

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 Mathieu Ngudjolo
5 Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and Judge Christine
7 Van den Wyngaert
8 Status Conference
9 Wednesday, 14 December 2011
10 (The hearing starts in open session at 10.10 a.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
13 Before we begin this status conference, the Chamber, Mr Gilissen, would like to
14 express our sympathies. You are from Liege, you represent the Liege Bar, and all of
15 us learned either last night or this morning about the tragedy that occurred in that
16 city just before Christmas, a time that is a time of great happiness, and we wish to
17 express our condolences.
18 MR GILISSEN: (Interpretation) Thank you very much, your Honours. Thank
19 you.
20 PRESIDING JUDGE COTTE: (Interpretation) And on a much more prosaic
21 note - and this is important for all those concerned - we have a number of people
22 from the Registry with us today for the status conference and they have taken their
23 places in the middle of the courtroom so that we can have a more free-flowing
24 discussion, but in no way are they witnesses or victims, or participants - active
25 participants - in these proceedings. On the other hand, they are actives -- they are

1 active participants in this status conference.

2 THE INTERPRETER: Inaudible.

3 PRESIDING JUDGE COTTE: (Interpretation) No. In the very near future, the
4 Chamber will be issuing an order that will specify the deadlines for filing final
5 written submissions, as well as the dates on which final oral arguments are to be
6 made.

7 The Prosecutor has told us that his brief will be filed in French, the Katanga
8 Defence team will be filing their own brief in English and we are supposing - and we
9 think this is reasonable - that the Ngudjolo Defence team and the legal
10 representatives of victims will be filing their final submissions in French. I see that
11 Mr Kilenda is nodding, as well as Mr Gilissen and Mr Luvengika.

12 So the question is exactly when will the Katanga Defence team have an English
13 language translation of the Prosecution's brief; a complete translation or a partial one?
14 We also have to wonder when the Chamber, the Ngudjolo Defence team and the legal
15 representatives of victims will have a French translation of Mr Hooper's brief, a
16 complete translation or a partial one, and finally we need to determine if this is
17 necessary - if this is necessary - whether the Katanga Defence team will -- when they
18 will have an English translation of submissions filed by Mr Kilenda and by the legal
19 representatives of victims?

20 As you know, and the Chamber has reminded you of this a number of times, must
21 ensure that the trial is run in a expeditious manner and that the accused are tried
22 within a reasonable period of time. The proceedings cannot be paralysed or even
23 delayed by excessively long delays in translation. The Chamber is well aware that
24 the translation units must juggle priorities, and this is a very difficult task, and this is
25 why this status conference has been convened.

1 The purpose of our conference today is to work together, and I call upon all parties to
2 show good will and a constructive mindset. The task really is to determine how we
3 are going to deal with these issues. In addition to the parties and participants, today
4 we have representatives from the Registry, Mr Vanaverbeke, who has been working
5 on these files for quite a long time, as well as representatives from the translation
6 units, Ms Tomic, Ms Camara and the head of the OTP language services unit as well.
7 We will begin with the translation into English of the Prosecution's final submissions,
8 and the maximum number of pages could be -- this has not been set in stone, but we
9 are expecting something along the lines of 250 to 300 pages.

10 Mr Hooper, we will begin by consulting you. We would like to ask you whether
11 you could take quite a constructive attitude and agree to receive rather than a revised
12 translation, but instead an initial draft, a draft translation, unrevised, something
13 along the lines of a working document that would allow you to review the
14 Prosecution's submissions in the English language. That is our first question for you.
15 Would you agree to a draft translation unrevised? Would you also agree to
16 receiving a document that does not have the footnotes translated? This would mean
17 that the Prosecution would only make moderate use and reasonable use of footnotes,
18 and this would also mean as much as possible the Prosecution would have to avoid
19 mentioning specific remarks or specific statements in the footnotes. This also means
20 that when reference is made to a transcript the footnotes would have to include
21 references to both the English and French transcripts, both references would have to
22 be provided, and this requirement is going to be imposed on all parties and
23 participants. We realise that this does constitute a burden, but at the same time it
24 will be extremely useful for everyone. Now, before giving you the floor, Mr Hooper,
25 before we ask you what your position is on this, the Chamber does wish to draw your

1 attention to the fact that this unrevised translation would be, to some extent, subject
2 to the oversight or the review of the French-speaking members of your team and, if
3 necessary, they could correct any errors or any approximate renderings, taking into
4 account the fact that the document will not be revised. We realise that your team
5 does have some people, and they have been in the courtroom ever since the
6 beginning of this trial, they will be able to read the final submissions directly, the final
7 submissions from the Prosecution.

8 What's more, we do stress that -- well, we realise that delivering an unrevised
9 translation is not at all in the general habits of the translation services but at this
10 particular stage in the proceedings we have to be very pragmatic if we want the trial
11 to continue at a proper pace.

12 We have to consider the necessity of a speedy trial. We have to think about the
13 possibility of perhaps having the -- the STIC unit, the Registry translation unit, and
14 the LSU work together. All of the resources here at the Court have to be used if once
15 again we wish to make progress at an appropriate rate, or a decent rate.

16 So, first of all, we would like to know, Mr Hooper, whether you would be willing to
17 agree to receiving an initial draft, unrevised? Would you be willing not to receive a
18 translation of the footnotes given that your team has a number of people who can
19 read French directly and whether possible co-operation between the two translation
20 units is troubling to you or causes you any concern? So these are our initial
21 questions. Please proceed, Mr Hooper.

22 MR HOOPER: Thank you, Mr President, and good morning everybody, and
23 particularly representatives of the translation department.

24 We are quite happy to receive the unrevised translation. We know that the
25 standards of the translation department here are high and, consequently, even the

1 unrevised translation will be of a high standard. So, we are, as I say, more than
2 happy to accept that and we are grateful to the translation department if that is a
3 facility that they are willing and capable of extending to us.

4 Secondly, in respect of any footnotes, we do not need translation of footnotes.

5 I think those are the two matters which I'm being asked to respond to at the moment
6 and as I've omitted, there's a third matter, is there?

7 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, the third point was
8 whether -- whether we could have - and this remains to be seen - whether it would be
9 possible to have the two translation units work together; namely, STIC and the LSU.

10 Does this cause any concern?

11 MR HOOPER: I don't think so, but let me just take some soundings. Won't be a
12 moment.

13 (Defence counsel confer)

14 MR HOOPER: We take it these are independent translation services or translation
15 services that work relatively or independently within the Registry. We're not
16 completely sure of the structure. On the basis that they are translation services, we
17 certainly have no objection to their working together, co-operating together.

18 MR MACDONALD: (Interpretation) If you don't mind, just to make things very
19 clear to my learned friend, I greet the Chamber, Judge Cotte, good morning.

20 (Speaks English) Mr Hooper, the question is the OTP has its own translation unit.

21 Mr Richard Redwood here today is the representative of this section, which is not
22 within the Registry but the Office of the Prosecutor. Just to clarify that.

23 Now the question is, do you see any objection if for the translation of this non-revised
24 translation of our brief Registry and OTP would co-operate in delivering this
25 non-revised copy? That is essentially the question.

1 MR HOOPER: Well, I wasn't aware that there was a STIC or what the other one is,
2 there was a difference between the two, I'm sure they are competent. But on -- it's
3 difficult to put it like this, but on the basis that both those functions are conducted by
4 people of the same or similar standard then I have no objection. I'm sorry to put it
5 like that, but I hadn't heard until a moment ago these particular references. And I
6 see you nodding, I see the Prosecution nodding, so I'm filled with confidence.
7 So may I say that on that basis, and accepting that as a recognition that these are
8 different but the same, I have no objection to that co-operation. It seems a very
9 practical way of achieving what is, after all, something of assistance principally to me
10 and I am very grateful for it.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. We need
12 to be very clear about something. Perhaps I didn't express myself clearly enough.
13 The Chamber is also taking the supposition that we are dealing with, be it translators
14 from the Registry or translators from the Office of the Prosecution, we are assuming
15 that we are dealing with professionals whose work is to translate, that is to say
16 provide their technical expertise, their skills, provide these services to a Court that
17 operates in a number of languages and, as I said earlier, we cannot move ahead at a
18 reasonable pace if these units are both working at top speed or dealing with
19 extremely high workloads.

20 So as long as we are dealing with professionals, and my colleagues and I are in the
21 habit of trusting these units, so thank you very much for your reply.

22 Now, there's no trap from the OTP or from any other party or participant, I think
23 we're all in agreement that we want to move ahead so that we can make best possible
24 use of these professionals who -- whose services have been provided to us and whom
25 we thank.

1 We are now going to ask a number of questions of the representatives of the
2 translation units to try to find what sort of deadlines might be possible for an English
3 language translation of the Prosecution's brief, which could run 250 to 300 pages, and
4 we realise this may be very difficult for you to agree to deliver a document that is not
5 impeccable and thoroughly revised but rather to provide us with a draft for
6 Mr Hooper and members of his team so that they can begin review of the actual
7 arguments.

8 Now, what sort of time-frame are we looking at for this work, and we remind you
9 that the footnotes do not need to be translated and references to both the English and
10 the French language transcripts will have to be provided?

11 Ms Tomic, thank you very much. Please proceed. You may be seated.

12 MS TOMIC: (Interpretation) If we're talking just about the final submissions from
13 the OTP, a maximum of 250 pages, I would say with a number of reservations that we
14 would need about three weeks to translate that document because the document will
15 be translated into English.

16 And I would remind you briefly, I think most people realise this, that our translation
17 unit has a number of translators that work only into English, which is their maternal
18 language, and a number of translators who only work into French, only into their
19 mother language, so it's not possible to have people translating in both directions
20 necessarily.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, madam.
22 We will think that over, but I believe that mindful of your workload three weeks
23 seems to be quite reasonable and I think that as at now it might be useful to contact
24 the gentleman whose name I now forget --

25 MR MACDONALD: (Interpretation) Mr Redwood, Mr President. I think I will

1 continue to call him -- well --

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Redwood, yes, that's the name.

3 So you need to contact Mr Redwood, because it may happen that some excerpts of the
4 final brief would be drafted in English and that might make the translation effort
5 even easier.

6 This is, therefore, a very strong wish that the Chamber wishes to put forth; namely
7 that all the forces available to this Court should work in a joint and collaborative
8 spirit for the benefit of all and sundry, be it the translation services of the Registry, or
9 those of the Prosecutor's office.

10 Let us now move on to a second problem, the final submissions of the legal
11 representatives of victims. We do not know the exact number of pages that this
12 submission will contain and Mr Luvengika has mentioned that he will be dealing
13 with a broader scope than Mr Gilissen in his submission, but quite tentatively we
14 may say that Mr Luvengika's final submission will be 80 pages long, while
15 Mr Gilissen's will be some 40 pages long.

16 These documents are taken quite seriously by the Trial Chamber, but we would like
17 to know whether Mr Hooper would like to have the French members of his team deal
18 with the final submissions of the representatives of victims, legal representatives, or
19 would he rather proceed along the same manner as we have suggested for the
20 Prosecutor's final brief, although we do recognise that there might be a difference in
21 the importance or significance of the two types of submissions?

22 (Defence counsel confer)

23 MR HOOPER: Yes, thank you. Yes, we're happy to have that in French; receive it
24 in its original language.

25 PRESIDING JUDGE COTTE: (Interpretation) Are you therefore saying that you do

1 not require even a draft translation of the final submissions of the legal
2 representatives? Do you think that this may not have an impact on Germain
3 Katanga's case if the French-speaking members of your team take cognizance of those
4 submissions and feed you with the necessary information, you as lead counsel?

5 MR HOOPER: Can I just have one moment?

6 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course.

7 (Defence counsel confer)

8 MR HOOPER: Yes. I think on reflection if it is possible, if it's not too much of a
9 burden on the translation service, it would assist us to have that translation.

10 PRESIDING JUDGE COTTE: (Interpretation) Is this mandatory, or is this an issue
11 that will have an impact on the translation of your own final submission which will
12 be in English and which would need to be translated into French in the same
13 circumstances as we have just discussed relating to the Prosecutor's final submission?
14 It is clear that within the translation services the set-up is not the same, but it is in any
15 event the same set-up with the same constraints as would occur elsewhere in other
16 services within the Court. So for very practical reasons we must delve to -- we must
17 seek to deal with the essentials as at now, and I do not know whether in other
18 international tribunals these types of measures are taken to put all parties in the best
19 possible conditions.

20 We do understand that it is essential for you, according to what we have just agreed
21 to, to have the Prosecutor's final submissions in English. We also believe that the
22 final brief of a Defence team is a vital document which we also need to be able to read
23 in a language that we are familiar with, at least for two of us; one of our Judges being
24 quite multilingual.

25 So once again we do not underestimate the submissions of the legal representatives,

1 or those of Mr Ngudjolo's counsel, but we must as quickly as possible and in a
2 practical manner as possible seek to move forward.

3 I hope, Mr Hooper, that you will not think that because your team has people with
4 sharp enough minds to read the French language should lead you to rely on them to
5 actually convey what will be contained in the briefs of the legal representatives. I
6 leave that with you to deal with, Mr Hooper.

7 MR HOOPER: Yes.

8 PRESIDING JUDGE COTTE: (Interpretation) We do not want to upset all the
9 schedules because of -- all the scheduling because of these problems. We will come
10 to a decision, but we want to get your remarks before we do so.

11 MR HOOPER: Yes. I hope within the way I answered that question, as it were the
12 second time I answered it, that within that the Court appreciated that I was perhaps
13 reaching out for something that was a possibility, but at the same time I didn't want
14 to create as it were a problem of competing interests when some to my mind, for
15 example our Defence brief being translated, has obviously an important priority for
16 us.

17 Now, I've raised the matter again with the team, we've just briefly discussed it and
18 we do not require the translation into English of the victims' representatives'
19 submissions, nor those on behalf of Mr Ngudjolo, and that is because we have people
20 within our team who can read it and I think, as has been apparent throughout the
21 case, have been themselves dealing directly with those particular categories of
22 submissions in any event in the course of the case.

23 So I can say to the Court that we do not consider ourselves inconvenienced in any
24 way. If in fact those particular submissions come to us in French, we can deal with
25 them in that language.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Hooper,
2 for your very constructive remarks.

3 Let us then look specifically to the final brief of your team, which apparently will
4 have some 250 to 300 pages were you to make use of the maximum allowed number
5 of pages.

6 It is normal that your brief will be in English. That is your working language and it
7 is also one of the working languages of the Court. The Mathieu Ngudjolo
8 Defence team, as well as the legal representatives, cannot be indifferent to your final
9 brief. However, we must be conscious that as a matter of priority and timing it is the

10 Chamber which is concerned about being apprised of this brief because the

11 Chamber would have to schedule the final -- the hearings for the final submissions.

12 The Chamber must also be able to prepare any questions or clarifications that it may
13 need, as need be, from parties and participants at the end of their submissions.

14 You see, the Chamber -- after each party would have submitted its filings and made
15 the necessary submissions, the Chamber must be at that crucial time in a position to
16 clearly understand the positions as they come out clearly from the submissions before
17 it goes into its deliberations.

18 Therefore, the translation of Mr Hooper's brief of Germain Katanga's final
19 submissions into French is something that needs to be done quickly as well. The
20 Chamber is willing to accept a draft, unrevised translation which would be
21 considered to be a working document which enables the Court to meaningfully
22 understand the arguments put forth by Germain Katanga and his team.

23 The Chamber will also be comfortable with a document whose footnotes will not be
24 translated, and we know that in Mr Hooper's team, in Mr Kilenda's team, there are
25 people who are able to read English and the Bench also is in the same position. In

1 that regard, we will therefore also be comfortable with a pragmatic arrangement that
2 has been made with the Prosecutor's brief.

3 So to the representatives of the Registry, the language services, and the Prosecution
4 language services, we would like to know, Ms Tomic and your team and the others,
5 within what time-frames you will be able to provide such services? Would it be
6 similar to what you just said a short while ago?

7 MS TOMIC: (Interpretation) Unfortunately, no, Mr President. The French
8 language translation services are under greater pressure because of the other cases
9 and the translation of a judgment, so we hope that we -- or we think that as of now
10 we will need five weeks, or thereabouts, for that assignment.

11 PRESIDING JUDGE COTTE: (Interpretation) When you say about five weeks, can
12 it be understood that without necessarily trying to complicate issues, would four
13 weeks be a reasonable time-frame? You know that in open session we cannot ask
14 you to make a choice between different priorities, because that will not be the
15 appropriate method by which to proceed, but we must also be aware that in this case
16 we have reached a crucial stage where time is of the essence, and if we are going to be
17 delayed exclusively because of translation problems - and I'm not talking about you
18 personally - that type of a situation may not be easily understood.

19 You see, the issues of excessive delays in our proceedings has come up again and
20 again, and for that reason we must work together to find solutions to these issues
21 while taking into account the difficulties that each service may encounter without
22 compromising the -- our services or the quality of our services. Now I see the
23 Prosecutor is on his feet. Mr Macdonald.

24 MR MACDONALD: (Interpretation) With your leave, maybe I can assist the
25 Registry services in relation to the four-week time-frame suggested by the Chamber.

1 Let me state that the translation services of the OTP are ready to work to the extent
2 possible with the language services of the Registry, mindful of their workload in
3 relation to other cases. So as a matter of good will and co-operation I would like to
4 inform the Registry that the Prosecutor will be willing and ready, should Mr Hooper
5 agree, to assist in the translation of Mr Hooper's brief so that we can get an unrevised
6 version in a timely manner.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, we are talking about
8 your brief, about the brief for Germain Katanga, and I would like to know from you
9 whether you have any reservations regarding that suggestion whereby the Registry's
10 translation services, represented here by Madam Tomic and Madam Camara, and the
11 translation services of the OTP represented by Mr Redwood would work together.
12 So the question again to you is whether you have any objection or any reservations as
13 to that type of arrangement? If there were to be any objections, then we would have
14 to look for another solution.

15 MR HOOPER: There are no objections to that arrangement. I've also taken specific
16 instructions from Mr Katanga because of the issue that the Chamber just raised, and
17 that is as to delay and length of trial and at this stage, looking at this stage from now
18 until the time when there's final submissions, Mr Katanga for his part would wish to
19 make it clear expeditiousness is, of course, one of his rights but he well understands
20 the problems that confront both his team and others, and he would prefer, for his part,
21 that things are done properly rather than over-speedily, and I hope that that is clear.
22 That's his declared position, and he is clear about it. He appreciates the problems,
23 and inasmuch as the Court's concern inevitably is to the length of his trial, in terms of
24 this process that we're now undergoing, until final submissions are made, oral
25 submissions are made to the Chamber, he appreciates fully the difficulties and he

1 does not consider that those matters being appropriately considered amounts to in
2 any way unreasonable delay.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. We fully
4 understand Germain Katanga's position. Therefore, regarding the translation of
5 your brief, we will not be requesting Mr Redwood's services to intervene; is that your
6 position? Do you want the document to be translated exclusively by the services of
7 the Registry? Is that your position? I want to be sure that I have understood your
8 position clearly. That would appear to be your position. Ms Tomic, five weeks is a
9 little bit of a lengthy period for us. Maybe - maybe - it could be possible for the
10 members of the Chamber, Judges and their assistants who are conversant with the
11 English language, it may be possible for them to quickly read Mr Katanga's final brief,
12 to read through it and select excerpts thereof which require urgent translation
13 because they appear to have a substantial bearing on an understanding of the
14 arguments and relevant to the use of such arguments in the final oral submissions.
15 So I think that the determination of those excerpts would not end up with 300 pages
16 out of 300. There might be a significant reduction in the number of pages. At that
17 juncture, therefore, it might be possible to make that selection of excerpts available to
18 the legal representatives of victims and Mr Ngudjolo's team. So if you have trouble
19 with the four-week deadline, can we proceed in the manner suggested, Ms Tomic?
20 Let us be clear that all of us at least read and understand English. I am not entirely
21 illiterate in English. Madam Diarra, who does much better than I in English, can
22 confirm that both of us will not easily assimilate or understand a 300-page document
23 written in English, and we have agreed that just like the Prosecutor's brief, which we
24 want to understand in English, we also want to be able to understand Mr Hooper's
25 brief in French.

1 So there might be a possibility here to work within those four weeks following what I
2 have just suggested; namely, selecting what appears to be essential for translation.
3 And as soon as the translations become available, they will be promptly forwarded to
4 Mr Ngudjolo's team and to Mr Luvengika and Gilissen, as need be. You have the
5 floor for the first time. Please take the floor.

6 MR KILENDA: (Interpretation) I think that this is a very important point in this
7 trial for Mr Katanga. We may have some persons on our team who master English,
8 but let me recall that in 2008 I filed a submission or an application and I was informed
9 that my team should be made up in such a way that some of its members understand
10 all the languages of the Court.

11 I would like to say that Professor Fofé and myself would like to read the full and
12 entire brief submitted by Mr Hooper. That is why I would call on the Chamber, I
13 will appeal to the Chamber, to go with the five-week time-frame suggested by the
14 Registry translation services, which is not unreasonable. In such a way we will be
15 able to read the full brief as translated.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr Kilenda, we thank you for first of
17 all accepting to receive an unrevised draft translation which will be a working
18 document which will enable you to understand the arguments in the brief. We also
19 understand that this is not something that the translation services would like to do,
20 because they are mindful of the quality of their work. We have taken note of that.
21 For that reason, Ms Tomic, we shall in any event work within the time-frame of four
22 weeks. And if you become, in fact, strangled by the work then we will extend to five
23 weeks, and our scheduling of the final submissions will be done along the lines of a
24 five-week deadline, rather than four. So let us try to finish the work within four
25 weeks but we will work within a five-week time-frame.

1 What we are saying, therefore, is as follows: The Prosecutor's final brief, and the
2 final brief of Germain Katanga's Defence team, for the first brief, the translation
3 services will work together to produce that draft translation which will be a working
4 document within three weeks and this will enable all parties to make meaningful use
5 of the briefs. Footnotes will not be translated, and we draw your attention to the fact
6 that footnotes should not be too dense and we call on all parties to provide the
7 references, the English and French references, for all footnotes.

8 As for Germain Katanga's final brief, there will be no collaboration between the two
9 services and that we can understand. Madam Tomic, I believe that my learned
10 colleagues here do agree that Madam Tomic will make the necessary effort to
11 complete the translation work within four weeks, but if this were not possible we
12 could extend that deadline to five weeks because even if we were -- are working with
13 a draft document, it is only proper for such a draft document to be properly
14 translated.

15 This is what we have discussed so far in a constructive atmosphere with each party
16 showing good will. So I would like to know whether there is any other question that
17 would need our attention before we break?

18 MR KILENDA: (Interpretation) Thank you, Mr President, for giving me the floor.
19 The question is: Have you considered rebuttals and other briefs that are part of the
20 procedure, and if that were the case what would be the deadlines in terms of
21 translation for those briefs?

22 PRESIDING JUDGE COTTE: (Interpretation) At this level, at this juncture, we will
23 not deal with that issue because what really concerns us now is deciding on the
24 scheduling of the final submissions and determining the final page allocation for the
25 parties in terms of the final brief and also scheduling the final oral submissions.

1 It is that decision that will determine whether or not there will be any rebuttal briefs,
2 so that is a matter that lies with the Court. Although you have put the question, it is
3 not out of place. Thank you. Mr Gilissen, Mr Luvengika, any comment? Would
4 you like to take the floor? Mr Luvengika.

5 MR NSITA: (Interpretation) Thank you for this opportunity to address the Court.
6 Obviously I have nothing else to add to these rather constructive exchanges of views
7 that we've had this morning, but I did want to express one concern about the
8 deadlines. Unless I'm mistaken I've understood that we may not have a status
9 conference to discuss these deadlines, and I wanted to inform the Chamber that we
10 have already begun our work, but it is truly necessary for me to consult the victims
11 that I represent.

12 At this particular juncture, given the situation in the DRC, I had made a request to go
13 on a mission to consult the victims, but the Registry thought that the security
14 situation would not allow for that and so I would not be able to travel to that area and
15 discuss matters with the victims that I represent to canvas them to obtain their views
16 regarding the content of final submissions.

17 So I wanted to draw the Chamber's attention to that point, particularly in light of the
18 number of victims that I represent, and I thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) We certainly understand what
20 you've just said, Mr Luvengika, and the Chamber will try to issue the order before the
21 end of this week, the order setting out the various deadlines. We will try to set
22 reasonable deadlines so that everyone can do his or her work under proper
23 circumstances. We will also take into account the Christmas recess, which is nearly
24 upon us, and I'm sure you'll agree, Mr Luvengika, that we can't allow everything to
25 be held up because of these difficulties.

1 So I think it would be a good idea for you to begin drafting, and I think you've said
2 that you have begun drafting your arguments. If you need to make contact with a
3 number of victims, if that were to be absolutely necessary, perhaps if that is the case,
4 if that happens, you could file a submission to the Chamber explaining exactly why
5 you might need an additional -- need to perhaps file an additional submission of
6 some kind.

7 Mr Gilissen.

8 MR GILISSEN: (Interpretation) Yes, your Honour. I am quite pleased with the
9 work that we've done today. We are making good progress, and I've taken note of
10 everything and I have no particular observations at this particular time.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.

12 Mr Katanga, I think you've seen -- and Mr Ngudjolo, I think you've seen that your
13 respective counsel have been clearly informed of the situation and have made
14 commitments to take on a constructive and pragmatic attitude so that we can allow
15 the trial to move forward expeditiously, and the Chamber has taken into account the
16 various observations from Mr Katanga's Defence counsel; that is to say we shall move
17 ahead, but not without -- but we won't rush forward too quickly either. We are
18 going to strive to be pragmatic.

19 We would like to thank all and sundry for all your efforts, and we are well aware that
20 all of this requires a great deal of work on your part and the work done by the
21 translation units, in particular STIC, the Registry translation unit, which we're
22 more -- that we're more familiar with. We also realise that there's the other unit.
23 We've seen Mr Redwood for the first time. We realise that there's a great deal of
24 work.

25 Now, Mr Macdonald.

1 MR MACDONALD: (Interpretation) I have the impression -- I feel like a bit of a
2 schoolboy just before the bell rings for recess.

3 PRESIDING JUDGE COTTE: (Interpretation) It all depends on your question. If
4 it is to wish us all a pleasant recess --

5 MR MACDONALD: (Interpretation) Well, it's a point that was raised and I -- well,
6 I'm raising this point now. There have been some consultations. In any event,
7 given that the Chamber is asking all parties and participants to make reference to
8 both the English and French transcripts for transcript references for footnotes -- and
9 there are advantages and disadvantages. There is no problem with that. We shall
10 comply. We realise that the Chamber will take into account the additional amount
11 of time that that will be caused, but there is an additional problem that I do have to
12 mention; namely, requests for correction of transcripts.

13 I believe that at one point the Chamber will have to set some sort of final deadline.
14 Why do I say this? Because this will have an impact on these much discussed
15 footnotes. If there's a discrepancy between the two transcripts, some discrepancies
16 are really quite minimal and of very little import. Others may be more important to
17 the person who is drafting, or the party, and in that case we could draw attention to
18 the discrepancy in the brief itself, but I think we have to avoid making too many
19 requests for transcript corrections because the pagination shall change and then the
20 various versions of the transcript become more and more numerous and it becomes
21 quite a dog's breakfast to -- forgive me the expression.

22 In any event, if we draw the Chamber's attention to this various -- these various
23 discrepancies, the Chamber will be informed, the parties will be informed and in any
24 event inevitably we will be making reference to both transcripts right from the very
25 beginning, so that means we will have read both, we will make reference to both and

1 we will provide transcript references to both.

2 I'm raising this point, but I think in your order it might be a good idea, your Honour,
3 your Honours, to take this into account.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you did well to point
5 that out. This is not an unreasonable suggestion. I wouldn't quite use the same
6 expression, but we don't want the transcript corrections to become an utter mess; a
7 slightly different turn of phrase than -- in comparison with that other word, a rather
8 crude word, that you used just a few moments ago.

9 Now, it goes without saying that when you are drafting your footnotes and when you
10 are providing the dual references, reference to English, reference to French, if you
11 realise that there is a discrepancy at that particular time between the English words
12 and the French words, which is not usually the case but which can happen, please
13 mention -- beside the dual reference just put the words "manque de concordance," or
14 "discrepancy" in English.

15 If you want to provide some explanation do so, but most likely just putting
16 "discrepancy" that will alert the Chamber and if there is a true problem on a
17 case-by-case basis the Chamber will ask the Registry to conduct a check, but we
18 cannot start out with the idea that these checks will be systematic. But do warn us.
19 Press the warning light, so to speak, if necessary.

20 So if when you are giving dual references -- I'm repeating myself deliberately, not out
21 of senility. Now, if you notice true discrepancies, please indicate that. We will look
22 at it very carefully and, if it's a problem, we will ask the Registry to conduct the
23 necessary check on a case-by-case basis. So there you have it.

24 Mr Kilenda.

25 MR KILENDA: (Interpretation) Thank you, your Honour. Now, would the

1 Chamber mind if the parties and participants here make a few suggestions regarding
2 the deadlines for the drafting of their final arguments?

3 PRESIDING JUDGE COTTE: (Interpretation) You are cutting to the chase, almost
4 like a tiger pouncing upon his prey. Please make your arguments.

5 MR KILENDA: (Interpretation) We can do so by email.

6 PRESIDING JUDGE COTTE: (Interpretation) No, no, no, we are in a hurry. We
7 do want to issue this order very quickly before the end of the week, so --

8 MR KILENDA: (Interpretation) This is a matter of capital importance and we will
9 consult our learned friends.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well, do so, but do send us an
11 email before 3.30.

12 Mr Hooper, please proceed.

13 MR HOOPER: Again, it's a matter that perhaps could be done by email and it's a
14 sizeable issue and that's the question of page count, and of course that's a matter that
15 now becomes somewhat linked with the burdens that are going to be placed upon the
16 translation services.

17 It seems, I suppose, fair that some limit should be set and that the Judges themselves
18 don't just throw it to the trust of counsel. I understand that, that some limit is also a
19 good discipline for us. We do need some reining-in.

20 The suggestion at the moment in the Judges' minds appears to be something between
21 250 and 300 pages. I think 300 pages was the limit in the Thomas Lubanga case, but
22 there is -- and we can distinguish this case from that case, because in the Lubanga
23 case, as we all know, there was a relatively narrow issue.

24 In this case we have, as you know, ten charges that have not in fact been considered
25 by this Court before, at least nine of them has not, and they are each of them

1 substantial allegations of serious crimes under international law, as you know, and
2 they are brought together under an umbrella of a mode of liability that is novel.
3 There are numerous other, on reflection we can see, legal issues that are going to
4 obviously have to be the subject of submissions in a new court, such as this, and we
5 don't know whether by the time -- I hope we will, but we don't know whether by the
6 time we come to make -- the parties come to make their written submissions whether
7 we will have the benefit of a judgment in the Lubanga case. It would be certainly
8 helpful to us if we did and perhaps of assistance to the Court if we did, because we
9 would then be in a position as counsel to some extent absorb and reflect what would
10 be and could be new jurisprudence.

11 Aside from the complex legal background to this case, we have of course not a
12 straightforward factual background. This is not too surprising. I note that the
13 confirmation decision itself, at a time before there was heard any evidence, ran to 227
14 pages, and that was a decision and so it wasn't itself particularly occupied with
15 argument as inevitably our briefs will be.

16 In this case there's been 3,200 filings, we've had 55 witnesses altogether, we've sat for
17 212 court days and my submission is that I hope the Chamber can be moved to give
18 us some latitude in terms of pages, to trust us to formulate arguments that are
19 succinct but necessary, and also to allow a page count that accommodates perhaps a
20 different tone in way -- the way in which written advocacy can be done.

21 So, for example, when it comes to reviewing witnesses it sometimes of far greater
22 assistance, in my submission, for judges in fact not to be dealing with footnotes but
23 for actually be dealing with text taken from the transcript. Not, in other words, to be
24 dealing with condensed counsel's summaries of evidence you, the Judges, have heard
25 but in the written brief to draw in and use the language of a witness. Not

1 excessively, not cut and paste throughout, but in a way that makes it a readable story.
2 The summaries don't carry that kind of weight, don't provide that kind of access.
3 And the only problem with that is it does take a few more pages than otherwise it
4 might. And having started on that exercise, as we probably all have, it also brings to
5 mind how difficult that particular exercise the closing brief is.
6 When it comes to providing a brief to our translation services, we would do our
7 utmost to ensure that it is done in a way that facilitates their work to the uttermost.
8 And if there is any, for example, a quote as it would be in, for example, in English in
9 our brief in the course of the brief, I'm not talking here of footnotes, we will provide
10 the French equivalent quote so that there is a facility there, and these won't be
11 condensed pages, and we are more than aware that whatever we produce, reproduce
12 is something that should not as it were burden, over-burden the translation service,
13 because this is a service principally for us. We appreciate that.
14 So I merely raise that and ask for some, essentially some greater latitude in terms of
15 page counts. We may not reach it. It may sound a great amount of pages, but
16 from --

17 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

18 MR HOOPER: Yes.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, thank you for those
20 remarks. A few of the points that you've touched upon are already very much on
21 our minds, within our respective minds.

22 With regard to the impact, and that may be too strong a word, but rather the
23 reference to the decision that may be rendered in the Lubanga trial, we are well aware
24 that if that comes after the deadline that may be of interest to all parties and
25 participants. We are very much aware of that.

1 As for the number of pages, please let us know, as is the case with the deadlines, what
2 you think an adequate number of pages might be. Please realise that you'll have to
3 make your arguments properly but at the same time you will have to strive to tighten
4 up your various arguments so that at this particular stage you can be as persuasive as
5 possible.

6 I think all of you are very much professionals, and you can choose your own
7 approach. I mean -- so I think we are really looking at not so much the number of
8 pages, but rather the quality of the submissions, so please consult regarding the
9 number of pages. Let us know what you think might be a good number. You may
10 not necessarily get the answer you are looking for, but please let us know and if you
11 could send us your suggestions for deadlines - Mr Kilenda wishes to do so - and then
12 we will decide and we do hope to come to this decision before the end of the week so
13 that you will know exactly where you are going. Mr Macdonald.

14 MR MACDONALD: (Interpretation) Before extending greetings, just before the
15 recess, the Prosecution realises that the Lubanga brief was 250 pages, and you
16 mentioned a possible maximum of 300 pages. If the Chamber gives the Prosecution
17 300 pages, we will try to come under that number but we think it's quite reasonable,
18 more than reasonable. As for the deadline, in light of the decision that you just
19 provided, and this was notified to the parties this morning, the Prosecution in its
20 wildest dreams is thinking, well, if perhaps the end of February, that would be good.
21 Or perhaps 1 March even, if we could round the number up to 1 March, that would
22 be a possible schedule for us in light of all the various imperatives at stake. So there
23 you have it.

24 It is -- that has just been recorded in the transcript and I'd like to wish everyone an
25 excellent holiday.

1 PRESIDING JUDGE COTTE: (Interpretation) Well, we have heard the various
2 parties and we are expecting your email by 3.30. Don't send it just to Pauline
3 Baranes, but also to the three Judges so that the three of us receive the email
4 immediately. Thank you, Mr Prosecutor, for your end-of-year best wishes.
5 Accused persons, good -- well, goodbye. I don't know whether we will be seeing
6 you again before the end of the year. We can't rule out any other status conferences
7 before the end of the year, so wherever you may be, whether in detention or enjoying
8 freedom, please do enjoy the rest of the year.
9 This status conference is now concluded and, once again, I'd like to thank
10 Mr Redwood and the representatives from the Registry, thank you very much.
11 THE COURT USHER: All rise.
12 (The hearing ends in open session at 11.22 a.m.)