

10:54:42 1 International Criminal Court
 10:54:50 2 Pre-Trial Chamber 1
 10:54:58 3 Case number ICC-01/04-01/06
 10:55:14 4 Situation Democratic Republic of the Congo
 10:55:24 5 Friday, 14 July 2006 -- Open Session
 10:57:31 6 [11:03 a.m.]
 11:03:29 7 THE USHER: The International Criminal Court is now in
 11:03:32 8 session.
 11:03:32 9 JUDGE STEINER: Good morning. Could the usher please call
 11:03:32 10 the case.
 11:03:32 11 THE REGISTRY: The situation in the Democratic Republic of
 11:03:32 12 the Congo in the case of the Prosecutor versus Thomas
 11:04:19 13 Lubanga Dyilo, number ICC-01/04-01/06.
 11:04:19 14 JUDGE STEINER: Thank you very much. Let me first welcome
 11:04:21 15 Thomas Lubanga Dyilo who is present at this hearing. Let
 11:04:30 16 me also welcome the Prosecution's team, the Defence team
 11:04:34 17 and representatives of the Registry, and I would like
 11:04:36 18 first the Prosecution, and then the Defence and the
 11:04:38 19 Registry to present themselves and their team.
 11:04:42 20 MR WITHOPF: Good morning, Your Honour; good morning to the
 11:04:47 21 Defence team; good morning to the Registrar and the
 11:04:50 22 further representatives of the Registry and, as usual,
 11:04:51 23 I extend my greetings to everybody in and around the
 11:04:54 24 courtroom. Your Honour, today for the Prosecution appear
 11:04:59 25 Julieta Solano, an Associate Trial Lawyer next to me;

11:05:02 1 behind her, Sangkul Kim, an Associate Legal Officer; next
 11:05:06 2 to him Michael Lees, he`s Head of the OTP's Knowledge
 11:05:10 3 Base Unit; our Case Manager behind me, Ramu Bittaye; and
 11:05:16 4 I, Ekkehard Withopf, the Senior Trial Attorney.

11:05:23 5 JUDGE STEINER: Me Flamme?

11:05:25 6 ME FLAMME (interpretation): Good morning, your Honour. The
 11:05:27 7 Defence today is represented by myself -- my name is Jean
 11:05:32 8 Flamme -- I am the Defence counsel; and by
 11:05:41 9 Mme Pandanzyla, who is my Judicial Assistant.

11:05:45 10 MR CATHALA (interpretation): Good morning, your Honour. Good
 11:05:46 11 morning to all of you. My name is Bruno Cathala. I'm
 11:05:50 12 the Registrar of the International Criminal Court. I'm
 11:05:53 13 assisted by Terry Jackson, who is the Chief of the
 11:05:57 14 Detention Section; by Ian Blacker, who is the Chief of
 11:05:59 15 the ITC Section; also by Mr Sam Shoamanesh, who is an
 11:06:07 16 Associate Legal Officer; by Uros Mijuskovic, who is the
 11:06:11 17 Senior Records Assistant in the Judicial Administration
 11:06:15 18 Section; and Anne Aurore Bertrand, who is an Associate
 11:06:20 19 Legal Officer in the services.

11:06:24 20 JUDGE STEINER: Thank you very much. First of all, I would
 11:06:29 21 like to emphasise that this hearing is held pursuant to
 11:06:33 22 paragraph 8 of the timetable set in the decision on the
 11:06:37 23 postponement of the confirmation hearing issued on 24 May
 11:06:42 24 2006. Therefore, it will focus on the process of
 11:06:47 25 disclosure and inspection, the process of communication

11:06:51 1 of evidence on which the parties intend to rely at the
11:06:55 2 confirmation hearing. I am aware of the pending
11:07:01 3 Prosecution's application pursuant to Rule 81(2) and, due
11:07:06 4 to the ex parte nature of this application, it will not
11:07:11 5 be subject of this hearing. I'm also aware of the
11:07:14 6 Defence applications related to Mr Lubanga's release and
11:07:19 7 to translation matters that are still pending before the
11:07:24 8 Chamber and, therefore, will not be subject of this
11:07:27 9 hearing either.

11:07:29 10 On the other hand, I realise that on the last
11:07:35 11 Status Conference held on 23 June 2006 a number of
11:07:38 12 logistical issues concerning for the most part Mr Lubanga
11:07:42 13 and the Defence team were discussed. Furthermore, at
11:07:47 14 that hearing the single judge requested the Prosecution
11:07:49 15 and the Registry, with the participation of the Defence,
11:07:53 16 if it so wishes, to work on a joint proposal concerning
11:07:58 17 the draft protocol on the presentation of evidence in the
11:08:03 18 courtroom. Thus, before focusing our attention on the
11:08:06 19 disclosure process I would like, as a preliminary matter,
11:08:09 20 to follow up on those issues. At the end of the hearing
11:08:14 21 the parties will be given an opportunity to call the
11:08:16 22 attention of the single judge on any other issue.

11:08:21 23 Is this way of proceeding agreeable to the parties?
11:08:28 24 Then let's start with the preliminary question matters.
11:08:32 25 The first of them is the draft protocol. As agreed at

11:08:36 1 our last Status Conference, I was expecting a joint
11:08:42 2 proposal from the Prosecution and the Registry and, if
11:08:48 3 the case, with the participation of the Defence
11:08:50 4 represented by Ms Melinda Taylor from the Office of the
11:08:56 5 Public Counsel for the Defence, on the draft protocol on
11:08:59 6 the presentation of evidence in the courtroom. Such a
11:09:01 7 proposal should contain the information that the parties
11:09:05 8 must provide with the filing with the Registry of the
11:09:08 9 original of the evidence on which they intend to rely at
11:09:12 10 the confirmation hearing.
11:09:15 11 At the last Status Conference it was agreed that a
11:09:19 12 proposal would be sent to the single judge before today.
11:09:23 13 However, throughout this week I received a request from
11:09:27 14 the Registry to extend the deadline until 20 July 2006,
11:09:33 15 and I authorised.
11:09:34 16 I would like to know first from the Registry, and then
11:09:39 17 from the Prosecution and the Defence about the progress
11:09:42 18 of the working group with a view to having a final
11:09:45 19 proposal by 20 July. So I would like first the Registry
11:09:50 20 to take the floor.
11:09:58 21 MR MIJUSKOVIC: Thank you, your Honour. Subsequent to the
11:10:04 22 last Status Conference we started working on the draft
11:10:07 23 protocol. We took a contact with both Prosecution and
11:10:12 24 the Defence and requested that comments be sent on the
11:10:15 25 draft protocol as it stood attached to your decision.

11:10:21 1 The comments were sent and the meeting was held between
11:10:24 2 the Registry and both Prosecution and the Defence
11:10:28 3 yesterday.
11:10:29 4 We agreed on some common points; some points are still
11:10:33 5 not agreed upon. We agreed to have further meetings,
11:10:37 6 probably during next week -- of course, prior to
11:10:42 7 20 July -- and once we have a full summary of agreed
11:10:47 8 points and points that are not agreed, we will forward
11:10:50 9 this proposal to the Chamber on 20 July.

11:10:54 10 JUDGE STEINER: Thank you very much. Could you please give
11:11:00 11 in advance to the Chamber an idea on the points that have
11:11:05 12 been already agreed and, if possible, on the points that
11:11:08 13 are still pending of an agreement.

11:11:13 14 MR MIJUSKOVIC: Yes, your Honour. The points that were
11:11:14 15 agreed today are the objective data that has to be
11:11:20 16 provided -- the objective data that has to be provided so
11:11:23 17 as to allow the presentation of evidence here during
11:11:25 18 hearings. There, we didn't have any problems.
11:11:28 19 When it comes to subjective data, to more detailed
11:11:32 20 information, there we come to some disagreement between
11:11:35 21 the parties as to the extent of the subjective
11:11:38 22 information that should be provided or not. Of course,
11:11:40 23 this is not a matter for the Registry to decide; we are
11:11:45 24 here to listen to both parties. As I mentioned earlier,
11:11:49 25 we will provide you, the Chamber, with the points that

11:11:52 1 are agreed that we might think are sufficient for the
11:11:54 2 presentation in the courtroom, and also the points that
11:11:57 3 are not agreed.

11:12:02 4 JUDGE STEINER: Thank you very much. In your view, this
11:12:07 5 final proposal would be ready until 20 May [sic] or --

11:12:14 6 MR MIJUSKOVIC: A final proposal containing agreed points,
11:12:17 7 which are usually the objective data that has to be
11:12:21 8 provided, will be ready by 20 July. Of course, the
11:12:24 9 subjective information that has to be provided and the
11:12:26 10 disagreement which we cannot solve, you will have to
11:12:29 11 decide on that, your Honour.

11:12:33 12 JUDGE STEINER: Thank you very much. The Prosecution,
11:12:35 13 please.

11:12:38 14 MR WITHOPF: Your Honour, I can confirm that what has been
11:12:40 15 reported by the Registry is comprehensive and it is
11:12:44 16 correct. The Registry has taken the lead in this common
11:12:51 17 effort to submit a joint proposal to your Honour, the
11:12:56 18 single judge. There is a three-step approach -- the
11:13:01 19 parties provide comments, then there is a meeting or a
11:13:04 20 series of meetings, and then the suggestion will be made
11:13:08 21 to your Honours.

11:13:11 22 The parties, including the Prosecution, have submitted
11:13:15 23 their suggestions in line with the timeline to the
11:13:18 24 Registry. A meeting -- a long meeting took place
11:13:24 25 yesterday in a very constructive way. The parties made a

11:13:30 1 concerted effort to limit the points of disagreement to
11:13:35 2 the absolute minimum. Based on the meeting yesterday,
11:13:42 3 the parties were invited by the Registry to make further
11:13:46 4 suggestions, and the Prosecution will certainly do so.
11:13:50 5 There may be further meetings. What the Prosecution
11:13:53 6 anticipates at this stage is the following: there will be
11:13:58 7 a suggestion to the pre-trial judge and there will be a
11:14:04 8 comparatively high level of agreement.
11:14:09 9 Based on the discussion in the context of yesterday's
11:14:12 10 meeting, however, your Honour, there will be a number --
11:14:17 11 a limited number but covering very important issues -- of
11:14:27 12 disagreement, and at this stage it does not look like
11:14:27 13 that these particular and limited issues can be solved.
11:14:32 14 The Prosecution anticipates therefore that by 20 July
11:14:37 15 your Honour will get a suggestion, but your Honour will
11:14:40 16 have to decide on a limited number of issues.
11:14:44 17 JUDGE STEINER: Thank you. Me Flamme?
11:14:53 18 ME FLAMME (interpretation): Yes, your Honour, I would like
11:14:54 19 to confirm what my esteemed colleague has said.
11:15:00 20 Certainly, we have obtained a certain number of
11:15:02 21 agreements, but there are a certain number of
11:15:04 22 disagreements on important points. I think that perhaps
11:15:07 23 a difference of approach might be something between
11:15:12 24 ourselves and the Office of the Prosecutor, because we
11:15:15 25 see this as a system which will survive after the

11:15:21 1 confirmation hearing, perhaps with certain amendments,
11:15:24 2 modifications, while the OTP wants to limit that to just
11:15:29 3 the confirmation hearing itself and for it to remain
11:15:34 4 there.
11:15:35 5 So perhaps it would be good to be able to explain our
11:15:38 6 point of view. If the Registry discloses the text of
11:15:44 7 our -- communicates the text of our point of view which
11:15:48 8 would perhaps not be clear unless you see the table where
11:15:52 9 the points of disagreement are and the points of
11:15:55 10 agreement are.
11:15:58 11 JUDGE STEINER: Thank you very much. Any observation made by
11:16:05 12 the Defence of course, I suppose the Registry will send
11:16:06 13 to the Chamber for a joint appreciation.
11:16:20 14 So coming to the second preliminary matter, it is related
11:16:24 15 to computer access by Mr Lubanga. In the Status
11:16:29 16 Conference held on 23 June the single judge was informed
11:16:33 17 by the representative of the Registry and by Me Flamme of
11:16:37 18 a number of issues concerning the access by Mr Lubanga to
11:16:41 19 a computer in the Detention Centre. I would like the
11:16:45 20 Registry and the Defence to provide the single judge with
11:16:51 21 an update on the following issues: the installation of a
11:16:57 22 computer with the Ringtail programme in the Detention
11:17:03 23 Centre in order to allow Mr Lubanga to have access to the
11:17:07 24 evidence and materials disclosed between the parties; the
11:17:11 25 connection of such a computer to the Office of Public

11:17:17 1 Counsel for the Defence in order to avoid the use of CDs
11:17:20 2 and pen drives; the gradual training of Mr Lubanga in
11:17:24 3 basic computer software and the most complex software
11:17:31 4 such as this Ringtail software; the availability of a
11:17:35 5 printer for Mr Lubanga in the Detention Unit; and any
11:17:42 6 progress on the drafting of directives or protocol to
11:17:45 7 manage properly the use of the computer at the Detention
11:17:51 8 Centre.

11:17:51 9 So, please, could the Registry explain the status of the
11:17:56 10 implementation of these procedures? You have the floor.

11:18:02 11 MR CATHALA (interpretation): Thank you, your Honour. Just a
11:18:06 12 few words before leaving the floor to the head of the ICT
11:18:10 13 [as interpreted] section, because I thought that we -- we
11:18:13 14 thought within the Registry that it would be important
11:18:16 15 for the Chamber to be completely informed with regards to
11:18:18 16 all the different questions. I just wanted to stress
11:18:20 17 that throughout this case here it is a new element for
11:18:25 18 all of us in this hearing here, and due to that the
11:18:30 19 Registry is trying to set up as many elements as it can
11:18:35 20 to make it possible for the Defence to exercise its
11:18:38 21 rights. I shall now hand the floor over to my colleague.

11:18:46 22 MR BLACKER: Thank you, your Honour. I can confirm, based on
11:18:49 23 your questions, and I have a timeline on the dates when
11:18:52 24 the following activities took place: on 24 May the
11:18:56 25 computer for Mr Lubanga was installed, as agreed with the

11:18:59 1 Defence, with a stand-alone Ringtail licence, which gave
11:19:04 2 him the possibility to upload disclosed material. I can
11:19:09 3 also confirm that on 1 June, the OPCD, we also installed
11:19:16 4 the work station with the Ringtail licence in Room C0358.
11:19:22 5 On 2 June the Defence team was trained on Ringtail, and
11:19:29 6 of course we also prepared two encrypted laptops for them
11:19:34 7 with Ringtail installed, and we had only some open issues
11:19:38 8 about the two loads of data that was supposed to be
11:19:44 9 uploaded, but I think we resolved that issue.
11:19:47 10 On 22 June the connection to the Detention Centre was
11:19:50 11 completed, so he had access to the machine in OPCD. We
11:19:58 12 also provided on 29 June -- the Defence asked for support
11:20:02 13 to upload the material, which we gave. I can also
11:20:06 14 confirm that the printer has been installed and
11:20:08 15 Mr Lubanga was demonstrated and trained on how to use the
11:20:14 16 machine, and he was also able to print from the machine.
11:20:18 17 He was also handed over -- he was trained and handed over
11:20:20 18 a secure ID card so that nobody else -- nobody could
11:20:25 19 compromise the machine. And on 6 June the Defence team
11:20:31 20 were given the disclosed material to load up on to the
11:20:36 21 OPCD machine.
11:20:38 22 The connection from Scheveningen to the OPCD machine to
11:20:47 23 provide seamless access without having to upload the data
11:20:52 24 has also been completed. We have had some small
11:20:55 25 problems, which is normal in this kind of thing -- at the

11:21:00 1 beginning you have some certain problems, but we are
11:21:01 2 getting through that.
11:21:03 3 Of course, one of the problems with this connection is
11:21:05 4 that we have to ensure the integrity of the
11:21:08 5 organisation's network as well; that access from the
11:21:12 6 prison to the ICC is only to one certain machine, which
11:21:17 7 means a lot of security mechanisms have to be put in
11:21:21 8 place to ensure that there's no contamination of
11:21:24 9 information at any stage during this process. So it does
11:21:27 10 take -- took a while, but we're there. Thank you very
11:21:31 11 much.

11:21:31 12 JUDGE STEINER: Can you please just clarify to the Chamber if
11:21:38 13 you can envisage the deadline for the final and complete
11:21:45 14 installation of all these mechanisms?

11:21:51 15 MR BLACKER: Actually, I think we're done. The installation
11:21:55 16 in the OPCD machine is done, the connection from the PC
11:21:58 17 to the Ringtail licence is done, so we are now able to
11:22:03 18 upload information seamlessly between the two machines.
11:22:08 19 The next issue is just giving a sufficient amount of
11:22:11 20 training for them to begin to analyse the information.
11:22:14 21 So from a technical perspective we are done.

11:22:18 22 JUDGE STEINER: Thank you very much for this clarification.
11:22:20 23 So would the defence like to say something on this topic?

11:22:25 24 ME FLAMME (interpretation): Yes, thank you, your Honour.
11:22:30 25 Certainly I can confirm that my client has let me know

11:22:33 1 that he has been able to start -- just yesterday, in
11:22:37 2 fact -- looking at documents on the computer. So the
11:22:41 3 connection concerning the second point with the Office of
11:22:51 4 Public Counsel for the Defence, the computer which is
11:22:52 5 there, this connection is done.
11:22:55 6 There was a technical problem this morning -- I think
11:22:58 7 that that is something that will be looked at in the
11:23:00 8 Detention Centre. Suddenly he could not look at it --
11:23:05 9 look at anything any more, but perhaps it's just a
11:23:07 10 technical problem. And with regards to the training,
11:23:12 11 I think that is underway, but my client is already able
11:23:15 12 to use his basic knowledge to be able to look at this
11:23:22 13 evidence which is very important, and it is a step
11:23:26 14 forward for the Defence.
11:23:27 15 I just wanted, however, to bring to your attention the
11:23:30 16 fact that here we're just talking about the very start,
11:23:34 17 the Ringtail being -- or at least depending on what the
11:23:39 18 Court decides on with regard the draft protocol -- the
11:23:43 19 protocol, if you like -- so it will be the protocol that
11:23:46 20 is going to implement Ringtail definitively. I say that
11:23:50 21 because we are currently still dependent on the manual
11:23:55 22 communication by the Office of the Prosecutor of CDs
11:23:59 23 containing the information which is disclosed, which we
11:24:03 24 manually put on to the computer, which is then manually
11:24:09 25 put on the computer of the Office of Public Counsel, and

11:24:12 1 then communicated to the Detention Centre.

11:24:16 2 So it is still a system which is very basic to the extent

11:24:21 3 that there still isn't a reference -- there is basically

11:24:26 4 a rough version, if you like, but there's no major

11:24:29 5 organisation there. So we are still waiting for the

11:24:33 6 final system, which I think will really make things

11:24:39 7 considerably easier for us. For example, if we remember

11:24:43 8 a particular piece of evidence but we can't find it any

11:24:45 9 more -- that's sometimes happened to me within the --

11:24:51 10 when there's so much communication, then several

11:24:54 11 references will help us to be able to find it very

11:24:57 12 quickly.

11:25:01 13 So I think that certainly we are certainly on the right

11:25:06 14 route, if you like, and I'm very pleased that my client

11:25:10 15 from the prison can already start to work with this

11:25:13 16 material. Thank you.

11:25:17 17 JUDGE STEINER: Thank you very much, Me Flamme. There is no

11:25:23 18 other information on this topic. We can go to the third

11:25:26 19 one, which is related to the access and training in

11:25:32 20 software of the counsel for the Defence, Me Flamme; the

11:25:38 21 appointment of an investigator and interns for the

11:25:41 22 Defence team, and Defence travel to the DRC. At the

11:25:47 23 Status Conference held on 23 June the Chamber was

11:25:53 24 informed by the representative of the Registry and by

11:25:55 25 Me Flamme that Me Flamme had already at his disposal a

11:26:01 1 laptop computer with the Ringtail programme, and that
11:26:05 2 Me Flamme and his team were going to receive gradual
11:26:09 3 training in the Ringtail software.
11:26:12 4 At the same time Me Flamme had requested the appointment
11:26:15 5 of an investigator and had provided to the Registry the
11:26:19 6 name of a person suggested by Mr Lubanga who was on site
11:26:24 7 in Bunia. However, the person had not sent to the
11:26:27 8 Registry yet the necessary documentation.
11:26:31 9 Me Flamme had also requested the appointment of several
11:26:35 10 interns, and the Registry was considering such a request.
11:26:41 11 Finally, the Registry was going to make the utmost effort
11:26:46 12 to permit Me Flamme to travel to the DRC at the earliest
11:26:51 13 opportunity, and preferably before this Status
11:26:55 14 Conference.
11:26:56 15 So I would like first the Registry to give some
11:27:00 16 information on the status of these issues, please.
11:27:11 17 MR CATHALA (interpretation): Your Honour, different people
11:27:14 18 within the Registry are going to respond to these
11:27:16 19 different questions, and I will keep the last question
11:27:19 20 for myself.
11:27:21 21 MR BLACKER: Your Honour, I can confirm that the training for
11:27:25 22 the Defence team has started and, as Me Flamme has said,
11:27:31 23 it's the beginning, so we assume that the training will
11:27:34 24 be ongoing, but we can confirm that the training has
11:27:36 25 started. We have shown them the application, we have

11:27:40 1 shown them how the information is structured, so from our
11:27:43 2 side the process has started.

11:27:53 3 MR SHOAMANESH: Good morning, your Honour. The name is Sam
11:27:55 4 Shoamanesh. I'm an administrative legal assistant
11:27:59 5 working for the Defence Support Section. I would ask --
11:28:02 6 I would apologise to you and my colleagues in advance --
11:28:06 7 I have a bit of a cough.

11:28:10 8 JUDGE STEINER: I also have to apologise.

11:28:14 9 MR SHOAMANESH: Again, your Honour, with your permission,
11:28:15 10 I will preface my update on this issue by stating the
11:28:18 11 following. The Registrar of the Court is committed to
11:28:20 12 ensuring that the Defence team and legal representatives
11:28:24 13 of victims are provided with nothing less than highly
11:28:27 14 qualified and competent professional investigators before
11:28:32 15 this Court. The Registrar is adamant in his desire to
11:28:37 16 avoid the experience of ad hoc tribunals where, at times,
11:28:42 17 individuals were assigned to defence teams not so much
11:28:45 18 because of their qualifications per se but because of
11:28:48 19 non-arm's length relationships they might have had with
11:28:50 20 the accused.

11:28:52 21 This is not only an abuse of the Court's legal aid
11:28:56 22 system, but also it will work to the detriment of the
11:28:59 23 interest of the accused persons of not being able to have
11:29:02 24 the benefit of qualified investigators. Regulation 137.2
11:29:07 25 of the Regulations of the Registry, recently adopted, is

11:29:11 1 a manifestation of the Registrar's vigilance in this
11:29:15 2 regard. It stipulates the requirements that professional
11:29:19 3 investigators must have before they can work for defence
11:29:23 4 teams and victims` teams before this court.
11:29:26 5 With that preface, that's how we approach each
11:29:30 6 professional investigator that is provided -- the
11:29:34 7 applications that are provided to us, they use 137 --
11:29:37 8 Regulation 137 to decide if they meet the requirements
11:29:41 9 for admission to the list of professional investigators,
11:29:43 10 if they have the required competence to act as
11:29:46 11 professional investigators before this Court.
11:29:48 12 My friend Me Flamme was kind enough to give us the name
11:29:52 13 of a potential candidate. We received the initial
11:29:56 14 application on 27 May 2006. This initial application was
11:30:00 15 not complete, as you know. He was notified on 6 June of
11:30:05 16 what additional documents he needs to provide our office
11:30:10 17 and, finally, on 29 June 2006 our office was finally in
11:30:14 18 possession of a complete file from this gentleman.
11:30:18 19 On the same day the file was reviewed, and it was the
11:30:22 20 decision of the Division that, unfortunately, this
11:30:24 21 gentleman does not meet the requirements as set out in
11:30:27 22 Regulation 137.2 of the Regulations of the Registry.
11:30:32 23 If you like, I can tell you what those qualifications
11:30:36 24 are. The professional investigator is required to have
11:30:41 25 established competence in international or criminal law

11:30:44 1 and procedure and at least 10 years of experience in
11:30:50 2 investigative work in criminal proceedings at national or
11:30:53 3 international level. Again, unfortunately, this
11:30:56 4 gentleman, although he requires [sic] 10 years of
11:31:00 5 criminal experience as a practising lawyer, he is not a
11:31:03 6 professional investigator per se. He does not require
11:31:06 7 [sic] those nuances and those specific skills that an
11:31:11 8 investigator would possess.

11:31:13 9 Now, given the situation -- we have been in contact with
11:31:19 10 Me Flamme and had asked him if he has any other
11:31:21 11 candidates in mind, given that the confirmation of
11:31:23 12 charges hearing is around the corner and the Registry
11:31:27 13 certainly understands the needs of the Defence to have
11:31:28 14 investigative work -- at least some preliminary
11:31:32 15 investigative work in preparations for that hearing.
11:31:36 16 Unfortunately, Me Flamme does not have any additional
11:31:38 17 candidates in mind.

11:31:40 18 What we've done is, in order to accommodate the interests
11:31:42 19 of -- the needs of the Defence, we have gone back to this
11:31:44 20 candidate and requested additional information -- further
11:31:48 21 elaborations to see if he indeed has some -- the
11:31:51 22 investigative work as envisaged by Regulation 137. I am
11:31:54 23 here to tell you, from what we have in his file, it does
11:31:57 24 not look like, even with the additional elaboration, that
11:32:00 25 he will fulfil this test. Nevertheless, since we are not

11:32:04 1 yet at the trial phase, this gentleman has, based on his
11:32:08 2 application, languages of the region, an understanding of
11:32:14 3 the conflicts, he is a counsel, so he is somewhat -- he
11:32:18 4 is competent to do some preliminary investigative work.
11:32:22 5 We have communicated that to my friend Me Flamme. He is
11:32:26 6 content that he -- he won't be assigned as a professional
11:32:30 7 investigator per se but as a consultant, or somebody that
11:32:33 8 can go in the region and do some preliminary
11:32:35 9 investigative work, inquisitorial work, which is
11:32:39 10 sufficient at this stage of the proceedings, and of
11:32:41 11 course I leave the floor to Me Flamme to correct me if
11:32:44 12 I'm wrong on what I'm submitting to you.
11:32:48 13 The difficulty that we face in my section is that the
11:32:52 14 legal aid system of the Court is very much structured
11:32:56 15 and, since this gentleman is not a professional
11:32:58 16 investigator, the funds to pay for his services are not
11:33:01 17 there. So we have to be flexible and we have to be
11:33:05 18 innovative in how to do this. So we proposed to
11:33:08 19 Me Flamme that we are willing to release funds from the
11:33:12 20 trial phase for a P2 level legal assistant and apply
11:33:18 21 those funds for this gentleman to do the work for the two
11:33:24 22 months that is required of him to do this preliminary
11:33:26 23 inquisitorial work for the Defence.
11:33:29 24 All this information has been communicated to
11:33:32 25 Me Flamme -- both orally on 5 June and in writing, just

11:33:37 1 recently I believe, on 13 June, and in essence we are
11:33:43 2 waiting for my friend to confirm-- sorry, I apologise,
11:33:46 3 14 July -- thank you for the correction -- 14 July, and
11:33:50 4 the second that we have the acceptance in writing from
11:33:54 5 Me Flamme we will proceed and have this candidate
11:33:57 6 assigned, plus we also envisage basic training for this
11:34:01 7 candidate as well as the Defence team on investigative
11:34:05 8 work from a highly reputable institution that will
11:34:10 9 provide investigative training. In essence, that is the
11:34:13 10 stage we are with respect to this.
11:34:15 11 For future, it is perhaps of interest to you to know that
11:34:19 12 the list of professional investigators will be set up, we
11:34:22 13 hope, in the next couple of months. The standard forms
11:34:26 14 are ready. They have to be approved at the high
11:34:29 15 levels -- the Registrar himself and the Presidency -- and
11:34:32 16 once that is done the list will be set up so that when
11:34:35 17 the time comes for this Defence team and future Defence
11:34:39 18 teams to select professional investigators, there will be
11:34:41 19 a list on hand where they have many options to choose
11:34:43 20 from.
11:34:44 21 But given the situation -- circumstances we face now, on
11:34:48 22 an ad hoc basis this is what my section has come up with
11:34:52 23 and that has been communicated to my colleague and that's
11:34:56 24 where we are at on this issue.
11:35:00 25 JUDGE STEINER: Thank you very much. Before going on to the

11:35:07 1 other topics, I would like to listen from Me Flamme,
11:35:11 2 because for me this is a very important one.

11:35:17 3 ME FLAMME (interpretation): Thank you, your Honour. As
11:35:20 4 regards the first point -- laptops, computers -- we have
11:35:27 5 indeed started training on these laptops and we also
11:35:35 6 requested somebody from Court Management to load the
11:35:48 7 CD-ROMs that the Prosecutor gave us -- to upload them on
11:35:53 8 to the laptops. The problem is we still don't have the
11:35:56 9 decisions and motions that were filed with the Registry.
11:36:02 10 As far as I recall, it was my understanding that these
11:36:06 11 laptops would be connected to a circular system, if you
11:36:11 12 may -- Ringtail suggests this -- and we would have an
11:36:16 13 almost automatic uploading of everything important --
11:36:19 14 decisions, motions and material. But up until now we
11:36:24 15 only have the material that was communicated by the
11:36:28 16 Prosecutor randomly on these laptops. So that is for the
11:36:34 17 first point.

11:36:35 18 Now, on the second point, the important point of the
11:36:42 19 investigator, I can confirm what Mr Shoamanesh has said.
11:36:48 20 We have just obtained an agreement concerning the form in
11:36:54 21 which we would like to request this person about whom I
11:36:58 22 don't want to give any details because we are in a public
11:37:01 23 hearing -- we would like to make this person come to
11:37:07 24 The Hague this month, if possible, as we are running out
11:37:09 25 of time, and train the person to enable them to start

11:37:12 1 work.

11:37:15 2 I had some reservations about taking this person with

11:37:23 3 funds that we're to use in the future for the trial, and

11:37:28 4 I had mentioned to the Registry -- but we are all

11:37:32 5 learning here and experiencing -- I mentioned to the

11:37:36 6 Registry that I had concerns concerning the composition

11:37:41 7 of the Defence team for the trial phase for the following

11:37:47 8 reasons. If I read correctly -- the text correctly,

11:37:53 9 counsel and co-counsel or a legal assistant should be on

11:37:58 10 the team and a second legal assistant, as well as a case

11:38:04 11 manager, if I recall correctly, and an investigator. And

11:38:06 12 I had mentioned to the Registry that at the ICTR for

11:38:10 13 similar cases we were entitled to a counsel, co-counsel,

11:38:14 14 two investigators, or a legal assistant, or two legal

11:38:20 15 assistants and one investigator.

11:38:24 16 And I also mentioned that here we are in a very new

11:38:32 17 situation and the charges are much more important than in

11:38:41 18 front of the ICTR and we will probably have victims

11:38:45 19 present, too, on top of the Office of the Prosecution and

11:38:50 20 the counsel of the Office of the Prosecutor, which will

11:38:54 21 create a lot of work, and we can already feel it now. We

11:38:57 22 will have to respond to the requests on the part of

11:39:01 23 victims for participation. All these duties are in

11:39:04 24 addition to the usual ones and represent a lot of work.

11:39:08 25 If we were in a similar team to the teams at the ICTR

11:39:12 1 with counsel, co-counsel, two legal assistants and an
11:39:16 2 investigator, that still wouldn't be sufficient, so I had
11:39:19 3 some reservations about using funds from that phase for
11:39:22 4 the current phase.

11:39:24 5 However, I've got my back against the wall and I need to
11:39:27 6 have this person this month in The Hague or else I'll
11:39:30 7 never be ready for the confirmation hearing, because the
11:39:37 8 Defence is composed of two persons, and if you look at
11:39:42 9 the adversaries against me, they have IT people, many
11:39:49 10 more -- much more staff which we don't have. And we are
11:39:54 11 constantly drafting requests and applications concerning
11:39:59 12 general interpretation and procedure problems about the
11:40:02 13 different texts. We have two appeal proceedings under
11:40:05 14 way and your Honour, up until now, we have only been able
11:40:13 15 to deal with the factual defence of this file, because we
11:40:18 16 constantly have to deal with these other duties which are
11:40:22 17 of a general nature in very short deadlines before this
11:40:27 18 Chamber and the Appeals Chamber and constantly have to
11:40:30 19 study the texts, respond to the Prosecutor's submissions,
11:40:39 20 et cetera, and I have limited means in the Defence. But
11:40:46 21 I am glad to have just heard that we have some concrete
11:40:50 22 developments that will help us move forward in the
11:40:53 23 following days.

11:40:55 24 JUDGE STEINER: On this point, the access to the filings in
11:40:58 25 general, the decisions and the motions, what does the

11:41:02 1 Registry say about that?

11:41:06 2 MR MIJUSKOVIC: Your Honour, in relation to this point raised

11:41:10 3 by Me Flamme, we wish to attract your attention to a

11:41:13 4 fundamental difference between court records and

11:41:18 5 materials that were given to the Defence in the process

11:41:20 6 of disclosure, plus the means that are used by the

11:41:25 7 Defence today to access those.

11:41:28 8 As a matter of fact, Ringtail, the software, is used for

11:41:31 9 the analysis and the access to the materials that were

11:41:35 10 disclosed by the Prosecution. The court records, that is

11:41:40 11 something completely different. Decisions and motions,

11:41:42 12 we do not have any problem today in providing those to

11:41:46 13 Me Flamme, which we do by each and every notification

11:41:49 14 that has been sent from the Registry.

11:41:52 15 Those documents are accessible; we can always provide

11:41:54 16 them to Me Flamme. Now, the analysis of those same

11:41:58 17 documents and the performing of the analysis of those

11:42:01 18 documents in the same manner as the analysis of the

11:42:04 19 disclosed materials, that is a totally different matter.

11:42:07 20 If we had to do that, then that requires additional

11:42:11 21 processing and effort on the side of the Registry, and

11:42:15 22 this is not what is done today, nor this is not what was

11:42:21 23 planned for today.

11:42:24 24 JUDGE STEINER: Thank you. So in relation to the appointment

11:42:30 25 or possible appointment of an equivalent P2 to assist

11:42:36 1 Me Flamme as an ad hoc investigator, how does the
11:42:41 2 Registry envisage the time or deadlines? Please,
11:42:48 3 Mr Cathala.

11:42:52 4 MR CATHALA (interpretation): Your Honour, as regards the
11:42:56 5 decision, we have taken it, so tomorrow already we can do
11:43:02 6 it, if Me Flamme agrees. If you allow, your Honour,
11:43:06 7 I would like to come back to the second part of what
11:43:09 8 Me Flamme was saying about the capacity to guarantee a
11:43:15 9 comprehensive defence.

11:43:18 10 I would just like to underline two points. Me Flamme was
11:43:22 11 comparing our system with the ICTR system, which you
11:43:26 12 could do with the ICTY system or any other system, but
11:43:30 13 I would like to underline that in this Court what we
11:43:33 14 wanted to have is a Defence that, as soon as possible,
11:43:38 15 could be at the same level as the OTP, and therefore we
11:43:41 16 have tried to set up an Office of Public Counsel for the
11:43:47 17 Defence which wasn't there to participate in the hearings
11:43:52 18 and plead, but to support and help the Defence in its
11:43:59 19 various needs. And the Registry -- and we saw that on
11:44:04 20 several occasions even this morning -- is also there to
11:44:08 21 help the Defence in its work. That was my first point.

11:44:12 22 The second point: as regards the legal aid system, we
11:44:18 23 discussed this system with Defence representatives, and
11:44:22 24 have been discussing it for two years already, and we
11:44:26 25 decided now to set up this system, but it is a flexible

11:44:31 1 system. It's a system that will evolve; it is not
11:44:35 2 finished today. With experience at this Court and with
11:44:41 3 the case law produced by the Chamber and the Court in
11:44:44 4 general, we will adapt the system of legal aid. That's
11:44:51 5 why we wanted a flexible system, because we don't know
11:44:54 6 how this Court will function. It's a new court with new
11:44:57 7 rules. There will be new case law and, therefore, we
11:45:01 8 will adapt the system along the way and, of course,
11:45:16 9 respect any decisions you take on this matter.

11:45:24 10 JUDGE STEINER: Just on the same topic, we could maybe talk
11:45:27 11 about the appointment of interns that would be a great
11:45:29 12 help to the Defence.

11:45:31 13 MR CATHALA (interpretation): Indeed, you are right, your
11:45:33 14 Honour. Here again we need to find a parallel system
11:45:36 15 with the defence system -- of course, I'm not talking
11:45:38 16 here in mathematical terms but some parallels between the
11:45:43 17 Defence's work and the OTP's work. I won't go into too
11:45:49 18 much detail here, but if I've understood correctly, the
11:45:54 19 Defence team should be in a position to have two interns
11:46:00 20 that will be able to help it. You may know that in this
11:46:06 21 Court, since it was created in October 2002, we have
11:46:10 22 worked on the possibility of having paid internships to
11:46:16 23 enable interns from all over the world to come here,
11:46:21 24 because living in The Hague is expensive and it was
11:46:25 25 difficult. So if we didn't have this system, we would

11:46:30 1 only attract candidates from western countries.

11:46:34 2 So what we wanted was to push to enable interns from

11:46:39 3 different parts of the world to come here, too. And

11:46:43 4 I would like to suggest that if Me Flamme wants his

11:46:46 5 candidate interns to come from these types of countries,

11:46:53 6 then that's not a problem. The Registry will look into

11:46:58 7 every application and, as things stand today, Me Flamme

11:47:04 8 has access to two interns.

11:47:08 9 JUDGE STEINER: In relation to Me Flamme's travel to DRC, is

11:47:18 10 there any new information on that?

11:47:24 11 MR CATHALA (interpretation): On this point I will have to

11:47:26 12 come back to the legal aid system, which includes

11:47:38 13 financial means to enable Me Flamme and his teams to

11:47:42 14 travel. There is one substantive issue that has to be

11:47:53 15 dealt with and that is security and safety -- not just

11:47:56 16 for Me Flamme but also for the Office of the Prosecutor

11:47:58 17 and Registry members that go in the field.

11:48:04 18 There are two points I would like to make about this

11:48:06 19 topic. Do court staff members have a green light to go

11:48:15 20 in the field? You know the security section regularly

11:48:18 21 assesses the situation in the field and at times does

11:48:25 22 indicate that it's not possible to travel to the field

11:48:27 23 for security reasons. That was the case very recently in

11:48:30 24 the Democratic Republic of the Congo and that is why we

11:48:35 25 also want Me Flamme to stick to these assessments that

11:48:43 1 are made of the security situation.

11:48:50 2 If Me Flamme wants to have at his disposal the security

11:48:58 3 services of the Court, we would agree if it's necessary

11:49:03 4 for the services to support the work of Me Flamme, but

11:49:09 5 you know that we have to be very clear about the type of

11:49:15 6 security work that this personnel is doing. We don't

11:49:20 7 have an army, we don't have a police -- we have staff

11:49:23 8 members that act as an interface between security or the

11:49:28 9 Congolese or MONUC security services and staff members

11:49:35 10 that go in the field. It is in that context that

11:49:38 11 Me Flamme could have our support on a case-by-case basis.

11:49:43 12 JUDGE STEINER: Thank you and, as far as I remember now,

11:49:44 13 between 15 July and 15 August it will not be possible for

11:49:52 14 MONUC to facilitate any; is that correct?

11:50:03 15 ME FLAMME (interpretation): Your Honour, I don't know the

11:50:05 16 exact dates, but it is true that MONUC, for a period of

11:50:12 17 time -- I believe end of July/beginning of August -- has

11:50:15 18 indicated it cannot help us, but not just us, and we have

11:50:20 19 to respect that. But we can be an intermediary with

11:50:30 20 MONUC to see whether and when it will be possible for

11:50:35 21 Me Flamme to travel to the field.

11:50:37 22 JUDGE STEINER: Me Flamme, would you like to say something on

11:50:40 23 this topic, and taking into account that probably you

11:50:44 24 have very soon someone in the field doing some

11:50:48 25 preliminary work?

11:50:57 1 ME FLAMME (interpretation): Indeed, your Honour, you are
11:50:58 2 right in what you say. The fact that we have somebody
11:51:01 3 from the field, even if this person comes to see us here,
11:51:05 4 and that goes back to the field with instructions on how
11:51:09 5 to work in the field, will probably occasion a number of
11:51:16 6 problems and if my team does no longer need to go in the
11:51:20 7 field, of course we will not ask for these costs to be
11:51:25 8 borne if it's not necessary.
11:51:28 9 There's another point that is very important for me, and
11:51:30 10 that's security. I'm not going to risk somebody's
11:51:33 11 life -- somebody from my team's life. I will certainly
11:51:41 12 not do that and if somebody from my team goes there, it
11:51:46 13 will only be with full safety assurances. And I know
11:51:49 14 that 100 per cent safety is not guaranteed, that
11:51:52 15 accidents are always possible.
11:51:54 16 Now that I have said this, I would like to add that
11:52:02 17 I would like to keep my request to travel to the DRC,
11:52:06 18 even if it was just to go to Kinshasa, but I do
11:52:11 19 understand that, for now, that probably won't be possible
11:52:14 20 before 15 August. We are currently in ongoing
11:52:20 21 discussions with the Registry to solve this problem.
11:52:23 22 As regards the interns, I did indeed make a request to
11:52:27 23 the Registry. I was given somebody's name. I contacted
11:52:33 24 the person. They are currently on holiday, but normally
11:52:36 25 I should meet them at the end of the month in The Hague.

11:52:40 1 And there's another intern that I've already put to work.
11:52:44 2 I still have to give the forms to the Registry, but this
11:52:47 3 person is working from home and that is possible because
11:52:51 4 the person resides in Belgium and, therefore, we don't
11:52:55 5 have any problems having this person working on some
11:53:00 6 material from Belgium.

11:53:03 7 I would, however, like to underline that these two
11:53:09 8 interns are non-paid interns. There is a system to pay
11:53:15 9 interns in place, but it's only for interns from certain
11:53:19 10 countries. I would, however, like to underline that this
11:53:26 11 can be a temporary solution, but we should not start
11:53:31 12 thinking that we will be able to work like this, because
11:53:33 13 I would like to have a team that works on the case right
11:53:38 14 up until the end, because each person working in a team
11:53:43 15 has a certain memory of the case, and it's very difficult
11:53:47 16 to replace people during a trial. Sometimes that is a
11:53:51 17 real disaster.

11:53:54 18 So even for interns, if somebody starts working on the
11:53:59 19 case, if the person is any good, I like to keep them up
11:54:03 20 until the end of the case, but it will be very difficult
11:54:08 21 to convince people to work for free for long periods of
11:54:11 22 time -- I think it's even impossible. We have to
11:54:14 23 understand this.

11:54:17 24 So there are a couple of problems we might encounter
11:54:21 25 about this in future. But I will always manage to find

11:54:28 1 people to carry out certain tasks on a temporary basis,
11:54:31 2 but personally I am not in favour of this approach.
11:54:39 3 That is as regards the problem of interns.
11:54:42 4 Now I would like to go back to what a representative of
11:54:46 5 the Registry was saying about the problems of decisions,
11:54:52 6 motions and material filed by the parties of the
11:54:57 7 proceedings in the record of the case. If I've
11:55:01 8 understood correctly, it's a separate court record or
11:55:06 9 court file, but we have to understand that these
11:55:18 10 decisions and motions are notified to me electronically
11:55:22 11 by e-mail. However, I get them on my desktop in my
11:55:29 12 office in Gent and I'm not great at IT and, for me, it's
11:55:39 13 an impossible mission from my desktop to upload these on
11:55:47 14 to laptops. And I think that if I attempt to do so I'll
11:55:51 15 probably make some big mistakes and it won't work. So
11:55:55 16 I won't do this, because it will increase the amount of
11:55:58 17 problems I encounter. So at least provisionally -- and
11:56:02 18 I'm speaking here especially for my client who has to
11:56:05 19 have access to decisions -- my client has to be able to
11:56:08 20 read these decisions in the French version. And that is
11:56:15 21 why I would like to ask the Registry whether it wouldn't
11:56:18 22 be possible for them to provide us regularly, perhaps
11:56:21 23 weekly, with a CD-ROM that contains new decisions and new
11:56:29 24 motions for us to be able to put them on to the system
11:56:31 25 and so that my client can have them with him in the

11:56:36 1 Detention Centre. So we would have two manual uploadings
11:56:43 2 on to the laptop of the communications on CD-ROM from the
11:56:52 3 Prosecutor and of the communications from the Registry.
11:56:55 4 However, I still have not quite understood about
11:56:58 5 Ringtail. In an ideal scenario, will we always have to
11:57:03 6 introduce everything manually, or once the system is up
11:57:06 7 and running will the uploading be electronic and will it
11:57:12 8 no longer be necessary to do so manually? If we have to
11:57:18 9 do so manually, we risk making a lot of mistakes.
11:57:23 10 I think I've understood the system will work that way,
11:57:26 11 but I'm not sure.

11:57:28 12 MR MIJUSKOVIC: Thank you, your Honour. In relation to the
11:57:30 13 provision of a complete case file and, of course, the
11:57:36 14 uploading of additional documents as they come, the
11:57:39 15 Registry sees no problem in doing that. We can always
11:57:42 16 create a CD and send that CD regularly every week to the
11:57:49 17 Detention Centre where, in accordance with the existing
11:57:52 18 procedures, it would be uploaded on a laptop or the work
11:57:58 19 station used by the accused, Mr Lubanga.

11:58:00 20 On the other hand, I wish to repeat what I said, what
11:58:03 21 I mentioned earlier: the format of those decisions and
11:58:08 22 what we are providing is not the format that is to be
11:58:12 23 imported in Ringtail. That is very important to
11:58:15 24 understand. It's something completely different today.
11:58:20 25 Thank you, your Honour.

11:58:23 1 JUDGE STEINER: Thank you for this clarification, and I think
 11:58:28 2 these issues could be discussed among the parties and the
 11:58:31 3 Registry and Me Flamme, otherwise we will start
 11:58:35 4 discussing technological problems and this
 11:58:40 5 Status Conference will become quite difficult, even for
 11:58:43 6 the single judge, to understand.
 11:58:45 7 I have just one concern in relation to the interns,
 11:58:49 8 Mr Cathala, that because the interns are working as part
 11:58:55 9 of the Defence team, of course they will have access to
 11:59:03 10 some confidential documents. I would like to have some
 11:59:06 11 explanation on the regime to which these interns would be
 11:59:08 12 submitted. Would it be the same as our interns, for
 11:59:13 13 instance, that have to sign some statements giving
 11:59:21 14 knowledge of their duties and responsibilities and the
 11:59:25 15 consequences of any breach of any of these duties? This
 11:59:31 16 is really a point of concern.

11:59:39 17 MR SHOAMANESH: Thank you, your Honour. If you'll allow me,
 11:59:40 18 I'll answer the question. It's envisaged that in fact in
 11:59:43 19 the long term we will have the same regime that currently
 11:59:48 20 exists for the interns for the different organs of the
 11:59:50 21 Court apply on the same basis as the interns for the
 11:59:54 22 Defence. So they will in fact go through the application
 11:59:56 23 process, fill it out and whatever required forms they
 12:00:00 24 need to sign and execute and provide to the Court -- they
 12:00:02 25 will in fact be required to do so in order to preserve

12:00:04 1 issues of confidentiality and the other issues that you
12:00:07 2 are raising. In essence, we will apply the same policy
12:00:13 3 that's currently existing for other interns?

12:00:18 4 JUDGE STEINER: Thank you very much.

12:00:20 5 ME FLAMME (interpretation): Me Flamme, if you will allow me,
12:00:23 6 your Honour, just to add to that. Of course, when I work
12:00:31 7 with interns it will be under my responsibility, as will
12:00:35 8 be the case with my office, and I will make it known to
12:00:38 9 these interns what their duties are with regard to the
12:00:41 10 confidentiality issue. In every lawyer's office this is
12:00:46 11 the case, but I certainly agree that these interns should
12:00:49 12 certainly conform with the court system where it concerns
12:00:54 13 the confidentiality requirements. That's a given, as far
12:00:57 14 as I'm concerned.

12:00:58 15 JUDGE STEINER: Thank you very much. So, in my view, the
12:01:02 16 preliminary issues that took the first half -- part of
12:01:07 17 this Status Conference come to an end and now we could
12:01:14 18 start with the disclosure issues, and then I would like
12:01:18 19 to invite the Prosecution to give an overview on how the
12:01:23 20 process of disclosure has taken place since the last
12:01:27 21 Status Conference and, if possible, how he envisages the
12:01:33 22 process of disclosure until the next Status Conference to
12:01:37 23 be held on 17 August.

12:01:41 24 Before giving the floor to the Prosecution, I would like
12:01:44 25 to ask, if possible, for the Prosecution to structure its

12:01:51 1 presentation, as far as possible, in separate topics --
12:01:58 2 the ones related to disclosure of witness statements
12:02:02 3 pursuant to Rule 76; then inspection of incriminating
12:02:08 4 evidence pursuant to Rule 77; and then inspection of
12:02:13 5 materials obtained from or belonging to Mr Thomas Lubanga
12:02:19 6 Dyilo or that are otherwise material to the Defence, also
12:02:24 7 pursuant to Rule 77 of the Rules. And I would also like
12:02:28 8 the Prosecution to address, in particular, how much
12:02:32 9 progress has been made on the inspection of those
12:02:35 10 documents obtained from Mr Thomas Lubanga Dyilo and,
12:02:40 11 also, to explain whether any problem has arisen when
12:02:45 12 implementing the new system of inspection, including the
12:02:47 13 pre-inspection notes and inspection reports put in place
12:02:53 14 since the last Status Conference; and, finally, the
12:03:00 15 disclosure of potentially exculpatory materials under
12:03:06 16 Article 67(2) of the Statute, in particular, if any
12:03:11 17 progress has been made on some issues related to
12:03:14 18 disclosure of these materials. So the Prosecution,
12:03:20 19 please, has the floor.

12:03:21 20 MR WITHOPF: Thank you very much, your Honour. Ms Solano and
12:03:33 21 I, we will address all the matters you have raised.
12:03:37 22 Prior to making our substantive submissions, however,
12:03:41 23 I wish to again inform your Honour how we have divided
12:03:47 24 our work for the purpose of this Status Conference.
12:03:48 25 Actually, we do apply the very same procedure as last

12:03:54 1 time. Ms Solano, my colleague, she will provide you with
12:04:00 2 an update, taking into account the criteria you have just
12:04:02 3 mentioned, your Honour. The update will comprehensively
12:04:06 4 cover the status of disclosure and, in doing so, very
12:04:09 5 detailed information will be provided on the progress
12:04:11 6 since the last Status Conference, and I already wish to
12:04:15 7 emphasise now there has been significant progress.
12:04:20 8 Ms Solano's report will, as mentioned again, be detailed.
12:04:25 9 It will cover the statistics in relation to all aspects
12:04:30 10 of disclosure, as you have mentioned, of incriminatory
12:04:35 11 evidence, of potentially exculpatory evidence, and it
12:04:39 12 will also cover any issues that relate to the inspection
12:04:44 13 of Rule 77 materials.
12:04:46 14 The report will also cover the filings to the Court
12:04:51 15 following the various disclosure meetings, and I wish to
12:04:56 16 inform your Honour that, following yesterday evening's
12:05:01 17 disclosure, we have filed today, prior to the hearing,
12:05:05 18 the various disclosure reports. It is my understanding
12:05:09 19 that your Honour has not yet been notified. For that
12:05:13 20 reason we would be in a position to provide you, if you
12:05:15 21 so wish, with courtesy copies of our today's filings.
12:05:20 22 JUDGE STEINER: Thank you very much. I would very much
12:05:25 23 appreciate that.
12:05:29 24 MR WITHOPF: The courtesy copies are available. We have four
12:05:31 25 sets of copies comprised of the three different

12:05:35 1 disclosure filings.

12:05:50 2 In our view, it would make sense to have a brief look, in

12:05:55 3 particular, at the annexes of these filings, because

12:05:59 4 later on I will address a very particular aspect which is

12:06:05 5 new and which has been introduced at the occasion of

12:06:09 6 yesterday's disclosure.

12:06:13 7 After the report by Ms Solano, your Honour, I will be

12:06:17 8 available, as last time, to address any questions that

12:06:20 9 may arise out of the report, or any further issues your

12:06:25 10 Honour wishes to discuss with the Prosecution. Provided

12:06:32 11 that this procedure is again agreeable to you, your

12:06:35 12 Honour, I would invite Ms Solano to provide the report,

12:06:39 13 please.

12:06:45 14 JUDGE STEINER: Yes, Ms Solano.

12:06:50 15 MS SOLANO: Your Honour, good morning. I will, as announced,

12:06:55 16 give you the report on the disclosure activities that

12:06:57 17 have taken place since the Status Conference of 23 June.

12:07:02 18 Since the last report to the Chamber, your Honour, the

12:07:04 19 Office of the Prosecutor has met with the Defence on two

12:07:07 20 occasions for the purposes of discharging its obligation

12:07:11 21 to disclose materials it intends to rely on at the

12:07:15 22 confirmation hearing, and potentially exculpatory

12:07:18 23 materials, and of permitting the Defence to inspect

12:07:21 24 materials falling within the scope of Rule 77. The

12:07:24 25 timing of these meetings has continued to be easily

12:07:27 1 agreed between the parties.

12:07:31 2 On 5 July, pursuant to our Article 61(3)(b) obligations,

12:07:38 3 the Prosecution disclosed to the Defence 47 documents

12:07:41 4 comprising 242 pages, and provided the Defence with

12:07:44 5 printed copies of 14 of these documents, which are

12:07:48 6 handwritten documents.

12:07:50 7 Pursuant to our Article 67(2) obligations, the

12:07:54 8 Prosecution disclosed 29 documents comprising 225 pages.

12:07:59 9 It also provided the Defence with printed copies of

12:08:06 10 22 handwritten documents that were part of this group.

12:08:09 11 Additionally, and in compliance with your Honour's oral

12:08:13 12 decision on 23 June authorising modifications to the

12:08:16 13 system of inspection of Rule 77 materials, the

12:08:19 14 Prosecution provided the Defence with a CD containing

12:08:24 15 21 documents comprising 297 pages.

12:08:30 16 Your Honour, a total of 97 documents comprising 764 pages

12:08:37 17 were thus disclosed or provided for pre-inspection on

12:08:41 18 5 July.

12:08:43 19 On 13 July the Prosecution disclosed to the Defence

12:08:48 20 26 documents comprised of 112 pages that it intends to

12:08:52 21 rely on at the confirmation hearing, pursuant to its

12:08:56 22 Article 61(3)(b) obligations, and provided the Defence

12:09:00 23 with printed copies of two of these documents, which are

12:09:03 24 handwritten documents.

12:09:05 25 It also disclosed three documents comprising 31 pages as

12:09:09 1 potentially exculpatory evidence, pursuant to its
12:09:12 2 Article 67(2) obligations.

12:09:16 3 Finally, the Prosecution provided the Defence with a CD
12:09:20 4 containing 12 documents comprised of 83 pages which fall
12:09:26 5 within the scope of Rule 77.

12:09:30 6 To date, your Honour, the Defence has not requested to
12:09:34 7 physically inspect any of the documents provided for
12:09:36 8 inspection pursuant to Rule 77.

12:09:41 9 On 13 July, your Honour, a total of 41 documents running
12:09:48 10 to 226 pages were thus disclosed or provided for
12:09:52 11 pre-inspection.

12:09:55 12 With your permission I will now give you an overview of
12:09:59 13 the overall disclosure activities since the first
12:10:03 14 disclosure on 31 March.

12:10:06 15 Since the beginning of these disclosure activities, the
12:10:11 16 Prosecution has met with the Defence on now nine times.

12:10:15 17 The average interval of disclosure and inspection
12:10:18 18 meetings has thus been less than two weeks.

12:10:23 19 In our two most recent meetings on 5 and 13 July the
12:10:28 20 number of materials disclosed or inspected by the Defence
12:10:30 21 has increased considerably, as announced by Mr Withopf.

12:10:35 22 In the 12-week period between 31 March and 23 June,
12:10:43 23 151 documents comprising 2,127 pages were disclosed. In
12:10:50 24 the three-week period between 23 June and 14 July,
12:10:56 25 138 documents comprising 990 pages were disclosed or

12:11:01 1 provided for inspection.

12:11:03 2 The combined result of these nine disclosure or

12:11:08 3 inspection meetings that have taken place since 31 March

12:11:12 4 brings the total number of materials disclosed pursuant

12:11:15 5 to the Prosecutor's Article 61(3)(b) obligations to

12:11:21 6 170 documents and 2,013 pages. The number of materials

12:11:29 7 disclosed as potentially exculpatory evidence is now

12:11:34 8 72 documents running through 627 pages. Finally, the

12:11:42 9 number of materials that have now been provided for

12:11:45 10 inspection is 47 documents comprised of 477 pages.

12:11:54 11 This brings the number of overall disclosed or inspected

12:11:59 12 documents, your Honour, to 289, with 3,117 pages.

12:12:09 13 In addition to the materials that it has actually

12:12:12 14 disclosed, we would like to bring to your attention, your

12:12:16 15 Honour, the fact that a considerable number of documents

12:12:19 16 have been preliminarily reviewed by the Prosecution and

12:12:25 17 have either been assessed as not containing potentially

12:12:28 18 exculpatory information, or they have not yet been

12:12:31 19 disclosed for a variety of reasons.

12:12:36 20 A total of -- this is in addition to the documents which

12:12:39 21 have been disclosed -- a total of 522 documents

12:12:43 22 comprising 7,496 pages have been reviewed. From this

12:12:50 23 group of 522 documents, 297 documents comprising

12:12:58 24 3,765 pages have been deemed not to contain potentially

12:13:03 25 exculpatory information. Again, from this group of

12:13:09 1 522 documents, 125 comprising 1,923 pages have been
12:13:18 2 deemed by the Prosecution to contain potentially
12:13:21 3 exculpatory information, but they are subject to
12:13:25 4 Article 54(3) restrictions which the Prosecutor is
12:13:29 5 endeavouring to lift.

12:13:34 6 I will now proceed, your Honour, with an account of the
12:13:37 7 filings in the record of the case that are related to the
12:13:40 8 latest disclosure activities. I will first address the
12:13:44 9 filing of the originals of the incriminating evidence
12:13:47 10 that the Prosecutor intends to rely on at the
12:13:50 11 confirmation hearing. The originals of the documents
12:13:53 12 which were disclosed to the Defence as incriminating
12:13:56 13 evidence on 5 July were filed with the Registry on 6 July
12:14:03 14 and the originals of the documents that were disclosed to
12:14:06 15 the Defence as incriminating evidence on 13 July were
12:14:11 16 filed with the Registry this morning, and these further
12:14:16 17 documents are for which you now have courtesy copies,
12:14:19 18 your Honour.

12:14:20 19 I will now address the filings related to the disclosure
12:14:23 20 of potentially exculpatory evidence. Since the
12:14:26 21 Status Conference on 23 June the Prosecution has filed
12:14:29 22 two disclosure notes of potentially exculpatory evidence
12:14:33 23 in the record of the case -- one on 6 July and the second
12:14:40 24 one this morning.

12:14:41 25 Finally, as for the materials provided for inspection

12:14:44 1 pursuant to Rule 77, the pre-inspection notes were filed
12:14:49 2 as follows: the pre-inspection note for the materials
12:14:52 3 inspected on 5 July was filed with the Registry on 6 July
12:14:56 4 and the pre-inspection note of the materials inspected on
12:15:00 5 13 July was filed this morning. This brings my report to
12:15:05 6 a close, your Honour. Thank you.

12:15:58 7 JUDGE STEINER: Mr Withopf.

12:16:02 8 MR WITHOPF: Thank you very much, your Honour. Your Honour,
12:16:04 9 there are again a number of matters I wish, with your
12:16:08 10 permission, to address. These matters range from very
12:16:12 11 practical issues related to disclosure to more complex
12:16:16 12 legal matters.

12:16:20 13 First, however, I wish to emphasise, as can be seen from
12:16:23 14 the statistics provided by Ms Solano, that in the recent
12:16:32 15 weeks the Prosecution was able, even more than ever
12:16:36 16 before, to shorten the intervals between the various
12:16:43 17 disclosure meetings and to, even more than ever before,
12:16:47 18 provide for substantial amounts of materials.

12:16:54 19 The Prosecution is using additional resources, even more
12:16:59 20 than ever before, to continue with the very significant
12:17:05 21 and substantial disclosure of materials falling within
12:17:09 22 all three categories of disclosure and Rule 77
12:17:13 23 inspection. And there is good reason to believe that the
12:17:19 24 Prosecution will be in a position to fulfil its statutory
12:17:22 25 obligations, as interpreted by your Honour, and within

12:17:27 1 the parameters as outlined by the Prosecution at the
12:17:30 2 occasion of the last two court hearings on disclosure.
12:17:37 3 Furthermore, there is one particular aspect -- and the
12:17:44 4 Prosecution pays particular attention to the limits of
12:17:47 5 Mr Thomas Lubanga Dyilo to understand and to read
12:17:53 6 documents that are disclosed in English -- the
12:17:57 7 Prosecution has identified such documents which have
12:18:02 8 previously been disclosed in the English language but are
12:18:05 9 also available in the French language. The Prosecution
12:18:09 10 is making a particular effort to identify such documents
12:18:13 11 and the Prosecution has in the past, and will continue in
12:18:17 12 the future, to provide for the French versions of these
12:18:23 13 documents.
12:18:26 14 The Prosecution does so in a concerted effort -- and the
12:18:30 15 concerted effort is beyond its legal obligation -- to
12:18:36 16 ensure fair proceedings and to minimise the burden of the
12:18:40 17 Registry to provide for translations of such materials.
12:18:47 18 Having said that, your Honour, we wish to draw your
12:18:50 19 attention to the following -- an issue that I have
12:18:57 20 already foreshadowed at the occasion of the 23 June
12:19:00 21 Status Conference on disclosure. The Prosecution has
12:19:06 22 yesterday -- and yesterday for the first time --
12:19:08 23 disclosed redacted documents, and I understand your
12:19:13 24 Honour had the opportunity to have a brief look at the
12:19:16 25 attachments to our today's filings, and your Honour will

12:19:19 1 have seen that in relation to some of the documents there
12:19:23 2 is an added statement "contains redactions". The
12:19:29 3 Prosecution envisages that this practice will continue in
12:19:33 4 future.
12:19:35 5 What are these redactions about, your Honour: most
12:19:39 6 importantly -- and I wish to underline this from the very
12:19:43 7 beginning, from the outset of our submission -- these
12:19:47 8 redactions are limited. They are actually very limited.
12:19:53 9 They concern documents which contain names of witnesses,
12:19:58 10 names of potential witnesses, and of other individuals
12:20:07 11 Mr Thomas Lubanga Dyilo may wrongly believe to be
12:20:11 12 Prosecution's witnesses. The redactions, in addition,
12:20:15 13 concern telephone numbers, fax numbers, e-mail addresses,
12:20:20 14 and similar potentially identifying features.
12:20:25 15 They, in addition, and in very limited instances, also
12:20:30 16 concern marks -- marks made by OTP investigators on the
12:20:37 17 documents -- and such marks include the initials of the
12:20:41 18 investigator, the initials of the witness or the source
12:20:47 19 who has provided the respective document or documents,
12:20:53 20 and the number of the annex.
12:20:56 21 The Prosecution, your Honour, redacts such information.
12:21:02 22 It does so in complying with its statutory duty as
12:21:05 23 outlined in Article 68(1) of the Rome Statute; namely, to
12:21:11 24 provide for both the protection and the privacy of
12:21:16 25 victims and witnesses.

12:21:19 1 In addition, the Prosecution does so in line with its
12:21:24 2 right pursuant to Article 54(3)(f) of the Rome Statute;
12:21:29 3 namely, to take the necessary measures to ensure the
12:21:33 4 confidentiality of information and the protection, as the
12:21:38 5 law says, of any person.
12:21:42 6 The Prosecution considers this being an independent right
12:21:47 7 of the Office of the Prosecutor, and going with it an
12:21:52 8 independent duty of the Office of the Prosecutor.
12:21:58 9 I hasten to add, your Honour, that these redactions do
12:22:02 10 not -- they do not concern witness statements, your
12:22:05 11 Honour, and my learned friends from the Defence team are
12:22:09 12 very well aware of the fact that the Prosecution has
12:22:13 13 sought authorisation in that respect pursuant to
12:22:18 14 Rule 81(2) of the Rules of Procedure and Evidence.
12:22:22 15 The Prosecution is always mindful of the potential
12:22:26 16 consequences of redactions, in particular, on the ability
12:22:33 17 of the Defence to prepare in this context for the
12:22:38 18 confirmation hearing. That is the reason, your Honour,
12:22:44 19 why the Prosecution has, and will continue, to always
12:22:49 20 indicate, as can be seen from the annexes attached to our
12:22:54 21 today's disclosure filing -- will always ensure that the
12:22:59 22 Defence is informed and that the Pre-Trial Chamber or the
12:23:04 23 single judge is informed, your Honour, about the fact
12:23:08 24 that certain documents have been disclosed in a redacted
12:23:11 25 format. The Prosecution will thus guarantee for fair and

12:23:19 1 transparent disclosure.

12:23:23 2 I want to complete this aspect of our submission by

12:23:28 3 informing your Honour that in the case of the disclosure

12:23:31 4 of redacted documents, in the event that such documents

12:23:38 5 fall under Article 61(3)(b) the Prosecution does file

12:23:45 6 copies of such documents only, and I wish to add at this

12:23:51 7 stage and the copies obviously do contain the redactions.

12:23:56 8 This is coherent with the Prosecution's approach to

12:24:00 9 provide for a court record that comprehensively and

12:24:05 10 accurately reflects what has been disclosed to counsel

12:24:09 11 for the Defence.

12:24:14 12 Your Honour, if you allow me to do so, I would like to

12:24:18 13 move to another aspect of the current disclosure

12:24:23 14 practice, and in doing so we will actually address a very

12:24:26 15 particular concern your Honour had expressed in the

12:24:30 16 context of the Status Conference of 23 June. I am

12:24:36 17 talking about the inspection of materials that fall under

12:24:41 18 Rule 77 and, in particular, about materials that belonged

12:24:47 19 to Mr Thomas Lubanga Dyilo. That is one of the aspects

12:24:53 20 you wanted us to particularly address today.

12:24:56 21 The point, your Honour, we want to make is the following:

12:25:00 22 the Prosecution -- in this case the Prosecutor against

12:25:06 23 Mr Thomas Lubanga Dyilo -- is applying a very broad

12:25:12 24 interpretation of the criteria in Rule 77, obviously to

12:25:19 25 the benefit of the Defence.

12:25:22 1 These criteria we apply are very broad in identifying
12:25:27 2 materials that belonged -- that is the word the law is
12:25:33 3 using -- that "belonged" to Mr Thomas Lubanga Dyilo.
12:25:38 4 What happens in practice is the following: quite
12:25:42 5 often -- and I repeat "quite often" -- such materials do
12:25:48 6 entail incriminatory evidence. Of course, in such a
12:25:53 7 situation the Prosecution wishes to use such materials,
12:25:57 8 obviously, in particular documents for the purposes of
12:26:01 9 the confirmation hearing.
12:26:05 10 That leads to the following consequence: further
12:26:11 11 materials fall under Rule 77 as materials that belonged
12:26:16 12 to Mr Thomas Lubanga Dyilo the Prosecution wishes to use
12:26:20 13 them for the confirmation hearing and discloses them as
12:26:24 14 such, because in the Prosecution's view Article 61(3)(b)
12:26:31 15 trumps -- and I believe for very good reasons -- trumps
12:26:34 16 Rule 77. This leads to the result that the number of
12:26:37 17 documents that were provided for inspection are not
12:26:40 18 always and are not entirely illustrative to the
12:26:45 19 Prosecution's efforts to comply with Rule 77. The
12:26:50 20 figures are actually higher -- they are significantly
12:26:53 21 higher, because the documents concerned are included in
12:26:56 22 our Article 61(3)(b) disclosure.
12:27:03 23 The very same criteria, your Honour, apply to the
12:27:07 24 disclosure of materials that fall under Article 67(2) --
12:27:12 25 materials of potentially exculpatory nature. We have

12:27:18 1 already emphasised at the beginning of this disclosure
12:27:21 2 process, and since then we have repeated it a number of
12:27:26 3 times, that there are documents that contain both --
12:27:33 4 incriminatory evidence and potentially exculpatory
12:27:37 5 evidence. Including incriminatory evidence the
12:27:44 6 Prosecution wishes to rely at the occasion of the
12:27:46 7 confirmation hearing. Such documents, your Honour, the
12:27:50 8 Prosecution -- and my learned colleague from the Defence
12:27:53 9 is very well aware of it, since he has been informed
12:27:57 10 about it a number of times -- such documents are
12:28:00 11 disclosed pursuant to Article 61(3)(b) as incriminatory
12:28:07 12 evidence, and they are disclosed only once, and they are
12:28:11 13 disclosed under incriminatory evidence for a reason of
12:28:15 14 added value, because such documents have to, and are,
12:28:19 15 communicated to the Pre-Trial Chamber.
12:28:24 16 The Prosecution, in applying this practice as I have just
12:28:28 17 described, provides for both disclosure of incriminatory
12:28:32 18 and potentially exculpatory evidence, and it does so for
12:28:36 19 the early information and to the benefit of the Pre-Trial
12:28:41 20 Chamber.
12:28:42 21 In this context, and this time I will be very brief and
12:28:47 22 will mention it only en passant, I wish again to
12:28:55 23 emphasise that to date -- and I wish to emphasise it for
12:28:59 24 the record -- that to date we have not received any
12:29:02 25 comment from my learned friend from the Defence on our

12:29:06 1 keyword list for the searches of potentially exculpatory
12:29:11 2 information and we have also not received any information
12:29:13 3 from the Defence team on criteria they wish the
12:29:17 4 Prosecution to apply in identifying materials that are --
12:29:23 5 and I'm quoting the language of the law -- material to
12:29:27 6 the preparation of the Defence.

12:29:31 7 There is one other aspect, and the aspect is related to
12:29:35 8 it and it's actually far more important -- there is one
12:29:38 9 aspect, however, the Prosecution wishes to highlight. To
12:29:43 10 date, the Defence has not disclosed anything to the
12:29:49 11 Prosecution, nor has it indicated any effort to comply
12:29:54 12 with its duties under Rule 78 to provide for inspection.

12:30:02 13 Disclosure, as your Honour will appreciate, is not a
12:30:06 14 one-way street. It is not only the Prosecution that is
12:30:10 15 bound by disclosure obligations; such obligations equally
12:30:16 16 apply to the Defence.

12:30:19 17 To date, while the Prosecution is making very concerted
12:30:23 18 efforts to comply with its duties, Defence has not
12:30:27 19 complied -- has not even started, certainly not visibly
12:30:32 20 to the Prosecution, to make an effort to comply with its
12:30:36 21 obligations. The Prosecution will closely monitor the
12:30:40 22 situation, and the Prosecution will keep your Honours
12:30:44 23 informed about it.

12:30:47 24 I am coming to the end of my submission. In answering a
12:30:54 25 question of your Honour what can be expected for the

12:30:57 1 future, I can provide you the following information.

12:31:02 2 Within the five weeks up until the time of the next

12:31:05 3 Status Conference, which to my recollection is scheduled

12:31:10 4 for 17 August, the Prosecution is envisaging and is

12:31:16 5 anticipating three further disclosure meetings with our

12:31:20 6 learned friends from the Defence, keeping the very short

12:31:26 7 intervals between the disclosure meetings.

12:31:31 8 By the middle of August we aim to have completed, or

12:31:35 9 nearly completed, the review of materials that resulted

12:31:39 10 from the searches of our priority search criteria --

12:31:45 11 I make reference to the explanation I've given at the

12:31:47 12 occasion of the last Status Conference -- meaning that,

12:31:52 13 in the belief of the Prosecution, most of what we call

12:31:57 14 the quality materials are likely to be disclosed to the

12:32:01 15 Defence.

12:32:04 16 In this context, and my colleague Ms Solano has mentioned

12:32:09 17 it, there is one particular aspect I want to briefly

12:32:13 18 further elaborate on. I anticipate that the Prosecution

12:32:20 19 will provide far more detailed information on this

12:32:24 20 particular aspect at the occasion of the next

12:32:26 21 Status Conference. What I'm talking about are the

12:32:31 22 Article 54(3)(e) protected documents. This is an issue

12:32:39 23 that is -- and continues to be -- of a primary concern to

12:32:44 24 the Prosecution. Why; why such a concern? The lifting

12:32:53 25 process, your Honour, is beyond the Prosecution's control

12:33:00 1 and the Prosecution, having made its first experiences
12:33:04 2 over the last few months, is very concerned about the
12:33:10 3 duration of the lifting process. We sent the requests to
12:33:17 4 the various providers. We emphasised the urgency of
12:33:21 5 their decision. We remind the various providers, in
12:33:27 6 quite a number of instances very successfully, and we get
12:33:30 7 the response; in other instances, however, we don't get
12:33:35 8 the response, or we get the response very, very slowly.
12:33:41 9 However, once we send out the request, this process is,
12:33:47 10 in principle, out of our hands. There are only very
12:33:51 11 limited means available to the Office of the Prosecutor
12:33:54 12 to have an impact or an influence on this process. This
12:33:59 13 is an aspect, your Honour, the Prosecution will continue
12:34:02 14 to pay particular attention to.

12:34:07 15 Your Honour, our combined submissions come to a close.

12:34:14 16 Disclosure remains -- remains to be a very difficult
12:34:17 17 process. It's very time consuming and it's very resource
12:34:22 18 intensive. It's very resource intensive in particular in
12:34:28 19 relation to matters that relate to victims and witness
12:34:32 20 protection and that relate to the confidentiality of
12:34:35 21 documents.

12:34:37 22 The Prosecution, however, continues to aim and is very
12:34:43 23 confident that it will successfully discharge its
12:34:49 24 disclosure obligations within the parameters as detailed
12:34:54 25 in the context of the last Status Conference and within

12:34:56 1 the framework of the interpretation of your Honour of the
12:35:00 2 disclosure regime. Thank you very much, your Honour.
12:35:03 3 I'm of course at your disposal to answer any questions
12:35:06 4 that may arise from our combined submissions. Thank you.
12:35:12 5 JUDGE STEINER: Thank you very much, Mr Withopf, for this
12:35:16 6 comprehensive explanation, and Ms Solano also. We need
12:35:24 7 to have a break in order to allow the interpreters to
12:35:27 8 rest a little bit, so I'm suggesting that this hearing is
12:35:33 9 suspended now and we will resume at 2 o'clock sharp.
12:35:40 10 Thank you very much.
12:35:44 11 THE USHER: All rise.
12:35:44 12 [12:35 p.m.]
12:35:56 13 [Luncheon adjournment]
14:05:30 14 [2:05 p.m.]
14:05:30 15 THE USHER: All rise. Please be seated.
14:06:25 16 JUDGE STEINER: Let us resume our Status Conference. I now
14:06:28 17 give the floor to Me Flamme to make his observations on
14:06:33 18 the report made by the Prosecution.
14:06:38 19 ME FLAMME (interpretation): Thank you, your Honour; I will be
14:06:43 20 very succinct. It was a report on the disclosure of
14:06:54 21 evidence indeed. As regards the remark of the Prosecutor
14:07:01 22 that we on our side have not yet disclosed any material,
14:07:05 23 that is wrong, as we have already disclosed three
14:07:13 24 pieces -- three materials annexed to our conclusions
14:07:16 25 requesting release, firstly. And, secondly, as regards

14:07:23 1 further material and remarks on the keywords, as long as
14:07:31 2 I myself have not been able to have investigations
14:07:35 3 carried out by the person whom we asked to be designated
14:07:40 4 to do so, it will be very difficult for us to disclose
14:07:45 5 anything at all. So this will require some more time.
14:07:53 6 We have a number of priorities. However, we need to go
14:07:58 7 in the field to find the material, identify it, and
14:08:02 8 decide whether or not to use it. Therefore, the
14:08:07 9 Prosecutor will have to be a bit more patient on this.
14:08:10 10 Thank you.

14:08:12 11 JUDGE STEINER: Thank you very much. Before giving the floor
14:08:31 12 to the Prosecution, I see from my notes and for the
14:08:41 13 document filed today, which the Prosecution by courtesy
14:08:50 14 has given a copy for the single judge, information that
14:08:58 15 some documents have been disclosed with redactions on the
14:09:01 16 numbers 2, 3, 4, 16, 18 and 24. Due to the redactions
14:09:07 17 the Prosecution submits paper copies of the documents
14:09:10 18 concerned instead of the originals.

14:09:14 19 So, first of all, I would like to ask the Prosecution
14:09:17 20 about the originals, since the obligation of filing
14:09:23 21 within the Registry the originals of any documents, even
14:09:28 22 if the originals must be filed ex parte, so the
14:09:33 23 observations of the Prosecution on this point.

14:09:37 24 Secondly, the Prosecution -- and I have it on my notes --
14:09:43 25 informed that this practice will continue in the future

14:09:48 1 as a practice of the Prosecution. On this point, I would
14:09:54 2 like to note that all redactions in these documents were
14:10:00 3 made without previous submission to the Chamber. So in
14:10:04 4 order to examine this practice, I decided to give the
14:10:15 5 Defence 10 days, until 24 July, to make its observations
14:10:21 6 on this Prosecution motion and the practice of filing
14:10:30 7 only redacted versions of documents instead of the
14:10:35 8 originals and containing redactions not previously
14:10:40 9 authorised by the Chamber.
14:10:47 10 In relation to what has been said by the Defence, I would
14:10:50 11 like to give the floor to the Prosecution.
14:10:56 12 MR WITHOPF: Thank you very much, your Honour. I understand
14:10:59 13 that at this stage I'm only supposed to respond to the
14:11:04 14 very brief submission of my learned colleague from the
14:11:07 15 Defence. Annexes to filings, your Honour, in the view of
14:11:12 16 the Prosecution have nothing to do with disclosure. It
14:11:16 17 has been mentioned today a number of times that filings
14:11:21 18 and their annexes are distinguished from disclosure
14:11:24 19 obligations. I wish to only echo this at this juncture.
14:11:32 20 What is annexed to a Defence filing, it may be later on
14:11:36 21 disclosed, but one cannot technically and one cannot
14:11:39 22 legally submit that this is disclosure. I therefore
14:11:45 23 maintain the Prosecution's view that to date the Defence
14:11:49 24 has not disclosed anything, and the Prosecution is very
14:11:53 25 much concerned about it.

14:11:57 1 On the second aspect that the Defence is not providing
14:12:03 2 comments on the Prosecution's keyword list and not
14:12:07 3 providing any further keywords, I'm a bit surprised about
14:12:11 4 the submission of my learned friend from the Defence.
14:12:16 5 I would have thought that it is of primary importance for
14:12:19 6 the Defence -- knowing a very detailed summary of the
14:12:25 7 evidence on which the Prosecution will rely upon at the
14:12:28 8 confirmation hearing -- I would have thought that
14:12:32 9 receiving PEX0 materials is a high priority for the
14:12:39 10 Defence. From what we get to hear now and today, it's
14:12:44 11 obviously not.
14:12:45 12 I understand that the Prosecution will be entitled, as
14:12:48 13 usual, to respond -- if there will be any written
14:12:51 14 submissions on the Prosecution's practice on redactions
14:12:54 15 by the Defence, that we are entitled to respond within
14:12:58 16 the usual time limits, and we would do so.

14:13:03 17 JUDGE STEINER: Thank you very much. Of course, the
14:13:05 18 Prosecution will be given time to respond. The next
14:13:18 19 topic of our Status Conference is focused on the
14:13:23 20 communication of the evidence that the Prosecution
14:13:25 21 intends to use at the confirmation hearing, and on this
14:13:30 22 topic I would like to listen from the representative of
14:13:33 23 Court Management Section or the Registry's views, its
14:13:39 24 observations about how the process of filing the
14:13:43 25 originals and electronic copies of the Prosecution's

14:13:46 1 incriminating evidence has taken place to date.

14:13:54 2 MR MIJUSKOVIC: Thank you, your Honour. As far as the dates

14:14:01 3 on which incriminating evidence has been presented for

14:14:04 4 filing, we have nothing more to add to what Ms Solano

14:14:09 5 already stated earlier. It was quite correct, and that

14:14:12 6 is when evidence was filed.

14:14:14 7 As far as the procedure is concerned, this is how it

14:14:17 8 happens. One of the representatives of the OTP comes to

14:14:20 9 the Court Management Section, they hand over originals

14:14:24 10 which are either in hard copy or electronic copy,

14:14:29 11 depending if the hard copy exists. There is a chain of

14:14:32 12 custody form, it's signed, the originals are kept in a

14:14:35 13 safe.

14:14:37 14 The only issue we have today at hand is the non-existence

14:14:46 15 of an agreement as to the e-court protocol which will

14:14:51 16 oblige us, once the agreement is signed and reached, to

14:15:01 17 go back to the Prosecution and re-request the electronic

14:15:04 18 copies of whatever was submitted to be resubmitted so

14:15:06 19 that we can actually import that in the system and make

14:15:12 20 it available to the Chamber in the future, which, in

14:15:20 21 conclusion, means that today we have the hard copies

14:15:21 22 there, we have the electronic copies, but they are all

14:15:24 23 sitting on a CD, they are still not imported in the

14:15:27 24 system because it cannot be done at this point.

14:15:30 25 Everything has been accounted for, and as we see, chain

14:15:30 1 of custody forms exist. We keep them, the Office of the
14:15:34 2 Prosecutor keeps them, too, and that's how the situation
14:15:37 3 is to date.

14:15:42 4 JUDGE STEINER: Thank you very much. Would the Prosecution
14:15:47 5 add something to this information?

14:15:49 6 MR WITHOPF: There's not much to add, your Honour. What has
14:15:51 7 been stated is correct and we are all aware of the
14:15:54 8 situation with respect to the e-court protocol.

14:15:56 9 JUDGE STEINER: I would like now to ask the Prosecution, the
14:16:11 10 Defence and the Registry if they would like to make any
14:16:14 11 final observation or to bring to the attention of the
14:16:16 12 single judge any other additional matter. The
14:16:19 13 Prosecution first.

14:16:20 14 MR WITHOPF: Thank you very much, your Honour, for giving us
14:16:24 15 that opportunity. There's nothing else that has been
14:16:26 16 mentioned previously that we would bring today to the
14:16:30 17 attention of the single judge. Thank you.

14:16:33 18 JUDGE STEINER: Me Flamme?

14:16:37 19 ME FLAMME (interpretation): Thank you, your Honour. No,
14:16:41 20 I think that everything I wanted to say has been said.
14:16:45 21 I don't have anything to add for now, thank you.

14:16:48 22 JUDGE STEINER: I would just like to remind the distinguished
14:16:51 23 Defence counsel of the deadline given to 24 July for his
14:16:55 24 observations on the filing of certain documents disclosed
14:17:01 25 to the Defence. Does the Registry have something to add?

14:17:06 1 MR MIJUSKOVIC: Yes, your Honour, we have something to add in
14:17:10 2 relation to what Me Flamme was saying at the beginning
14:17:14 3 this morning of the hearing and of the support of the
14:17:18 4 Registry to the Defence so as to enable the Defence to do
14:17:24 5 their analysis and search on the disclosure materials
14:17:29 6 that were disclosed inter partes between OTP and Defence.
14:17:36 7 It's important to note that up to date we were involved
14:17:39 8 in the support of the e-court protocol, and of the
14:17:43 9 configuration of the system so as to satisfy the
14:17:47 10 presentation of exhibits in the courtroom.
14:17:51 11 The configuration of the system so as to support further
14:17:55 12 analysis of whatever is disclosed between the Prosecution
14:17:58 13 and Defence is a totally different matter. If the
14:18:02 14 Defence requests us to support that, we would have to
14:18:05 15 meet with the Office of the Prosecution and see how the
14:18:11 16 information is being provided, what is being provided so
14:18:14 17 as to configure the system that Me Flamme has in such a
14:18:20 18 manner to allow searches and analysis on those materials.
14:18:24 19 If this is not done, then the analysis is not happening.
14:18:30 20 So today we are ultimately awaiting for maybe your
14:18:37 21 instruction to go towards the Prosecution and meet with
14:18:41 22 them and come up with a solution to this problem.
14:18:47 23 JUDGE STEINER: You bring now a problem that the single judge
14:18:50 24 is not in a condition to evaluate the consequences of
14:18:54 25 changing the system at this point, or to create a new

14:18:58 1 system, so we are still waiting for the implementation of
14:19:02 2 the Ringtail and we're facing difficulties on that.
14:19:07 3 So my only concern is to decide on the spot on
14:19:16 4 authorising the implementation of another second or third
14:19:20 5 system. So maybe if the Registry would be so kind and
14:19:26 6 even in an informal conversation to bring to the
14:19:30 7 attention of the Chamber the possible consequences of
14:19:36 8 changing or of not changing the system of communication
14:19:40 9 of documents filed within the Registry. And I think we
14:19:47 10 could do it in a more informal way, because this seems an
14:19:55 11 issue that should be evaluated by the three judges of the
14:19:58 12 Chamber, because there are other consequences more than
14:20:04 13 the ones related to the disclosure process.
14:20:07 14 So I would suggest the Registry, we could maybe convene a
14:20:12 15 meeting in my office or at the Registry in order to
14:20:18 16 evaluate before the single judge takes any decision on
14:20:23 17 that, if this is acceptable for the Registry.
14:20:29 18 MR MIJUSKOVIC: Yes, your Honour, it is. Thank you.
14:20:32 19 JUDGE STEINER: Thank you very much. So at the end we had a
14:20:38 20 very, very short second part of this hearing. I could
14:20:42 21 not foresee we could maybe have anticipated this moment.
14:20:50 22 Anyway, I would like to thank the Prosecution, Mr Withopf
14:20:53 23 and his team; Me Flamme and his team; and Mr Cathala and
14:20:57 24 his team. Thank you very much for this cooperation --
14:21:07 25 very, very cooperative work done in this

14:21:10 1 Status Conference. I would like to thank the
14:21:12 2 interpreters, as always, and the meeting is adjourned.

14:21:12 3 [2:21 p.m.]

14:21:23 4 [The Chamber adjourned accordingly]

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