

1 International Criminal Court  
2 Trial Chamber II - Courtroom I  
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and  
4 Judge Christine Van den Wyngaert  
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07  
6 In the case of the Prosecutor versus Germain Katanga and  
7 Mathieu Ngudjolo Chui  
8 Trial Hearing  
9 Wednesday, 23 March 2011  
10 The hearing starts at 9.02 a.m.  
11 (Open session)  
12 COURT USHER: All rise. The International Criminal Court is now  
13 in session.  
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.  
15 Good morning, everyone. The accused persons are in the  
16 courtroom. Good morning.  
17 To begin with, a little clarification to address to the people in  
18 public. Contrary to what the public information office published  
19 yesterday, Trial Chamber II will not be hearing the first witness of the  
20 Defence of Germain Katanga today. This hearing will be devoted to the  
21 reading of a certain number of oral decisions to be handed down by the  
22 Chamber. We are handing down these decisions orally because they are  
23 urgent, at least most of them.  
24 The first oral decision is in response to a motion by the Defence  
25 of Germain Katanga which wished that the Defence witnesses should be able

1 to visit Germain Katanga at the penitentiary after the end of their  
2 testimony. By application 2773 of the 14th of March, 2011, the Defence  
3 of Germain Katanga asked the Chamber to authorise all Defence witnesses  
4 for Germain Katanga to be able to visit the accused after their  
5 testimony. The Defence points out that Germain Katanga has been detained  
6 for a long time, and because he has been far away, he cannot receive  
7 visits, particularly family visits, and he is therefore isolated.

8 The Defence submits that the accused has the right to receive  
9 visitors under Regulation 100(1) of the Regulations of the Court and that  
10 this text also applies to people who have testified in the case. The  
11 Defence points out, and as a matter of courtesy, that after informing the  
12 Chamber of his intention to ask the Chamber for such visits, the Defence  
13 will make an oral request for each witness at the end of his or her  
14 testimony. The Defence also requests that it should be relieved of the  
15 requirement of the deadline under Regulation 179 of the Regulations of  
16 the Registry, which requires that the form for application of visits be  
17 submitted to the Registrar at least 15 days before the expected date of  
18 the visit.

19 In its answer number 2779 of the 18th of March, 2009 (\* as  
20 interpreted), the Prosecutor is categorically opposed to such visits, and  
21 he mentions his legitimate concerns regarding possible exchanges between  
22 the witnesses and the accused. He refers to the Chamber's decision  
23 number 2711-Conf of the 18th of February, 2011, which prohibits contacts  
24 between the party that has called witnesses, and that witness that is  
25 right until the end of the presentation of the case in the -- in the

1 proceedings. That is paragraph 10 of the decision.

2 The Prosecutor does not exclude an alternative solution,  
3 particularly as it concerns family members, and that is in paragraph 12  
4 of the response.

5 When I was talking about paragraph 10 a short while ago, it was  
6 the filing of the Prosecutor that I was referring to. So the Prosecutor  
7 does not exclude family members. That is in paragraph 12 of his  
8 response.

9 Whatever the case, he feels that such visits should be subject to  
10 strict conditions. Paragraph 6.

11 The Legal Representatives also recall a decision of the  
12 18th of February, 2011, and they underscore that the application of  
13 Mr. Katanga is not consistent with that decision and that it is incumbent  
14 on him to request leave on a case-by-case basis, justifying them with the  
15 necessary justifications. So this was the response of the Legal  
16 Representatives in filing number 2790.

17 On the 18th of March, 2011, the Registrar also filed observations  
18 number 2784. After having recalled that the only hypothesis requiring  
19 the court to interfere in the area of visits to the penitentiary comes  
20 under Regulation 101 of the Regulations of the Court, which relates to  
21 contacts for the detained accused. The Registrar refers to practical and  
22 organisational difficulties that may arise as a result of the requested  
23 visits. The Registrar also points out that she fears that in case the  
24 application is granted, this might constitute a precedent that could lead  
25 to abuses. The Registrar also mentions a practice that has been noted in

1 ICTY and ICTR according to which accused persons called witnesses for the  
2 sole purpose of organising visits.

3 Let us begin with certain preliminary considerations. The  
4 Chamber would like to recall its decision number 2711, dated  
5 18th February 2011, which generally prohibits contact between parties and  
6 witnesses after their testimonies while at the same time indicating that  
7 there might be exceptions.

8 The Chamber also recalls that if exceptional situations  
9 justifying that exceptions should be granted to that general prohibition,  
10 the Chamber will rule on a case-by-case basis on the merits of such a  
11 question and on the conditions under which such visits may take place.  
12 The Chamber points out that the competent organ to organise visits to the  
13 prison is the Registry, and this is in accordance with the provisions of  
14 Regulations 179 and 180 of the Regulations of the Registry. An  
15 application for such authorisation under Regulation 179 should be  
16 submitted in writing and within -- and be 15 days before such a visit,  
17 subject to the fact that only the Registrar will make a determination.

18 The Chamber is of the opinion that before a witness is authorised  
19 to meet with an accused person, two different decisions have to be taken  
20 by two authorities that also have different areas of competence. One  
21 decision determining whether the situation is exceptional enough to --  
22 that decision will be taken by the Chamber to decide whether such a visit  
23 should be granted because of exceptional circumstances, and a decision to  
24 organise such a visit itself will be taken by the Registrar. A witness  
25 who has to visit an accused person in the prison in principle has to

1 seize the Chamber with a justified application explaining in which way  
2 the meeting with the accused person can be considered as an exceptional  
3 situation. If the Chamber is of the opinion that that visit should be  
4 authorised, the witness will therefore contact the Registrar in  
5 accordance with Regulation 179.

6 That said, we will now consider the specific case in point.

7 The Chamber can only point out that the Defence's application  
8 does not mention the decision of the 18th of February, 2011, and it  
9 therefore does not invoke the existence of an exceptional situation. The  
10 Chamber, therefore, does not have any justification that would make it  
11 possible for it to determine whether it is necessary or not to give the  
12 Defence leave for this visit contrary to the decision initially taken.

13 The Defence -- or, rather, the witness called by the Defence has  
14 to start testifying tomorrow, the 24th of March, and it so happens that  
15 that witness is the brother of Germain Katanga. Given the urgency, the  
16 Chamber feels that it is necessary to examine this application.

17 The Chamber is aware that a waiver to that general rule according  
18 to which the witnesses may not in principle discuss the case with the  
19 parties up until the end of the case can only be exceptional. However,  
20 it is clear that the accused are parties to the trial, and that  
21 prohibition is equally applicable to them.

22 The Chamber is also aware of the importance for a detained person  
23 to have the possibility of maintaining personal and effective relations  
24 with his family, especially when he has been detained for several years  
25 and because of the distance, he cannot receive regular visits. And the

1 Chamber refers you to its decision 2018, paragraph 62.

2 To that effect, it appears to the Chamber that under certain  
3 circumstances and once the testimony has been concluded, it is possible  
4 to envisage a brief meeting between an accused person and a close  
5 witness, more so if that witness is a family member.

6 A meeting organised in that spirit and to that purpose cannot  
7 undermine the concerns underlying the principle of direct contact between  
8 witnesses and parties. The Chamber therefore feels that we can  
9 exceptionally authorise a meeting between Germain Katanga and  
10 Witness DRC-D02-P-136, who happens to be his brother. The Chamber feels  
11 that the conversation has to be limited to personal, family and friendly  
12 issues or issues relating to the life of the accused person in detention  
13 and that there should be no mention at all of the case itself or of the  
14 contents of the testimony that has just been concluded or past or future  
15 testimonies. The Chamber also asks that the meeting take place in French  
16 or Swahili, and there should be a representative of the Registry who  
17 understands those two languages and who is capable of putting an end to  
18 the meeting if the language is changed or if discussions are carried out  
19 on the merits of the case.

20 Regarding the organisation of those meetings and given that the  
21 Registry has requested precise instructions from the Chamber regarding  
22 the organisation of the visits, the Chamber recommends, if this is  
23 possible, that the meeting should take place at the premises of the court  
24 at the end of the testimony of the witness and before the accused is  
25 taken back to the prison. Under such circumstances, the meeting will be

1 authorised for a duration of 30 minutes.

2 If, on the contrary, it is not possible to organise such a  
3 meeting at the premises of the court, then such a meeting will be  
4 organised at the prison itself, and the witness will be taken to that  
5 prison after obtaining the authorisation of the Registrar, who is the  
6 competent authority under Regulation 180 of the Registry. The duration  
7 of the visit will be left to the discretion of the head of the prison.

8 Regarding the other witnesses called by the Defence of  
9 Germain Katanga, it will be up to that Defence to submit various  
10 applications as needed. The Chamber requires that those applications  
11 should clearly state why it would be legitimate to grant a waiver to  
12 those decisions of 2011. However, several witnesses may be the subject  
13 of the same application as long as a justification is included for each  
14 witness. For those reasons, the Chamber grants that application for  
15 Witness DRC-D02-P-136, and the Chamber rejects the application with  
16 regard to the other points.

17 We will now move on to another oral decision which is in response  
18 for a request for clarification from the Defence of Germain Katanga  
19 relating to paragraph 19 of the Chamber's order number 2775 of the  
20 15th of March, 2011.

21 By order number 2775 of the 15th of March, 2011, the Chamber,  
22 pursuant to Regulations 43 and 54 of the Regulations of the Court,  
23 determined the modalities and order of appearance of witnesses called by  
24 the Defence teams. Paragraph 19 of that order states as follows:

25 "With regard to the Legal Representatives of the Victims, the

1 Chamber recalls that they have the possibility of asking questions with  
2 its leave. To that end, reference is hereby made to instructions given  
3 on the 1st of December, 2009, for hearings and depositions in accordance  
4 with Rule 140 of the Rules."

5 By urgent application number 2781 of the 18th of March, 2011, the  
6 Defence of Germain Katanga points out that under paragraph 87 of those  
7 instructions, the Legal Representatives must notify the Chamber and the  
8 Prosecutor seven days at least before the arrival of a witness of the  
9 questions that they intend to ask him and which can be anticipated. The  
10 Defence of Germain Katanga requests the Chamber to clarify, given that  
11 the presentation of the Defence case is about to begin, whether it is  
12 appropriate for the Legal Representatives to continue to notify their  
13 questions to the Prosecutor, or whether it is not instead proper for them  
14 now to communicate those questions to the Defence teams given that the  
15 Defence teams are now presenting their case.

16 The Chamber takes note of the request made by the Defence of  
17 Germain Katanga, and anxious to ensure the fairness of the proceedings,  
18 the Chamber is of the opinion in accordance with paragraph 3 of  
19 Article 68 of the Statute and Rule 140 of the Rules of Procedure and  
20 Evidence to take a decision on this matter. The request to the  
21 Legal Representatives to communicate in advance to the Prosecutor the  
22 questions that they intended to ask had as main objective to enable the  
23 Prosecutor to determine whether it would be necessary for him to  
24 integrate or not similar or identical questions during the final planning  
25 phase of his direct examination.

1        Given that the presentation of the Prosecution case has been  
2        concluded, it is indeed no longer necessary for him to benefit from such  
3        disclosure. That disclosure, on the other hand, and for the reasons that  
4        have been mentioned, needs to be done to the Defence team that is now  
5        expected to carry out direct examinations of their own witnesses. If it  
6        turns out that one of the questions asked by the Defence during its  
7        direct examination is similar to one that the Legal Representatives  
8        intended to ask, then the Chamber will determine whether it is necessary  
9        to grant them leave to ask the question again with a view to obtaining  
10       complementary information from the witness.

11       The Chamber is therefore of the opinion that instructions number  
12       1665 of the 1st of December, 2011 (\* as interpreted), should be amended,  
13       and paragraph 87 should be read as requiring the Legal Representatives to  
14       communicate in advance the questions that they intend to ask in all cases  
15       to the Chamber, and depending on the witnesses that are called, either to  
16       the Prosecutor, during the testimony of those witnesses, or to the  
17       Defence of Germain Katanga if it is his witnesses who are testifying, or  
18       to the Defence of Mathieu Ngudjolo when the latter's Defence witnesses  
19       would be testifying, or to the two Defence -- or to the two Defence teams  
20       in the case of common witnesses. This decision shall come into force  
21       with immediate effect. And this means that Mr. Gilissen and  
22       Mr. Luvengika will address to Mr. Hooper as soon as possible the  
23       questions that they intend to put to Witness 136, who will be the first  
24       witness to appear.

25       Filing number 2776 of Mr. Gilissen, dated 15th March 2011,

1 relating to Witness DRC-D02-P-134 should be reclassified and made  
2 available to the Defence of Germain Katanga.

3 Oral decision number three relates to the final order of  
4 appearance pursuant to Regulations 43 and 54 of the Regulations of the  
5 Court for the presentation or appearance of Defence witnesses.

6 On the 21st of March, 2011, the two Defence teams filed their  
7 responses to the Chamber's request in order number 2775 of 15 March 2011,  
8 establishing the modalities and order of appearance of witnesses called  
9 by the Defence teams. These filings are number 2785 for the Defence of  
10 Mathieu Ngudjolo and 2786 for the Defence of Germain Katanga.

11 The Chamber notes the withdrawals and groupings that were  
12 effected for the order of appearance of the witnesses. The Chamber notes  
13 that Germain Katanga is now at number 23 of the list of witnesses to be  
14 called for his Defence, and the team would like that if he is called to  
15 testify, he should be -- he should do so after Mathieu Ngudjolo's  
16 witnesses.

17 In a filing of the 23rd of March, 2011, the Defence of  
18 Mathieu Ngudjolo is opposed to Germain Katanga testifying after his own  
19 witnesses. The Defence points out that the position that would then have  
20 been given to Germain Katanga will be contrary to the provisions of  
21 decision 1665 of the 1st of December, relating to the conduct of the  
22 proceedings, and to Rule 140, which stipulates that the witnesses of  
23 Germain Katanga will testify first and then will come the witnesses of  
24 Mathieu Ngudjolo.

25 The Chamber points out that Regulation 43 of the Regulations of

1 the Court gives us the right to determine the order of appearance of  
2 witnesses. The Chamber recalls that we are fully aware of the fact that  
3 the counsel for the two accused intend to carry out their own defences  
4 differently. We also point out that the provisions of Rule 140, which  
5 have to be complied with, that request was made at the same time that the  
6 proceedings on the merits were beginning and that we could not take into  
7 account any incidents that took place in the course of the proceedings.  
8 The Chamber was therefore compelled to amend on several occasions,  
9 including this morning, 10 minutes ago, particularly with regard to the  
10 order of appearance of witnesses, those provisions in order to enable the  
11 Defence of Mathieu Ngudjolo to call its witnesses -- to call common  
12 witnesses immediately after the presentation of the Defence case by the  
13 Defence of Mr. Katanga.

14 The Chamber recalls that the Defence for Mathieu Ngudjolo does  
15 not show in what way such an arrangement must or can be prejudicial to  
16 it. The Chamber notes, on the contrary, that the very specific nature,  
17 such as the importance of the testimony of the accused themselves, makes  
18 it important that at the end of the presentation of the two Defence  
19 cases, those two accused persons could testify at the close of the  
20 Defence cases. Apart from the importance of testifying together, the  
21 Chamber feels that this arrangement will fully ensure the fairness of the  
22 trial.

23 And therefore, if the principle of the appearance of  
24 Germain Katanga as a witness is maintained, then the Chamber decides that  
25 he will testify after the testimony of Mathieu Ngudjolo's witnesses but

1 immediately before Mathieu Ngudjolo himself, who will be the last to  
2 testify.

3       Given the modifications which have been made in the evening of  
4 Friday, the 18th of March, 2011, the Chamber would like to state that the  
5 next witnesses to be called will be DRC-D02-P-0236 from tomorrow, the  
6 24th of March, and then the three detained witnesses, DRC-D02-P-0236 and  
7 DRC-D02-P-0011, these are joint witnesses from the 30th of March, 2011,  
8 followed by DRC-D02-P-0228 and DRC-D02-P-0350, and lastly,  
9 DRC-D02-P-0134. The Chamber also recalls that the changes which could  
10 occur in the order which has been adopted today have to be formalised in  
11 writing and sent to all parties and participants or made orally at the  
12 beginning of the hearing of Monday as agreed during the hearing of the  
13 21st of February, 2011, and I would like to refer you to the modalities  
14 which we agreed upon which you'll find in the transcript of the hearing  
15 of that day, pages 2 and 3.

16       With respect to the changes in the order of appearance of  
17 witnesses, such changes should not be done through e-mails as was the  
18 case in -- on the 18th of March, 2011. E-mails should only be used in  
19 cases of extreme emergency.

20       I will now hand down an oral decision on the application of the  
21 Legal Representative of the group of child soldiers relating to access to  
22 a certain number of confidential *ex parte* documents.

23       The Chamber would like to respond to the application made orally  
24 by the Legal Representative of the group of child soldiers who are  
25 victims, during the Status Conference of 9 March 2011, transcript number

1 T-236, page 53 to 54. That request was sent through an e-mail to the  
2 Chamber on the 10th of March, 2011, at 12.56 p.m., and that application  
3 related to access to a certain number of confidential *ex parte* documents.

4 As concerns the procedure relating to detained witnesses called  
5 by the Defence, the Chamber has just submitted confidential or redacted  
6 public versions of the decisions it has handed down. As concerned  
7 documents relating to proposals and the positions of parties with respect  
8 to agreements on evidence, the Chamber considers that these documents  
9 relate to discussions which are *inter partes* by nature and that access to  
10 such documents is not necessary for the participation of victims as the  
11 Chamber defined it and that such documents should therefore remain  
12 *ex parte*. The Chamber recalls that it is in this light that it ordered  
13 in its decision relating to modalities for participation of victims, the  
14 decision rendered on the 22nd of January, 2010, number 1788,  
15 paragraph 125, that it ordered the submission of a new document by the  
16 Prosecutor in order to give Legal Representatives of Victims access to  
17 the matters on which agreement was reached.

18 Lastly, the Chamber is not opposed to the Prosecutor forwarding  
19 to the Legal Representatives its e-mail of 20 January 2011.

20 The Chamber will now read an oral decision, a decision which can  
21 only be handed down in closed session. Up to now our proceedings have  
22 been confidential and *ex parte*. This oral decision has to be handed down  
23 in the absence of the Legal Representatives of Victims. But before I  
24 read that decision and before I refer an e-mail that was sent to the  
25 parties, the Chamber would like to say a few words on the arrival of

1 three detained witnesses.

2 The Prosecutor has stated that he would like to say a few words  
3 on a filing number 2790 of 21 March 2011, sent by the Defence team of  
4 Germain Katanga on which you were requested to submit observations, and  
5 this was done on the 27th -- and this had to be done by the  
6 27th of March, latest.

7 Before the Prosecutor takes the floor, the Chamber would like to  
8 remind you, to inform you, that most of the filings which have been  
9 *ex parte* hitherto are currently being reclassified as confidential, and  
10 they will be brought to your attention.

11 Mr. Prosecutor, you have the floor after my very long  
12 intervention.

13 MR. MACDONALD: (Interpretation) Good morning, your Honours.  
14 Thank you for giving us leave to respond orally to this request that was  
15 submitted yesterday.

16 Furthermore, your Honour, since we are going to go into closed  
17 session, I would like to know whether it's possible, and this is only a  
18 suggestion, there may be some discussions on the exchange of e-mails that  
19 has taken place between the Defence and the Prosecution and maybe the  
20 Chamber. I wish to clarify an error. Before we go into closed session  
21 and ask our colleagues to leave, maybe we should address these matters.  
22 And this has to do with documents which we have to use for  
23 Witness P-0236, that there was an error on the list that we sent to you,  
24 an error relating to the ERN of the Defence. 2790, that's the reference.

25 Well, we leave everything to the appreciation of the Chamber,

1 your Honour, but we wish to draw your attention to two EVD numbers, and  
2 they are public. There are two other confidential EVD numbers, and I  
3 don't know why they are confidential. These EVDs could help you in  
4 appreciating the request for protective measures which have been asked  
5 for the second detainee, who I believe is 00228. Now I'll read out the  
6 EVD numbers -- or, rather, they relate to a correspondence from the three  
7 detained persons, including the detainee Katanga, dated 31 January 2007,  
8 and I'm referring to EVD-OTP-231 -- or, rather, 00231, as well as  
9 EVD-OTP-00230, which has the content of that document. This has to do  
10 with the complaints of the detained persons, who were at that time at the  
11 prison of Makala. You should take note of the addressees, the persons to  
12 whom these documents were addressed; namely, the court, its president,  
13 and its prosecutor, the representatives of the United Nations, the  
14 representatives from parliament and from the government of the Congo, as  
15 well as certain NGOs and other personalities. It also includes the  
16 auditor general of the army, that is the official responsible for  
17 detention of the records of the two detainees who are going to come to  
18 give evidence. You should also look at the content of that memorandum, a  
19 memorandum sent to His Excellency the Minister of Justice and Keeper of  
20 the Seals, and you will find, I believe, that the complaints or the  
21 theory of the Defence with respect to the authority sent to Kinshasa of  
22 Beni at the time of the attack are all described in here. Maybe not in  
23 as great detail as you would find in the statements of the witnesses, but  
24 this is not a secret to the Congolese authorities. So we are submitting  
25 this to the Chamber.

1        There are also two documents which are confidential, documents  
2        which the Chamber has certainly noticed as well. These are EVD-OTP-00233  
3        and EVD-OTP-00234. These documents are confidential. When we  
4        submitted -- we submitted these documents by bar table motion by order of  
5        the court. That was the first point.

6        Second point: We understand that Mr. Hooper, who represents  
7        Mr. Katanga, is the party calling these witnesses. However, we would  
8        like to draw your attention to the fact that in his filing he refers to  
9        the detention conditions of the three witnesses in Kinshasa, the duration  
10       of the detention. I think there is a deviation here. Well, a  
11       distinction has to be made between the interests of Mr. Katanga as  
12       defended by his counsel Mr. Hooper and the interests of these witnesses,  
13       and Mr. Hooper is not counsel for these three witnesses. I think we  
14       should avoid any mix-up or overlap of things here, and we wish to draw  
15       the attention of the Chamber to this point.

16       Now with respect to application for protective measures, we do  
17       not have any comments to make on that. We would like to depend or rely  
18       on the Chamber's discretion.

19       PRESIDING JUDGE COTTE: (Interpretation) Thank you,  
20       Mr. Prosecutor. Should we consider, therefore, that the observations  
21       which we requested for the 25th of March before midday have been  
22       presented and that you are not going to send any observations in writing?  
23       It would be proper for you to send them to us in writing so that we can  
24       have the full logic of your reasoning and have all the references of the  
25       documents you have presented.

1 With respect to the second point of your observation, relating to  
2 an overlap between the interests of the accused and the interests of  
3 witnesses, rest assured that the Chamber is reading all filings that are  
4 submitted very attentively, and we try to detect any problems that might  
5 arise.

6 Since we are in public session, you would like us to deal with  
7 certain practical matters that could facilitate our job tomorrow. Of  
8 course you have the floor to do so. This is not a Status Conference, of  
9 course, but that doesn't stop us from attending to certain housekeeping  
10 matters.

11 MR. MACDONALD: (Interpretation) Thank you. Your Honour,  
12 yesterday we submitted our list of documents which have to be submitted  
13 three days prior to the beginning of the cross-examination. Last Friday  
14 we sent our list for Witness 134, but given the changes that have taken  
15 place, we will have to reorganise our distribution of documents and  
16 finalise certain notifications which we had not done at this juncture.

17 You will remember that in the case of Witness 236, that is the  
18 first witness, an unsigned statement was sent. Secondly, a signed  
19 statement followed, and the two statements bear different references,  
20 different ERN numbers in eCourt.

21 When we submitted our list yesterday, we made error in the ERN.  
22 We were referring to the unsigned statement, whereas we should have been  
23 referring to the signed statement. Well, unless there is any other  
24 differences between the two statements. In any case, we think that this  
25 has to be addressed.

1 We would like to maintain the reference number of the unsigned  
2 statement but would like to add the ERN reference of the next statement,  
3 the ERN which we should have included or added. It is DRC-D02-0001-0547.  
4 This ERN is that of the signed statement of Witness D-136.

5 I also sent an e-mail to my colleagues of the Katanga team to ask  
6 them whether there were any differences between the signed statement and  
7 the unsigned statement that we received, and I think Ms. Menegon sent us  
8 a reply yesterday, I believe, confirming that there was no difference  
9 between the two statements.

10 Well, there are many things which we -- many documents which we  
11 receive and send, but I think the difference is only in the ERN numbers,  
12 and so we agree with the team, and we are going to make submissions in  
13 writing.

14 I have another point to make later on, your Honour, for another  
15 exhibit.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, the Chamber  
17 is still relying on the e-mail that was sent by Ms. Menegon yesterday,  
18 stating that the signed statements and the unsigned statements are one  
19 and the same thing. Do we agree on that?

20 MR. HOOPER: Yes, and that relates to Witness 501, 136, and 134,  
21 and they were sent ahead of time, that is the unsigned statement, just to  
22 provide that little bit more material for the Prosecution, and they were  
23 then followed by the signed statement. They are exactly the same. And  
24 the signed statements, of course, are the documents, if they are to be  
25 referred to, that we'd wish any witness be shown rather than the unsigned

1 ones. Thank you.

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

3 MR. HOOPER: Ms. Menegon further assists us this morning by  
4 drawing my attention to the fact that the statements served for 236 and  
5 228, that is the two detainee statements that have been served, similarly  
6 the unsigned draft is exactly the same as the signed statement.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you for that  
8 clarification.

9 Prosecutor, you wish to carry on. Please.

10 MR. MACDONALD: (Interpretation) Thank you for that  
11 clarification. We endeavour to keep referring to the signed statements.

12 Second point: On that list, this afternoon we are going to  
13 disclose documents, and one of those documents is identified on the list,  
14 namely the page of -- it's a web site, web site of an NGO which operates  
15 in Congo and which also carries out activities in Ituri. We submit that  
16 that NGO is the one that was identified in the statement, but identified  
17 under a slightly different name, and it is in the statement of  
18 Witness D-236, and I think this must be on page 6 or 7, if I'm not  
19 mistaken, when reference is made to an intermediary of the Prosecution.

20 What we have noticed -- what we noticed yesterday is that the  
21 activities of that NGO --

22 MR. HOOPER: I'm only interrupting because it seems to me my  
23 friend's rather running away with the morning. If these are evidential  
24 points, then he can make them in due course. We submitted this morning,  
25 or we will shortly, an objection to the production or reference by the

1 Prosecutor to five items on his list, and we would submit that the  
2 present discussion would take -- be better placed after the Prosecutor  
3 has had an opportunity of seeing our objection and, if necessary,  
4 responding to it in due course when the time comes for him to refer to  
5 any document. Now, this is not the time to do that.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, indeed  
7 we believe that we are only trying to deal with housekeeping matters here  
8 in order to facilitate our discussions tomorrow. If we have time this  
9 morning or this afternoon to have a discussion between the parties in  
10 order to clarify a certain number of points or to raise objections, then  
11 we will be able to revisit the issues you are trying to raise, because  
12 the point, the purpose of this hearing this morning is not to discuss  
13 these matters. So I would like to suggest that we stop there.

14 I would like to seize this opportunity before we start the  
15 Defence case, the presentation of the Defence evidence, to state that the  
16 final preparations -- you remember when we were dealing with the  
17 Prosecution case, we knew the number of days that were going to be taken  
18 by the Prosecution team. So there have been a lot of discussions that  
19 have taken place. We have encountered a lot of difficulties. There was  
20 a witness that was supposed to give evidence as the first victim -- as  
21 the first witness but apparently was not able to give evidence, because  
22 we are working in a situation of emergency, and I believe that we have to  
23 prepare well in order to avoid situations of this nature. It is  
24 important, therefore, that the presentation of Defence evidence be done  
25 in the same climate of serenity that we witnessed during the presentation

1 of the Prosecution evidence.

2 I am aware that your task is not an easy one, and consequently  
3 that of the Chamber is not easy. The same applies to the Legal  
4 Representatives and the Prosecution.

5 Now, Legal Representatives, we are going to appeal to you to  
6 leave us now. We wish to hold an *ex parte* session.

7 And, Court Officer, could we go into closed session.

8 Yes, Mr. Kilenda.

9 MR. KILENDA: (Interpretation) Thank you, your Honour. We do  
10 not know whether the Legal Representatives of Victims are going to come  
11 back to the courtroom, and so for that reason I would like to request  
12 your permission in order to say a few words. This is not going to take  
13 time, maybe just one minute.

14 PRESIDING JUDGE COTTE: (Interpretation) You may take two or  
15 three minutes.

16 MR. KILENDA: (Interpretation) Thank you, your Honours.

17 I regret to announce to you that within a few days, our case  
18 manager, who is, so to speak, the hard drive of this team, is going to  
19 leave us. She is going to turn to France to carry out her duties as  
20 lawyer, and on behalf of the entire team I would like to bring this  
21 information to your attention and to extend to her our sincere thanks for  
22 all the work she has done within this team.

23 I would also like to seize this opportunity to present to you  
24 Ms. Nathalie Leblanc, with great pleasure, who is of Canadian  
25 nationality. She is a lawyer of the Bar in Montreal, and she has served

1 at the International Criminal Tribunal for the Rwanda. She is the one  
2 who is going to replace our case manager. Thank you, your Honour.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.  
4 Similarly, just as the Court receives everyone who arrives, we would like  
5 to warmly welcome Ms. Leblanc, and we wish her success in the duties  
6 which she is going to take up within the Defence team of Mathieu Ngudjolo  
7 and at the service of the court. The Chamber would like to express its  
8 regret about the departure of someone whose name, I apologise to say, I  
9 cannot pronounce and that's why I limit myself to saying Helene. Helene  
10 has brought her smile and her competence to the team of Mathieu Ngudjolo.

11 A short while ago I talked about the need for serenity in our  
12 proceedings, and Helene certainly contributed to the easy flow of mail  
13 that we exchange every day to ensure that our working conditions and our  
14 work is of good quality. So thank you and good luck in your duties in  
15 France, and we wish that you are going to have an easy transition to your  
16 new duties. So after these very emotional time -- moments, perhaps you  
17 will take the smile off our lips.

18 MR. LUVENGIKA: (Interpretation) Mr. President, do we come back  
19 to the Chamber afterwards?

20 PRESIDING JUDGE COTTE: (Interpretation) No. We are just going  
21 to hand down a decision which has to be handed down in closed session,  
22 *ex parte*, and to read out an e-mail which will then become official. So  
23 we will see you tomorrow morning at 9.00 a.m. with the first witness for  
24 Germain Katanga's Defence team. Thank you for your attendance this  
25 morning.

1       The organisational constraints linked to going into *ex parte*  
2 session means we have to suspend for -- to adjourn for half an hour. We  
3 will adjourn. It is now 10.05. We will resume at 10.35, and then we can  
4 conclude at 11.00.

5       So for the public, the hearing is going to be suspended. It will  
6 resume at 9.00 a.m. tomorrow. The reading of decisions can only be done  
7 in closed session, because these are responses to filings which were all  
8 exchanged confidentially *ex parte*.

9       So the hearing is adjourned, and we will resume at 10.35.

10      The hearing ends at 10.05 a.m.

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