
12 brought in a whole bunch of other issues and not everyone can respond.

13 So far, you have been lucky. The Chamber has been able to respond but please try to
14 show us some consideration. Please conclude quickly.

15 MR MACDONALD: (Interpretation) All we are asking, your Honour, is, well,
16 disclosure is an inter partes exercise, by way of Ringtail, and you spoke of a deadline of
17 Monday, the 7th, and that was done by way of eCourt, but if the Defence discloses
18 information we would like to have the same information in Ringtail on DVD and also a
19 reminder, this is a reminder, everything else, I would remind all of Regulation 35, which
20 is now effective with regard to the Defence team, since the deadline has gone by, with the
21 exception of information for 14, and a statement. But any document to be added, well,
22 there should be a clear order from the Chamber that the Defence, in the future, cannot
23 upload any information into eCourt without leave from the court after filing an
24 application, by way of Regulation 35. There you have it.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor. With regard to

1 your introduction having to do with contacts with the witness, we have taken note of that
2 and we have understood that you have made a commitment to respect the code of
3 conduct and both ethics and if you need to contact us, you have to mention specific
4 references from the Lubanga, because that is necessary for the answers that we have to
5 give you.

6 Regarding filing 2761, the Chamber is fully aware of that, but it is clear that we did not
7 have to respond to that.

8 The decision regarding the possibility for you of meeting Witness 250, about the
9 possibility of having him out of the protection system, where mentioned, and we are not
10 going to come back to that now.

11 Regarding the eCourt protocol, we have learned that you want reciprocity. The Katanga
12 and Ngudjolo teams will go through their correspondences with the Registry and other
13 structures with which they worked to see whether that is technically possible, and
14 whether it is not too much work. They will try to see how the Registry can help them.
15 And in principle, what the Mabilie team did in Lubanga cannot be replicated by the other
16 Defence teams, here.

17 I believe that according to Regulation 35, that is possible. The Defence teams remember
18 that and you mentioned it during your own Prosecution case and the Chamber defined
19 some jurisprudence that was applicable. Ms Denis, do you have anything to say?

20 MS DENIS: (Interpretation) I think you have read our minds, and I wish to inform you
21 that we have no observations.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Ms Denis. Ms Goffin. It's
23 true that we did not allow you a great deal of time today but we do see that you have
24 been monitoring the discussions.

25 Now, at the end of this two-day status conference, which I see as working sessions that we

1 have had, to find the best possible way of working together, since we are aiming to meet
2 the same objective, the Chamber wishes to remind all that we have never tried to mix up
3 the defences or - and Professor Fofé reminded us of this - we wish to streamline the
4 presentation of witnesses, because in the -- because under Regulation 43 of the Court, we
5 are authorised to carry out such streamlining, so that the proceedings can move ahead
6 more smoothly. I will give an example.

7 Under some cases we may decide to group a number of witnesses together for a particular
8 reason, and we all have the example of 250 in mind, and that's an example we can think
9 of. Once again, we do not intend to impose, we suggest, but we do not impose anything.
10 You made your views known yesterday, and once again today. We thank you for that.
11 We do not wish to force anyone to follow a schedule that would be impossible, or
12 contrary to the interests of the two Defence teams.

13 Now, perhaps, now, we did take note of the radical separation between the two Defence
14 teams, we did take note of that yesterday. Mr Hooper may have gone a bit far by saying
15 yesterday that there was another trial going on, namely, the trial of Mr Ngudjolo. I think
16 you saw my reaction. Well, no, there is only one trial here. The decision to join the two
17 cases, an old one, but it is there. You do have a concern, and we do realise that you wish
18 to express your views separately, and we have taken that into consideration, and you
19 have made this point a number of times. So we will see how we can organise all of this
20 as best possible and in light of the comments made by everyone, and we will strive to
21 send everyone an order that is, that will -- sets out the various time slots, so to speak, in
22 light of the extremely unusual circumstances, the entirely singular circumstances of the
23 trial.

24 We will also set out the order of witnesses, and I think it seems quite likely, now, there
25 may be a few final cross-checks but in any event, it would appear that we would resume

1 on approximately 23 March, perhaps with your witness 1, who has another witness
2 number, but in any event, but I know you do want to have a very clear schedule.
3 We will provide confirmation very quickly, and if there are any -- as long as we don't have
4 any insurmountable logistics problems, we will then hear from the four witnesses in
5 detention. So there you have it.
6 We wish to thank Mr O'Shea, Professor Fofé, Mr Kilenda, Mr Macdonald who I
7 interrupted quickly, Ms Denis, Ms Goffin, we are thinking about the best possible way of
8 doing our work and you have helped us and we wish to thank the interpreters, the
9 various interpreter teams on each side of the courtroom. We shall now conclude and this
10 hearing is now adjourned.
11 (The hearing ends at 3.58 p.m.)