

Ex Parte - Prosecution and Katanga Defence Only (Closed Session)
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1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor v. Germain Katanga and
7 Mathieu Ngudjolo Chui

8 Ex Parte - Prosecution and Katanga Defence Only-Reclassified Public

9 Monday, 3 May 2010

10 The hearing starts at 4.00 p.m.

11 (Closed session) (*Reclassified into Public)

12 PRESIDING JUDGE COTTE: (Interpretation) The session is now
13 open. Kindly be seated.

14 So we will now resume. A thank you to the Office of the
15 Prosecutor for having come along.

16 Just to be very brief, Mr. Prosecutor, you will remember this is
17 a recent "souvenir," that the Defence team for Germain Katanga has
18 petitioned the Chamber on the 23rd of February this year with a request
19 for cooperation bearing the number 1900. This is a request for the
20 cooperation, a copy of which has been redacted lightly and sent to you,
21 and also provided to Ngudjolo Defence team on the 23rd of April.

22 There are two appendices to this request which have not been
23 redacted and two which have been partially redacted.

24 The Chamber was hoping to base its decision on Article 57(3(b) of
25 the Statute and reading this in conjunction with Rule 116 of the RPE, and

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1 that's why you're here with us today, Mr. Prosecutor, because we need to
2 gather your opinion as Rule 116 requires. The Chamber will first-hand
3 over to Counsel Hooper, or should I say Counsel O'Shea who is here with
4 us today to support this request for confirmation. So Mr. O'Shea will
5 give us an expose of this request. He is going to be as brief and
6 precise as possible so that Mr. Prosecutor can fully grasp what he wishes
7 to have said and to assess the difficulties against which he has come up
8 in seeking information of his own bat that he deems important to the case
9 of the Defence.

10 You have, Mr. O'Shea, ten minutes or 15 maximum to give us an
11 expose of your request. Thank you.

12 MR. MACDONALD: (Interpretation) Your Honour. By way of
13 introduction, your Honour, you said that we had access to some
14 appendices. I should just point out that this morning we had access to
15 Appendix 1 without redactions as per the e-mail that we sent, And
16 Appendix 5, but we have no further appendices. See we have appendix 1 to
17 document 1900 and -- and document 5 which I assume has been redacted by
18 the Katanga team.

19 PRESIDING JUDGE COTTE: (Interpretation) If what we are talking
20 about are reminder e-mails or telegrams that have been sent to
21 governmental authorities -- to governmental authorities in the RDC and
22 also to a representative of the diplomatic corps of the RDC in Belgium.
23 I think that it's Annex 4 and 2 which are unredacted and Annex 5 is
24 partially redacted, and this was disclosed to the bureau of the
25 Prosecutor, and to my understanding Annex 3 has not been redacted. The

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1 idea now is just to -- the idea was just to send a reminder to those
2 authorities to say, "Well, we did send you a letter and we would
3 appreciate an answer." That's what I can tell you about those
4 appendices.

5 So Mr. O'Shea will therefore give a precis in 10 minutes or 15
6 maximum of this request which should enable Mr. Prosecutor to give an
7 opinion about -- as required under R.116 in as brief a delay as possible.
8 Once we have our opinion, the Chamber will be able to decide whether
9 there are grounds for issuing the order pursuant to Rule 116. So there
10 we have a double-pronged exercise before us. Firstly, it's up to
11 Mr. O'Shea to provide this information so that you can give an informed
12 opinion so that we, and, secondly, can decide whether we have enough
13 information in order to issue this order under Rule 116.

14 So 10 to 15 minutes of floor time to Mr. O'Shea, and then the
15 Prosecution will have the same amount of time, but the Chamber has a few
16 questions to ask you, Mr. Prosecutor, so that, I repeat, we can
17 understand the best way forward with this request and to see whether it
18 is able to issue the order under R 116.

19 It is now after 4.05, so you have until about 4.20. The floor is
20 yours, sir.

21 MR. O'SHEA: Thank you very much, Mr. President, your Honours.
22 Effectively on the 23rd of February of this year, the Defence for
23 Mr. Katanga has made a request to this had Chamber for a request to the
24 government of the DRC through the Registry for cooperation in terms which
25 have been defined in that motion and in correspondence with the DRC.

1 The -- the Defence makes its application in terms of Articles 86,
2 87, 93, 96 of the Rome Statute, and Rule 177 of the Rules of Procedure
3 and Evidence. The nature of the request contains matters of which the
4 Prosecution are privy and more detailed matters of which the Prosecution
5 are not privy. Effectively, we are requesting information which relates
6 to -- and documents which relate to the relationship between certain
7 governments, in particular the Government of Uganda, the Government of
8 Rwanda, and the Government at Kinshasa, and also between the RCD-K/ML and
9 the APC, on the one hand, and on the other hand, the Lendu and Ngiti
10 combatants in the region in question between January 2002 and August
11 2003.

12 The Defence is also requesting information and documentation with
13 respect to the process of demobilisation and reintegration, as well as
14 the role of the national organ CONADER in that respect. The Defence
15 would like to know how these processes were organised, which individuals
16 in particular were involved at the highest levels from whatever side of
17 the conflict in this demobilisation process, and the Defence has set out
18 a number of specific issues, questions, and documents in a letter to the
19 Democratic Republic of Congo on the 6th of October, 2009, and the
20 Prosecution is not aware of the contents of that letter.

21 Having sent that letter to the Democratic Republic of Congo on
22 the 6th of October, 2009, the Defence followed up by e-mail and sent the
23 letter again, the same letter, on the 7th of October, 2009. On the 27th
24 of October, 2009, the resource person for the Defence team for
25 Mr. Katanga delivered personally copies of the same letter to the

1 government of the DRC and received stamps on those copies.

2 On the 28th and 29th of December, 2009, the same resource person
3 for the Defence team visited two ministries and received the response
4 from the DRC that the matter was being dealt with but that it was not yet
5 finalised, but we have no further details or response from the Democratic
6 Republic of Congo, nor do we know if the Democratic Republic of Congo has
7 the intention of going into the details of the letter sent to them or
8 will provide, if it does, a formal response with the view expressed
9 beforehand that it does not have to cooperate with the Defence. And then
10 the next stage was that our motion was filed on the 23rd of February,
11 2010.

12 It's the Defence submission that it is likely that there are
13 documents in the form of records, letters, minutes, or documents of other
14 nature in the possession of the DRC, or the DRC government is aware of
15 existence of such documents and their location, and we are seeking
16 clarification from the DRC as to the existence of those documents and for
17 disclosure of such documents to the Defence for the purposes of our
18 Defence case.

19 The relevance of these documents and information to the Defence
20 case has been set out in our motion, in paragraphs which have been
21 redacted for the Prosecution.

22 In our submission, the kind of information that we are requiring
23 is best obtained from the Democratic Republic of Congo itself. Such
24 efforts as have been made by the Defence to obtain documents which we
25 suspect exist from other sources have not been successful.

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1 Mr. President and your Honours, in light of the fact that this
2 information has been set out in detail in our motion for cooperation, of
3 course, sympathising with the fact that Mr. MacDonald's team is not aware
4 of all the details, I think that that is all that is necessary for me to
5 say at this juncture.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Counsel O'Shea.

8 The Chamber recalls that simply, as it said a moment ago, that
9 this motion number 1900 dated 23rd of February, 2010, or should I say the
10 request for cooperation is only slightly redacted, which means that the
11 Office of the Prosecutor does have in its possession these
12 redactions (indiscernible) only in paragraphs 26 and 27, but with this
13 request for cooperation the Office of the Prosecutor does have a maximum
14 of information that the Defence has been able to provide.

15 So, Mr. Prosecutor, before the Chamber asks you a few questions,
16 it would first like to hear your reaction to this request as has just
17 been orally presented by Counsel O'Shea. So we would like to reiterate
18 what the Defence has requested or what they would like to obtain, be it
19 from the governments of the RCD, Rwanda, Uganda, relations between
20 Central Kinshasa government and the RCD-K/ML, DV, APC, all of this
21 between the dates that we heard and also the Lendu, Ngiti combatants, and
22 he has outlined the difficulties up against which he came in -- of a more
23 general nature.

24 So could you please, Mr. Prosecutor, give us a general response
25 initially to what you have just heard about this request. Please give us

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1 your opinion under Rule 116 before we go ahead with our questions. Thank
2 you, sir.

3 MR. MACDONALD (interpretation): Thank you. We are here
4 obviously to assist the Chamber, and therefore also the Defence. We are
5 aware that the Prosecution has perhaps more privileged contacts with
6 Congolese authorities than other organs of the truth. I would just like
7 to remind that Mr. Pascal Turlan was in Kinshasa one week ago as part of
8 a mission for the OTP, and he was able to ensure the follow-up with the
9 Congolese authorities, so I will hand over to him as concerns the results
10 that he was able to obtain, and then I will come back to give additional
11 information so that I can answer any questions the Chamber may have for
12 me.

13 So I will stop here for the moment and come back later.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Mr. Prosecutor.

16 So, Mr. Turlan, you have the floor. So last week you were in the
17 RDC?

18 MR. TURLAN: (Interpretation) Yes, that's correct. I was there
19 not only to discuss this particular case, but I did meet with the
20 Ministry of Defence focal point and also the focal point the Ministry of
21 Justice with whom we have been working on a regular basis with what we
22 call the national programme of the DDR for the demobilisation,
23 disarmament and reintegration. I raised the issue of this request for
24 cooperation sent by the Defence. I did not go into the details of the
25 document in question specifically relating to the elements of the

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1 (indiscernible). I just talked about the process. The usual process for
2 obtaining information from Congolese authorities is to send a request to
3 the Ministry of Justice and this was done. This is the focal point for
4 contact between the authorities of Congo and the organs of the Court, and
5 this is then transferred to the competent authorities. In other words,
6 the Ministry of Defence and the Ministry of Defence abroad and the unit
7 aiming at the national DDR programme who can then provide the information
8 concerning the DDR programme.

9 Our contact within the Ministry of Defence, and we can offer the
10 contact details to the Defence if necessary, is (Expunged). And he
11 is the legal advisor to the Ministry of Defence. I met with him in his
12 office, and on the 1st of March, 2010, he received this document. I
13 don't know how it came to him so late. In our experience we can see,
14 however, that it was him who is best placed to follow up on these
15 requests within the Ministry of Defence in the Democratic Republic of
16 Congo.

17 He indicated that it would be difficult to go into the details of
18 this request with me because the request mentioned that the questions
19 were talking about the Congolese authorities and would require discussion
20 with -- discussion with other organs of the court other than the Defence.
21 Some of our -- our questions seemed quite difficult for him to answer.
22 Maybe they were too general in nature. The questions were not targeted
23 enough for him to be able to ask the right people for the information.
24 He also stated that part of the information would be difficult to gather
25 because for certain items of information these dated back to 2002 or

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1 2003, which was a period in which the DRC was in a very different
2 political situation with a different government in power, with different
3 controlling bodies in different parts of the country, or in some cases
4 there were very few archives available for certain aspects upon which
5 the -- in which the Defence was interested.

6 Naturally, he indicated that he was at the avail -- he was at the
7 disposal of the Defence. If they wanted further clarifications, he would
8 follow up on -- on this request.

9 That is what I can say about these two meetings that I had, the
10 first with the meeting of the DDR national programme who -- which is the
11 successor of the CONADER programme. We can discuss this in more detail
12 afterwards if you have any questions thereabout. And he replied that any
13 questions addressed to him should go through the Ministry of Justice and
14 then through the Ministry of Defence, and he would refer to them
15 directly.

16 One final point to make. In our experience when dealing with the
17 Congolese authorities, we in the OTP ourselves have experienced very long
18 delays when we are asking for cooperation. Sometimes these are very
19 long. Sometimes they are extremely long. It is not usual for a request
20 for cooperation addressed specifically to the Ministry of Defence to take
21 several months to get an answer.

22 Thank you very much.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes. Just some
24 clarification. Thank you, Mr. Turlan. One clarification. Perhaps I did
25 not understand you correctly. You indicated that there were two

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1 meetings, the first one with (Expunged). Are we talking about the
2 national DDR programme? Did you meet someone, and did that person
3 receive on the 1st of March, 2010, as (Expunged) or -- before or
4 after the request as submitted by the Katanga Defence team?

5 MR. TURLAN: (Interpretation) Thank you, your Honour. Indeed I
6 met (Expunged)
7 (Expunged)
8 (Expunged). He did not indicate that he had
9 received the request from the Defence. As far as I know, this is still
10 held in the Ministry of Defence. He did, however, tell me that any
11 request addressed to the national DDR programme would pass through the
12 Ministry of Justice and then the Ministry of Defence who would refer it
13 to him if -- if necessary.

14 PRESIDING JUDGE COTTE: (Interpretation) And he also agreed on
15 these long time frames; is that correct?

16 Thank you, Mr. Turlan. Given what you've just heard from
17 Mr. Turlan, does the Katanga Defence team wish to take the floor again or
18 would you like to leave it to the Chamber to ask a few questions to the
19 Office of the Prosecutor or would you like to ask for any clarifications
20 or additional information yourselves? Over to you, Mr. O'Shea.

21 MR. O'SHEA: I don't know if my learned friend was given any
22 indication, because he said that it was habitual for several months'
23 delay in these applications, and, of course, since the time of our letter
24 some 11 months have passed. I don't know if during the course of these
25 discussions he was given an indication or a statement of intention from

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1 the person in question, I think (Expunged), as to when they expected
2 to answer the Defence and if they intended to answer the Defence.

3 He outlined -- my learned friend outlined that (Expunged)
4 had expressed some difficulties with some of the questions put to the DRC
5 in the sense that he thought that they were too general, but did he
6 indicate that they were actually going to answer the Defence, and did he
7 indicate when they expected to answer the Defence?

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Turlan,
9 Counsel O'Shea is asking whether your interlocutor had issued some kind
10 of statement of intention of if he would respond and when, and the
11 Chamber would like to add to Mr. O'Shea's question the following: Did
12 (Expunged), who had intimated that some questions made by
13 Mr. Hooper's team were too general, did (Expunged) also intimate
14 that he would be willing to answer more precise questions? In other
15 words, questions that had a tighter focus.

16 So to pick up on Mr. O'Shea's questions, can he expect a -- an
17 answer, and the Chamber's question, would he be willing to answer
18 questions with more targeted questions if they were closer in focus? Can
19 you answer these questions, sir?

20 MR. TURLAN: (Interpretation) Thank you, your Honour.
21 (Expunged) did certainly not indicate that he was unwilling to
22 answer any of the Defence's questions. Here again we did not go into
23 details of the questions that he had been asked. He explained that he
24 and his service would require some time to collect the information if
25 indeed they existed, and there we can say that they did appear to intend

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1 to answer the application of the Defence. I can cite two points that he
2 made. He said that it was difficult for them to have an answer today in
3 that the questions as formulated, and he said "Il est bien connu," it is
4 well known that -- that as much information as possible on such or such
5 an information would not be able to be given immediately, that he would
6 be able to refer this to the service that could provide that information
7 if that information indeed existed. (Expunged) did not specify a date
8 by which he envisaged responding to the request. He did note that there
9 were several questions in this request and that it would require some
10 time to be able to answer them. He furthermore indicated that he was
11 available to answer the Defence's questions directly by telephone or via
12 a visit to his office, and in the OTP we are obviously available to
13 facilitate the contact between (Expunged) and the Defence team be it
14 by providing contact details or by a joint visit if this is required for
15 the Defence team and (Expunged) to discuss this in further detail.

16 I think that out of this meeting it became clear that precise
17 questions on a precise subject would facilitate an answer, but the answer
18 would not be necessarily rapid on the part of the Congolese authorities
19 if the information exists and is available and can be transmitted to the
20 bodies of the court.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Turlan.
22 One comment to begin with and a few additional questions.

23 The Chamber realises that you did not have any difficulty
24 yourself contacting this (Expunged) who is maybe if not too easy to
25 contact, but it is possible to contact him. Did you have the feeling

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1 that (Expunged), that is if more specific questions are asked him
2 rather than it is well known that, so if specific questions were asked to
3 him, did you have the impression that he would accept to answer directly
4 to the Germain Katanga Defence team? That is what the team hopes,
5 because they addressed one of their letters directly to the Ministry of
6 Defence. And so my question to you is do you have the feeling that the
7 Defence team of Germain Katanga can address themselves directly to
8 (Expunged), or is it necessary to go through the normal channels,
9 that is, the ministries, and obtain results several months after, because
10 we talked about the 6th or the 9th of October, and (Expunged)
11 received the mail only recently. So is it possible to contact him
12 directly and can the Defence team write to him directly and contact him
13 directly? That would be very important if that is the appropriate or
14 ideal authority for the military aspects.

15 MR. TURLAN: (Interpretation) Thank you. Please, with your
16 leave, I will take a moment to consult.

17 (Prosecution counsel confer)

18 MR. TURLAN (interpretation): Thank you, Mr. President.
19 (Expunged) indicated that he would be prepared to assist directly
20 with the request of the Defence team. On the basis of my experience with
21 Congolese authorities, it seems to me that it would be useful to follow
22 the two channels parallelly, that is, stay in contact with the Ministry of
23 Justice, which is the focal point between the DRC and the ICC and send
24 them a reminder about the necessity to respond, and then also directly
25 contact (Expunged) who has already received the request which passed

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1 through the normal channels and who expressed his readiness to answer the
2 Defence questions directly.

3 We are prepared to facilitate contact with (Expunged) as
4 well as with the competent authorities in the Ministry of Justice. The
5 (Expunged) or a member of his cabinet
6 who has been following up our requests in the past.

7 I do not doubt the will of the Congolese authorities to respond
8 to this request, but it might be said that an intervention of the Chamber
9 will provide further support for that request, that is if the Chamber
10 decided to take that option.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you once again,
12 Mr. Turlan. So to be sure that we understood you correctly, you are
13 suggesting that we should formally remind the two ministries involved the
14 existence of the first request dated 6th of October, 2009, and which has
15 been followed up which the resource person in the DRC. At the same time,
16 we should follow up the direct contact with (Expunged), given that
17 he has already received the request through the normal channels. So we
18 will be saving time by going through the normal channels and by actually
19 sending a courtesy letter of reminder; is that correct?

20 MR. TURLAN: (Interpretation) Yes, indeed, Mr. President. I
21 believe that telephone contact with (Expunged) is also quite
22 possible and would be faster and more efficient than sending him a new
23 correspondence directly.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Turlan.
25 Mr. O'Shea, given Mr. Turlan's suggestion and assuming that he

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1 will give you some of the useful contact details necessary for you to
2 push through your request, would you accept such a proposal, because
3 these are conventional methods that we are using here. So is that
4 suggestion acceptable to you?

5 MR. O'SHEA: Indeed, Mr. President. I'm very grateful to the
6 Prosecution for the efforts that they've made and for the good faith that
7 they've demonstrated in their presentation today.

8 I -- my learned friend indicated at the beginning of his
9 presentation that he recognises that the Prosecution has an easier line
10 of communication with the government of the DRC. Indeed, we have tried
11 to get in contact with (Expunged) on a number of occasions, and
12 we've never been successful on our own efforts.

13 With regard to the Ministry of Justice, we've had a very unhappy
14 experience with them, if I can put it that way, but if I -- if I may
15 suggest that if my learned friend could perhaps facilitate the contact
16 between us and (Expunged), I think that would help matters. If
17 (Expunged) has an e-mail address, or if he doesn't, then through the
18 telephone. My learned friend could call him or communicate with him
19 and -- and give him an indication that there's been a discussion between
20 the Prosecution and the Defence and that he invites (Expunged) to
21 help us to the extent that he's able, an e-mail to that effect would, as
22 it were, open the door to -- for us. Then we can -- then we can enter
23 directly into communication with (Expunged), telephonically or
24 directly, and my learned friend can provide us with his e-mail address
25 and his telephone contact.

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1 Preferably, even if this is not the normal protocol, preferably
2 his direct e-mail and telephone.

3 And also my learned friend mentioned a (Expunged). It
4 would be useful for us to enter into direct communication with this
5 gentleman as well. And I think it would be -- I think it would be
6 helpful if my learned friend makes the first contact, because then it's
7 seen more as a mission in the interests of justice than -- and the
8 internal politics, whatever they may be, of the DRC, don't necessarily
9 have to enter into things if they see that there is, to some extent, a
10 joint effort on the part of the parties to acquire their cooperation.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

12 Mr. Prosecutor, Mr. MacDonald, and Mr. Turlan or both, do you
13 believe that you are ready to respond orally to Mr. O'Shea's request,
14 that is, to facilitate contacts, provide information and the necessary
15 identities? Is that something that you can commit yourselves to right
16 now?

17 MR. MACDONALD: (Interpretation) Certainly, Mr. President.
18 There is no objection. We can use the method proposed by the Defence,
19 e-mail or telephone. We will do the initial approach. Maybe we can send
20 an e-mail and copy Mr. Hooper or Mr. O'Shea, which will make it possible
21 to have some follow-up. And we can indicate the level of importance of
22 this communication between the OTP and the DRC, and we can remind them
23 that this is as a follow-up to an ex parte hearing that we are initiating
24 that contact in the interests of justice.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Mr. Prosecutor. You can inform them that a hearing was held to discuss
2 this issue. So that reference to a hearing of the Chamber, which, of
3 course, is not an official aspect under part 9 that is relating to
4 requests for cooperation, but this will indicate to the competent
5 authorities in the DRC that the Chamber considers this matter to be
6 important. So the Chamber realises or notes that there is an agreement
7 right now between the Defence team of Germain Katanga and the OTP to
8 continue to carry out the conventional investigation being pursued by the
9 Defence of Germain Katanga while at the same time the OTP will serve as a
10 sort of intermediary to facilitate contacts with the government
11 authorities and the Defence of Germain Katanga.

12 Mr. O'Shea, please.

13 MR. O'SHEA: Yes, Mr. President. I think that's right, and -- I
14 said I think that's right. And indeed, it might be wise in the
15 circumstances to, as it were, put our motion on the shelf. Not the top
16 shelf but the middle shelf or the bottom shelf, at least for a week or
17 so, until we've had the opportunity to go down these avenues and see
18 where they lead.

19 And the Chamber has requested that we provide certain
20 clarifications to the Chamber earlier today. I would request that we
21 also defer that. We can get it ready "ou cas ou," but obviously it's
22 going to require a little bit of time for us to put this information
23 together in any event. So I would request that we provide that
24 information to the Chamber a little later in the even that we find
25 ourselves blocked again over the next two weeks or so.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

2 For the time being, each party is full of hope by the idea that
3 the DRC will provide the assistance, and we hope that this will be done
4 quickly within the framework of the investigation of one of the Defence
5 teams to prepare as well as possible for the defence of their client.

6 The Chamber also notes that for the time being the request for
7 cooperation number 1900 is at least deferred, maybe even withdrawn. This
8 means it can be submitted once again in case the steps being taken to
9 contact (Expunged) are not successful.

10 So these are the steps that we have to take as a matter of
11 priority, and a request for cooperation is for the time being set aside.
12 I do not know whether you intend to withdraw it or you are just shelving
13 it for the moment. And if you are not satisfied within the framework of
14 the measures that are going to be taken in the near future, you may
15 reactivate that request and submit it afresh while providing the
16 additional information requested by the Chamber.

17 MR. O'SHEA: (Previous translation continues) ... suspension
18 rather than withdrawal simply in the interests of expeditiousness. It
19 should be quite soon that we should be able to determine, you know, the
20 extent to which (Expunged) is in a position to help us.

21 I suggest that we report back to the Chamber in a couple of weeks
22 from now and leave the -- leave the motion to the side rather than
23 withdrawing it.

24 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, it is
25 obvious that if the steps that you're going to take with the assistance

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1 of the Prosecutor to contact this (Expunged), amongst others,
2 including some other people that they have identified, if they provide
3 successful results, then that will be the end of the matter, but if you
4 are not successful, it will be necessary for you to apply to us once
5 again, providing the additional information requested from you and
6 indicating that the other procedure has failed.

7 So it is clear that request number 1900 of the 23rd of February
8 has been set aside. So the Chamber will not respond explicitly to that
9 request. We do agree on that.

10 If you are satisfied by the steps that are going to be taken that
11 is okay, but if not, then you will reapply to us including the new
12 information that will show that the process was a failure. Is that
13 correct?

14 MR. O'SHEA: (Previous translation continues) ...

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you.

16 Mr. MacDonald, please.

17 MR. MACDONALD: (Interpretation) Maybe to conclude,
18 Mr. President, the Prosecution is going to do everything possible to
19 serve as an intermediary. We will also follow up that request, and we
20 are talking about a two-week time line, and you have to take into
21 consideration the comments of my colleague Mr. Turlan, because responding
22 is usually slow despite all the goodwill.

23 I would also encourage the Defence if you have difficulties, you
24 can always communicate with us so that we should try to follow up with
25 those authorities, that is, if they have the required information.

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

3 The Prosecutor has offered his services, and this seems to us to
4 fall under Article 56(1), which states that he can -- he should
5 investigate both incriminating and exonerating evidence. So he can
6 give -- make every contribution necessary for the Defence. Are we
7 agreed, Mr. O'Shea?

8 MR. O'SHEA: I'd rather just put it that my learned friend is
9 being helpful and acting in good faith in putting us in contact with the
10 authorities of the DRC.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. We agree
12 with the good faith, and we would like to add goodwill. So that is where
13 we stand at now. The Chamber will not ask the Prosecutor the questions
14 that we intended to ask. We hope that we will not have to ask those
15 questions, because that would mean that our initiative has been
16 successful. So this meeting was absolutely indispensable.

17 Thank you, Mr. Prosecutor, and particularly Mr. Turlan, for the
18 information provided to us, for the suggestions and the commitment that
19 you have just made.

20 We believe, Mr. O'Shea, that all this will facilitate the
21 obtention of the information that you wish to have.

22 That is where we will end here. We thank all of you who have
23 participated and all those who assisted us. This hearing is adjourned.

24 The hearing ends at 4.54 p.m.

25 RECLASSIFICATION REPORT

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- 1 Pursuant to Trial Chamber II's email instructions dated 19th August 2011,
- 2 the redacted version of the transcript is reclassified into Public.