

1 International Criminal Court

2 Pre-Trial Chamber I

3 Situation Democratic Republic of the Congo - ICC-01/04-01/07

4 Status Conference - Open Session

5 Friday, 14 December 2007

6 The hearing starts at 5.29 p.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session. Please be seated.

9 JUDGE STEINER: Please let the detainee in.

10 Just one minute, because I'm -- I'm trying to log on.

11 So this Status Conference is held in accordance with Rule 121 of
12 the Rules of Procedure and Evidence in which the parties to the
13 proceeding -- to the case of the Prosecution versus Mr. Germain
14 Katanga will discuss the different stages of the disclosure
15 proceedings that lead to the confirmation of the charges hearing.

16 I would like to welcome you all, in particular Mr. Hooper, who
17 has been recently appointed for Mr. Katanga, as Defence counsel of
18 Mr. Katanga. So welcome to this hearing. And I would like to ask
19 those appearing for the Prosecution, the Defence, and the Registry to
20 introduce themselves, please, starting by Prosecution.

21 MR. MacDONALD: Thank you, your Honour. I will be assisted for
22 this hearing by Ms. Florence Darques-Lane, Anneliek Hendriks,
23 Ms. Krisztina Varga, Mr. Ibrahim Yillah, and Nicholas Leddy. And my
24 name, Eric MacDonald. Thank you.

25 JUDGE STEINER: Mr. Hooper, for the record.

1 MR. HOOPER: Yes. David Hooper, assisted by Caroline Buisman.

2 JUDGE STEINER: Thank you very much. Representatives of the
3 Registry.

4 MR. DUBUISSON (interpretation): Thank you, your Honour. On the
5 Registry Bench you have Bibiana Becerra-Suarez, and Paul Roussos. I
6 am Marc Dubuisson. I'm representing the Registrar.

7 JUDGE STEINER: Thank you very much.

8 This is the first hearing on disclosure matters that is held in
9 the presence of Mr. Hooper. I understand that for these first two
10 hearings Mr. Hooper had some prior professional commitments that
11 prevented him from being at the seat of the court last Wednesday. I
12 would like to emphasise right now that as shown by the case of
13 Prosecution versus Mr. Thomas Lubanga Dyilo, that proceedings of this
14 case in the coming two months will be very time-consuming, and that
15 his presence at the seat of the court will be necessary quite often.
16 I expect from the Defence counsel to make its utmost to be available
17 in this regard and to adjust any prior professional commitments that
18 he might have at this stage.

19 May I expect this from you, Mr. Hooper?

20 MR. HOOPER: I understand full well the reasons for that. I
21 think I've indicated, certainly in a confidential document, but I
22 don't mind making it plain, my position over the -- the next weeks.
23 Being an independent, I suppose, lawyer and advocate one gets an
24 appointment, but this takes a little while to, as it were, disengage
25 from other necessary commitments.

1 I was aware of those commitments, and one of them involves the
2 conclusion of the Prosecution case in a case before the ICTR, which is
3 due to start in mid-January. I know from experience how long that
4 will take. It will take about three weeks. There may be a little
5 lead time to that, but I hope that -- as in discussions with the
6 Registry earlier that if there are oral hearings, that, in fact, we
7 hope to at least have a regime within the team which will not
8 inconvenience the Court. I can put it like that. So that's something
9 that's in development at the moment, but I'm aware of the Court's
10 concerns.

11 I was also in useful discussion with Mr. MacDonald just a moment
12 ago as to the number of witnesses that might be called, and I'm not
13 going to say what those are, but it's a relatively modest number. So
14 we've got a fairly good appreciation of the -- at least the evidence
15 side to the case. So I hope all things being equal, that the Court
16 will not be unnecessarily inconvenienced by my pre-existing
17 commitments.

18 For my part, obviously it assists if there is a degree of
19 understandable liaison between myself and other parties in the case,
20 and not least of all the Court, and perhaps there might be a way
21 whereby we can have an effective liaison or discussion in terms of to
22 some extent the Court assisting me, but also me being able to fulfil
23 my obligations to the Court.

24 What I can say is that I don't anticipate there will be
25 difficulties that will prevent the general projected scheduling of the

1 case.

2 JUDGE STEINER: Thank you very much. I very much appreciate your
3 efforts, Mr. Hooper. And as you have seen, the first disclosure notes
4 were filed yesterday, and therefore the system of disclosure between
5 the Prosecution and the Defence is already in motion. I would like
6 for this hearing to clarify some points in this regard so as to start
7 operating with a clear disclosure system from now on, which is a
8 system that differs a little bit of the national systems on
9 disclosure.

10 This is important, because the starting date of the Confirmation
11 Hearing has been scheduled for 28th February, 2008, and the Chamber
12 does not intend to postpone such a date unless unforeseen exceptional
13 circumstances arise in the coming two months.

14 First of all, I would like to inform the parties that the
15 Single Judge intends to follow the practices on disclosure that were
16 followed for the purpose of the Confirmation Hearing in the case of
17 Mr. Thomas Lubanga Dyilo. For this reason I would like to bring to
18 the attention of Mr. Hooper to the decision on the system of
19 disclosure issued by the Single Judge of 15 May 2006, the decision on
20 the general principles concerning disclosure matters issued on 19 May
21 2006, and the decision of the Appeals Chamber of 13 October 2006 that
22 relates to the latter.

23 Moreover, the transcripts of the hearing held on 23 June 2006 are
24 also relevant, because there a system of pre-inspection and inspection
25 under Rule 77 of the Rules is set out.

1 Finally, the Single Judge would like to inform Mr. Hooper that
2 the draft protocol for the presentation of evidence used in the
3 confirmation of the charges in the case of Prosecution versus Thomas
4 Lubanga Dyilo will also be used in the present proceedings.

5 As already stated, the starting date for the confirmation of
6 the -- Confirmation Hearing has been set up for 28th February, 2008.
7 Hence according to Rule 121(3), the Defence must get access to all
8 evidence on which the Prosecution intends to rely at the Confirmation
9 Hearing 30 days in advance. That means by 29th January, 2008. Then
10 according to Rule 121(6), the Defence will have until 15 days prior to
11 the Confirmation Hearing to file its list of evidence.

12 We will have time to discuss in January those questions related
13 to the calendar for the filing of the Defence list of evidence and of
14 the Defence's requests, if any, for authorisation for redactions
15 pursuant to Rule 81 of the Rules in the evidence on which the Defence
16 intends to rely at the Confirmation Hearing. Nevertheless, I would
17 like to emphasise right now that if the Defence intends to conduct any
18 mission on the field to meet prospective Defence witnesses and Defence
19 sources before the Confirmation Hearing, this will have to be done
20 sometime in January, by the -- or at the latest by the beginning of
21 February. Therefore, the Defence should start making the proper
22 arrangements with the Registry right now. The experience in the
23 Lubanga case shows that the complexity of these arrangements may take
24 some time, and therefore it is necessary to right -- to start them
25 right now.

1 So in -- before moving ahead into matters related to the
2 disclosure process, I would like to remind both parties that according
3 to the decisions of the Pre-Trial Chamber I of 8 November 2008, and of
4 Trial Chamber of 30 November 2007, none of which has been subject to
5 leave to appeal, the practice of witness proofing is a practice which
6 is not allowed before this court. Hence I wish to emphasise this
7 point right now in order to avoid any misunderstandings, in case the
8 parties finally decide to rely on oral testimony of some witnesses
9 during the Confirmation Hearing.

10 With these I conclude these preliminary remarks, and I would like
11 the Prosecution and the Defence, whether they have any comments in
12 relation to any of these aspects of these preliminary remarks.

13 First the Prosecution.

14 MR. MacDONALD: We will wait, your Honour -- sorry. We will
15 wait, your Honour, for -- I understand as the -- I understand that,
16 sorry, you will be discussing different topics during this hearing. I
17 reserve my comments for later on, your Honour.

18 JUDGE STEINER: Mr. Hooper.

19 MR. HOOPER: There was disclosure made yesterday, but we've yet
20 to have access to it because of the computer regime. As you know,
21 we're going to do that as soon as we can. But I just mention that,
22 because you appreciate where we are in the year and the rest of it and
23 the present structure of the team. We still won't -- we won't have an
24 effective case manager for at least -- till after Christmas, I think.
25 In the new year.

1 So I certainly take on board your Honour's -- the Court's
2 observations in respect of the need to set the ball rolling in respect
3 of any Defence investigations, but we're just not in a position to
4 begin to calculate what those could be or what the Prosecution
5 evidence is until we've completed that. We're not in a position to
6 start thinking about it.

7 So that -- that's an immediate difficulty, but we'll address that
8 mindful of what you've said, and we'll try to see how quickly we can
9 progress that particular -- particular area.

10 Thank you.

11 JUDGE STEINER: Thank you very much. Just in order to clarify
12 Defence team in relation to some aspects of this -- or difficulties
13 for the next two months at least, I would like to -- to ask
14 Mr. Dubuisson if he could give the Single Judge an idea on how long it
15 will take to have the Defence with all structure the Defence team
16 needs in terms of personnel, computer, IT training, et cetera, et
17 cetera, and also to give us a brief explanation on the arrangements
18 for a travel to the field in case the Defence so wishes, how long it
19 would take to -- to have everything arranged for an eventual travel to
20 Congo.

21 MR. DUBUISSON (interpretation): Thank you, your Honour. As I
22 emphasised a while ago, the computer equipment and software have been
23 provided both to the Defence team and Mr. Katanga in detention. What
24 needs to be installed -- or take place is the training, which has
25 already been offered but which has been postponed at the request of

1 the Defence team. So we are waiting. We have made our proposal to
2 organise the training.

3 As to the team, as we explained by Didier Preira, the team is
4 complete as per the requirement for Defence team at the pre-trial
5 phase. There is also a sum of money available for investigations.

6 Now, with regard to missions on the ground, we should know as
7 quickly as possible what the Defence intends to do on the ground,
8 where they want to go exactly, what sort of assistance they want in
9 terms of logistics and security, and based on what information they
10 give us, we will then be able to meet their needs. So for the time
11 being we're dealing with Ituri, their operational needs that we need
12 to meet there. And we need to meet such needs with the support of
13 partners, which is why it is important for us to know what the Defence
14 intend to do as soon as possible. It is possible for us to set up
15 within two weeks, with two weeks' notice, a Defence visit to the
16 field. 17 JUDGE STEINER: Thank you very much.

18 Turning now to the evidence on which the Prosecution intends to
19 rely at the Confirmation Hearing, the Single Judge would like to
20 inform the Defence that in relation to the disclosure of witnesses'
21 statements pursuant to Rule 76 of the Rules, we will follow a system
22 of inter partes disclosure. After this has taken place, the following
23 must be filed with the Registrar along with the details of the draft
24 protocol for the presentation of evidence: So first the originals of
25 the statements, which should be filed ex parte if redactions have been

1 authorised; second, a copy of the authorised redacted versions of the
2 statements, which for the time being shall be filed confidential; and,
3 finally, an electronic copy of the version filed as confidential.

4 The Single Judge will rule soon on the Prosecution request for
5 redactions concern -- concerning additional witnesses, more
6 specifically one additional witness. So his statement will soon be
7 disclosed to the Defence with redactions, if any, authorised by the
8 Single Judge.

9 And finally, until now the Prosecution has explained to the
10 Single Judge in ex parte hearings concerning the issue of protective
11 measures that it intends to rely on maybe a maximum of 12 additional
12 witnesses. For some of these witnesses the Prosecution has already
13 filed requests for redactions. In any case, the Single Judge has set
14 the date of 14th January, 2008, for any further request for redactions
15 by the Prosecution concerning evidence, including witness statements
16 on which the Prosecution intends to rely on the Confirmation Hearing.
17 This deadline also applies to any additional document, photograph,
18 book, map, or physical object on which the Prosecution intends to rely
19 at the Confirmation Hearing and that must allow inspection to the
20 Defence pursuant to Rule 77 of the Rules. All requests for
21 authorisation for redactions concerning this evidence must be may made
22 at the latest by 14th January 2008, and the Single Judge will decide
23 upon them before 29th January 2008.

24 In this regard, the Single Judge would like to remind also the
25 parties that those documents and evidence on which the Prosecution

1 intends to rely at the Confirmation Hearing and which fall under Rule
2 77 shall be made available to the Defence following the system of
3 pre-inspection and inspection set up at the hearing that took place on
4 23rd June 2006 in the case of Prosecution against Mr. Thomas Lubanga
5 Dyilo. According to the system, the Prosecution will transmit to the
6 Defence an electronic copy of the relevant documents, and only if the
7 Defence requests the physical inspection of the documents, Prosecution
8 and Defence will agree on a time and location for this to take place.
9 After this procedure is completed, the Prosecution shall immediately
10 file with the Registry, one, the originals of the evidence which
11 should be filed ex parte if redactions have been authorised; second, a
12 copy of the authorised redacted versions of the evidence, which for
13 the time being shall be filed confidential, and an electronic copy of
14 the version filed as confidential with the data requested by the draft
15 protocol on the presentation of evidence.

16 Finally, the Single Judge has been informed that the Prosecution
17 just filed the proposed redacted version of the formatted version of
18 the Prosecution application for a warrant of arrest against
19 Mr. Germain Katanga. The Single Judge intends to rule upon it --

20 THE INTERPRETER: Interpreters respectfully request to slow down.

21 JUDGE STEINER: -- as soon as possible so that the Defence can
22 get access to it as authorised by the Single Judge.

23 So in relation to these remarks on the procedure of disclosure
24 under Rule 76 and 77, I would like to hear from the Prosecution and
25 then from the Defence if they have any comments in relation to these

1 remarks.

2 MR. MacDONALD: Your Honour, as you mentioned, unless unforeseen
3 exceptional circumstances, the Confirmation Hearing is to take on the
4 28th of February. Now, against that date you're setting, obviously,
5 the calendar for disclosure, and especially here and the -- let's put
6 it this way: The difficulty, in the Prosecution's mind, is with the
7 filing of all redacted material by the 14th of June -- sorry, January
8 2008. Why? Because as you know, today's the last day, then next week
9 it's a court -- official court recess, but beyond that, between the
10 21st of December and the beginning of January, it is also the
11 Christmas season and vacation where people are going on leave. It is
12 also the period of the year where most people do take vacation to go
13 back and visit their families and usually travel far away. I have
14 staff members going back to Asia, New Zealand, some of them in the
15 Americas or North America, and so on.

16 That being said, the Prosecution, because of this, is losing two
17 weeks to continue working on the redactions. And as you well know,
18 your Honour, redacting is not a simple task. You need to think about
19 it to make sure that what needs to be redacted is redacted.

20 Now, the Prosecution -- what I'm trying to get at is that the
21 Prosecution is working to meet that deadline of the 14th of January as
22 to all the statements it intends to rely upon for the Confirmation
23 Hearing. What we may have difficulty with are some material or
24 documents that are not witness statements. Again, I understand the
25 Court's order. It's in relation of documents to be filed or part of

1 the list of evidence. Then there's also maybe additional documents to
2 be disclosed within Rule 77 that may be material that we will not be
3 relying upon that may need to be redacted and so on.

4 So that being said, also there are realities in the field, as you
5 know, your Honour, as we've expressed in closed session in terms of
6 logistical difficulties at the very moment, and health risks, and
7 these health risks - sorry - are more serious than we thought
8 initially. We've had to pull people out. So this is a -- may be one
9 of the unforeseen situation.

10 So this is why we're submitting that the calendar as set and the
11 date of the 28th, and maybe echoing also my colleague's comments as to
12 his availability with prior engagements, I think that reasonably if
13 the Prosecution was afforded an extra two weeks beyond the 14th to
14 meet its deadline, that would be suitable.

15 So that's the comment I wanted to make in terms of the date of
16 the 14th. As to the other issues raised in terms of the e-court
17 protocol and so on, I have no comments, your Honour.

18 JUDGE STEINER: Just a comment, but last year we had a problem
19 with a time limit in relation to a Defence team that didn't file a
20 document within the time limit ordered by the Chamber, and with, let's
21 say, the excuse that the court recess, according to -- to Defence
22 team, during the court recess time limits would not run.

23 In my view, there is no rule saying that during the recess time
24 limits does not run -- do not run. So the Chamber is about to decide
25 in relation to the week that is stated as holiday of the court, which

1 is completely different. So I think the Prosecution's not missing two
2 weeks but maybe just one. But this is just a side comment.

3 MR. MacDONALD: With the Court's permission, if I can reply. No,
4 I truly understand. And I wasn't making the calculation two weeks off
5 and then that means the delays do not run or stop, or suspended, not
6 at all. What I'm saying is in practical terms this is the Christmas
7 period, which independently of the court recess, your Honour, which
8 runs for three weeks in total, but within that time staff members go
9 back home. If you're travelling, for instance, to visit your family,
10 you -- some may do it for a couple of days. I've done that before.
11 But at this period in time, usually people leave for at least two
12 weeks. So this is where I come from when I mention this two weeks.

13 JUDGE STEINER: I fully understand your concerns, Mr. MacDonald.

14 Mr. Hooper, you have any comments on -- on this first part of the
15 rules on disclosure and inspection?

16 MR. HOOPER: Well, no, it's -- very much the ball is in the
17 Prosecution's court here, as it were, and we will respond as material
18 is served. The end of February would doubtless be not inappropriate
19 if it's a non-contested Confirmation Hearing, but if it is to be an
20 effective Confirmation Hearing, the logistics rather speak against an
21 eight-week period of preparation, and we'd invite the Court to
22 consider, in fact, putting the Confirmation Hearing back by a period
23 of four weeks, to the end of March. That's not so long. That's about
24 12 weeks from the beginning of the year.

25 I say we have to see how things develop, but I think certainly if

1 it's going to involve us, who are new of course to the system and the
2 process here, which is a restraint as you would be aware being
3 unfamiliar with the system as the Single Judge noted this morning in
4 welcoming us, and we're in a position where we have at the moment no
5 evidence, no witnesses, no instructions, and no investigator, and no
6 concept of the nature of the investigation. I was rather concerned to
7 hear the issue of health concerns raised, and I'll be talking to
8 Mr. MacDonald shortly afterwards about that.

9 So we'll do our best, but it is a short period, eight weeks, and
10 as I say, we're -- we're new here, but that's an instinctive reaction
11 to it, and once we've seen the material -- and I appreciate from what
12 my friend has said, in terms of actual witnesses it's relatively
13 modest, about 20, I'm not holding him to a figure, it's a very modest
14 witness list, if that's the case it maybe possible. But
15 investigations, I've got a feeling, that it might not be, albeit it's
16 just two weeks to put people on the field, the trouble is you have to
17 have a very good idea what you're looking for when you go out there.

18 I've done investigations in other parts of Africa like that.
19 They're far from easy, and you then have to assess and of course
20 utilise the product of that investigation. It all takes a significant
21 period of time.

22 So I'll be in a much better position once we've seen the evidence
23 and discussed it, at least initially, with Mr. Katanga, of course,
24 and -- and as soon as Mr. Katanga has told us what the position is,
25 then we'll be in a position to tell the Court.

1 Thank you.

2 JUDGE STEINER: Thank you, Mr. Hooper.

3 I would like to listen from the representative of Victims Unit,
4 its comments about the deadlines that were imposed by the Chamber in
5 relation to implementation -- assessment and implementation, not going
6 into details because we are in a public hearing, but in the view of
7 the Victims Unit if those deadlines are supposed to be complied with.

8 MR. ROUSSOS: Thank you, your Honour. I've had a look at the
9 deadlines and the orders that you've given, and in my opinion on
10 behalf of the VWU we don't see a problem with meeting those deadlines.
11 I think the problems we'll raise -- or will arise from some of the
12 things that Mr. MacDonald has alluded to, and we've made our staff
13 available. We've recalled people from holidays so that we can meet
14 the deadlines that the Court is putting on us, but I think that we
15 will find that the issues, the problems will arise from other areas.
16 So -- but from our point we will do our best to see it through.

17 JUDGE STEINER: Thank you very much.

18 Let's proceed now with the -- talking some preliminary remarks on
19 the disclosure of potentially exculpatory materials, or materials that
20 are otherwise for the Defence preparation for the Confirmation
21 Hearing.

22 According to Article 67(2) of the Statute, the Prosecution is
23 under an obligation to carry out ongoing searches of potentially
24 exculpatory materials. Among those materials that are in the
25 possession or under the control of the Prosecution. Normally the

1 Prosecution uses keywords. As soon as materials are identified as
2 potentially exculpatory, they must be disclosed to the Defence unless
3 they are covered by Prosecution confidentiality obligations or the
4 Prosecution conceded that certain redactions are needed in part of
5 such documents.

6 In performing these searches, the Prosecution may identify
7 documents that are not per se of potentially exculpatory nature but
8 that they are material to the preparation of the Defence for the
9 Confirmation Hearing or were obtained or belonged to Mr. Katanga.
10 Once again, as soon as these materials are identified, the Defence
11 must be allowed to inspect them pursuant to Rule 77 of the Rules
12 unless they are covered by Prosecution confidentiality obligations.

13 By the consent of the providers or redactions are needed, the
14 Prosecution must immediately request such a consent under Article
15 54(3)(e) or request authorisation for redactions under Rule 81(2) and
16 (4) of the Rules.

17 The Single Judge is mindful of the difficulties that the
18 Prosecution can encounter in this process. The Single Judge is also
19 mindful that the 30-days time limit of Rule 121 does not apply to
20 materials which are of a potentially exculpatory nature or otherwise
21 material for the Defence's preparation for the Confirmation Hearing.
22 However, at the same time, the Single Judge wishes to emphasise right
23 now that the bulk of those materials must be disclosed to the Defence
24 with sufficient time before the starting of the Confirmation Hearing
25 so as to put the Defence in a position to make an appropriate use of

1 these materials in gathering evidence for the purpose of the hearing
2 and at the Confirmation Hearing.

3 The experience in the Lubanga case shows that one way in which
4 the Defence may facilitate the early identification of these materials
5 is by providing the Prosecution with a list of keywords or by
6 identifying categories of materials that the Defence considers that
7 are material for the preparation for the confirmation hearing. The
8 Single Judge is clear in that the Defence has no statutory obligation
9 to provide these type of lists to the Prosecution, but according to
10 the previous experience, we can ensure that providing the Prosecution
11 with a list of keywords or categories of materials would help a lot.

12 The disclosure of potentially exculpatory materials will also
13 take place inter partes. The experience in the Lubanga case shows
14 that this is the best -- this is best done through electronic versions
15 of the relevant documents put in a CD room. However, for certain
16 documents this might be not possible. In any case, the Single Judge
17 expects that the parties will agree in the manner which is most
18 convenient for the disclosure of these materials.

19 The Single Judge highlights that potentially exculpatory
20 materials disclosed by the Prosecution pursuant to Article 67(2) of
21 the Statute do not need to be filed with the Registry and the
22 Prosecution does not need to provide the data requested by the draft
23 protocol. However, following the practice in the Lubanga case, the
24 Single Judge expects for the Prosecution to file disclosure notes
25 signed by the Prosecution and the Defence in which the materials

1 disclosed are listed. Disclosure notes must be filed immediately
2 after disclosure takes place, and the Single Judge would like that
3 this takes place every two weeks if possible.

4 Those materials falling under Rule 77 of the Rules shall be made
5 available to the Defence following, as said before, the system of
6 pre-inspection and inspection set up at the hearing that took place on
7 the 23rd of June, 2006. According to this system, the Prosecution
8 will transmit to the Defence an electronic copy of the relevant
9 documents and only if the Defence requests the physical inspection of
10 the documents, Prosecution and Defence will agree on a time and
11 location for this to take place.

12 Materials which are relevant for the Defence preparation for the
13 Confirmation Hearing or which were obtained or belong to Mr. Katanga
14 do not need to be filed with the Registry, and the Prosecution does
15 not need to provide the data requested by the draft protocol. As with
16 the disclosure notes, pre-inspection and inspection reports must be
17 filed immediately afterwards. As with the disclosure notes, the
18 Single Judge would like this to take place every two weeks.

19 I now would like to listen from the Prosecution and the Defence
20 if they have any comments on these initial remarks on the system of
21 disclosure of exculpatory materials or materials that are materials
22 for the preparation of the defence or belong to Mr. Katanga.

23 MR. MacDONALD: We have no comments, your Honour.

24 MR. HOOPER: Nor do we.

25 JUDGE STEINER: So now for the last part of this hearing, I would

1 like to have a report from the Prosecution on the status of those
2 materials identified as of a potentially exculpatory nature or
3 material for the Defence preparation for the Confirmation Hearing and
4 covered by Articles 54, 72, 73, or 93 every two weeks. The Single
5 Judge wants to know exactly how many documents have already been
6 identified as falling within those two categories, how many requests
7 for the consent of the providers have been made, the reasons for any
8 delay in such requests, and the status of such requests.

9 For this moment, I just would like to listen from the Prosecution
10 the status of the searches it has conducted to date, the number of
11 documents identified as of potentially exculpatory nature or material
12 for the Defence preparation of the Confirmation Hearing, how many of
13 them can be disclosed of right now, right away, how many of them are
14 covered by Article 54, how many requests to providers have been made,
15 what is the status of such requests, and when the Prosecution intends
16 to make the additional requests to the providers as well as any
17 requests for redactions that might be needed.

18 So the Prosecution, if he's ready for a short update of the
19 Single Judge on these matters.

20 MR. MacDONALD: Yes, your Honour. The priority, as indicated in
21 a prior decision, if I'm not considering the calendar, I think it's
22 Decision Number 28. We started with material which was under 54(3)(e)
23 received by the Office of the Prosecutor under condition of 54(3)(e).
24 We've reviewed 1.365 documents or so. All of them that have been
25 identified as possibly relevant to the case amongst all the documents

1 within our database, all of them have been reviewed for pexo, and
2 again the requests have been set. I cannot give you the exact number
3 of how many within that 1.365 or so now were identified as of
4 potentially exonerating character, but all the requests are being
5 compiled. I mean, the list is ready. It is being sent to different
6 providers.

7 Also, some of these documents are being requested for lifting in
8 the Lubanga case. So we're receiving, at the same time, responses.
9 Some of them negative, some of them hopefully positive.

10 So this is where we stand on 54(3)(e), pexo document.

11 We have in total 3.000 -- well, more than 10.000 documents that
12 have been visually revised from the search words that were being
13 identified. So we had 10.000 documents. All those have been
14 reviewed. 3.000 have been identified or so as relevant to this case,
15 half of them are 54(3)(e) lifting requests that have been sent for
16 pexo, and also ongoing for incriminating material.

17 Now, the rest, the 1.500 that are left within this 3.000 are
18 being reviewed as we speak. The process started two weeks ago, and as
19 we're identifying pexo, but these are non-54(3)(e) documents, so the
20 disclosure on pexo should be able to take place and should take place
21 as of next week, your Honour. Before entering the courtroom I had a
22 discussion with Mr. Hooper to verify his availability, because of
23 course the disclosure notes that have to be filed with Registry, that
24 means we have to be able to meet with our colleagues to make sure that
25 they're present, but that is being addressed, and it's just a question

1 of setting up meetings to really engage in the disclosure process.

2 Beforehand it was difficult, because of course Mr. Katanga not
3 being represented, it was felt by the Prosecution to wait for the
4 presence of counsel.

5 So this -- I'm ready to respond to any questions that you may
6 have on what I've just mentioned and the numbers basically.

7 JUDGE STEINER: Thank you very much. Maybe it would be
8 interesting if the Prosecution file an update on this related to this
9 information. It would facilitate instead of having the Defence coming
10 to transcripts and et cetera. So I would very much appreciate it if
11 the Prosecution could file an update to the Single Judge, and that
12 would be useful for the Defence also.

13 I would like now to listen from the Defence if there is any
14 comment in relation to disclosure of exculpatory or potentially
15 exculpatory materials, and especially in relation to the possibility
16 of the Defence to provide Prosecution with keywords or listing
17 categories of documents in order to facilitate Prosecution searches.

18 MR. HOOPER: Well, I've really nothing to say. I'm not in a
19 position to provide a keyword at the moment, but when we do we will.
20 And the only note I -- I'd want to strike is I assume the review of
21 potentially exculpatory material is done by -- I don't know the
22 system, so I'll able to discuss this with Mr. MacDonald. We've
23 already started talking to one another and that's probably the better
24 forum, really. But I'll raise it with Mr. MacDonald afterwards. It
25 needn't concern the Court.

1 Thank you.

2 JUDGE STEINER: Thank you very much. So these were the initial
3 observations the Single Judge wanted to provide Prosecution and
4 Defence in this very beginning of -- of the case. I would like also
5 to remind Defence that we are in the pre-trial stage of the
6 proceedings, and the idea is to have not a mini trial. So the
7 concerns that the Defence, and very fair concerns in relation to
8 investigation and gathering evidence, must -- must be -- must take
9 into account the context of a pre-trial phase. It's not a mini trial.
10 So just to -- not to have the Defence so concerned about the pressure
11 on -- on time limits imposed by the Pre-Trial Chamber, but of course
12 the Chamber will take into consideration all exceptional circumstances
13 when and if it needs to analyse a motion for postponement of the
14 Confirmation Hearing.

15 It's the intention of the Single Judge to hold a -- the next
16 Status Conference on disclosure issues on the 15th of January, 2008.
17 So soon after the recess. In this Status Conference, we will listen
18 from the Prosecution -- we will have from the Prosecution an update on
19 the situation of disclosure of incriminating and potentially
20 exculpatory materials, and of the Defence on the progress made or
21 difficulties met in -- in completing its -- its search for exculpatory
22 or -- materials for the preparation of the Confirmation Hearing.

23 So unless there is some real impediment, the next Status
24 Conference is scheduled for the 15th of January.

25 Does the Prosecution has any final comments before we adjourn the

1 hearing?

2 MR. MacDONALD: No, your Honour. See you next year. Happy New
3 Year, Merry Christmas.

4 JUDGE STEINER: Thank you very much. Mr. Hooper.

5 MR. HOOPER: You will notice from what I said earlier, it's
6 unlikely that what I -- for me to be here on the 15th of January, but
7 I appreciate what the Court wants from the Defence on the 15th of
8 January in response to those matters that have been provided by the
9 Prosecution or not, whatever the case may be, is an effective and
10 accurate response that fully informs the Court of the position, and
11 I'll certainly ensure that that's done. And as I indicated earlier,
12 we'll try and ensure that there's appropriate representation.

13 Thank you.

14 JUDGE STEINER: Thank you, Mr. Hooper. And if the case change on
15 the day or two or three days, it will be possible. So the Single
16 Judge is open to reconsider the date if you find another date very
17 close to the 15th of January in order to accommodate your commitments.

18 MR. HOOPER: Yes. My problem, as I've said, is that on the 8th
19 I'm due to go to Arusha to start the hearing I think on the 14th. Is
20 the 15th the Monday or the Tuesday? And I anticipate that will last
21 three weeks, and so I appreciate that that comes in this busy time of
22 the calendar, and I recognise that what the Court wants is to have
23 this moving and if I am absent, that absence doesn't hold up the
24 process and that Mr. Katanga, for his part, that the Defence are
25 capable of informing the Court fully and accurately of the position

1 and of any difficulties. I appreciate that. Thank you.

2 JUDGE STEINER: Thank you very much.

3 Is there anything else the representative of the Registry would
4 like to add?

5 MR. DUBUISSON (interpretation): We are also available to you if
6 you would like to organise a videolink or telephone conference if that
7 would be helpful.

8 JUDGE STEINER: Mr. Hooper?

9 MR. HOOPER: Yes. I -- it might be good this end. Arusha may be
10 a little more difficult. But, no, that's certainly a very, very
11 helpful suggestion, and -- well, a very practicable device indeed.
12 Thank you.

13 JUDGE STEINER: So I would like to thank very much the
14 Prosecution team, the Defence team, the representatives of the
15 Registrar, the Court Officer, and most and foremost the interpreters
16 that had a very, very difficult day, the liaison interpreter for its
17 availability to help this -- this Court to hold a hearing in which
18 Mr. Katanga was able to be informed, at least about the main features
19 of the court.

20 So if there is nothing else to be considered at this hearing and
21 with my -- my best wishes for Merry Christmas for all of you, I --
22 this hearing is adjourned.

23 COURT USHER: All rise.

24 The hearing ends at 6.22 p.m.

25