

1 International Criminal Court

2 Pre-Trial Chamber I

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

4 Status Conference – Open Session

5 Monday, 21 January 2008

6 The hearing starts at 2.05 p.m.

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

9 JUDGE STEINER: Good afternoon. Please, could the Court Officer
10 call the case.

11 THE REGISTRAR: Situation Democratic Republic of Congo, case of
12 the Prosecutor against Germain Katanga, number 01/04-01/07.

13 JUDGE STEINER: Thank you very much.

14 Is Mr. Katanga present?

15 MR. SLUITER: Yes, he is.

16 JUDGE STEINER: Could the officer please introduce Mr. Katanga to
17 the courtroom.

18 (The accused entered the courtroom)

19 JUDGE STEINER: So let me first welcome Mr. Germain Katanga. So
20 first I would like to welcome Mr. Germain Katanga, who is present at
21 this hearing. And as provided for in the decision on the Defence
22 request for leave to appeal the decision on the Single Judge
23 concerning languages, Mr. Katanga in this hearing will be provided, in
24 accordance with Regulation 61(1)(D) with liaison interpretation into
25 Lingala. Are you connected with the Lingala interpretation,

1 Mr. Katanga? Yes? I would like to listen from Mr. Katanga that he is
2 hearing the Lingala translation. If he could be -- please answer into
3 the microphone.

4 THE ACCUSED (interpretation): Yes. Yes, I am following the
5 interpretation.

6 JUDGE STEINER: Thank you very much. I would like to welcome the
7 representatives of the Registry and then I would like first the
8 Prosecution and then the representatives of the Registry to introduce
9 themselves and their teams.

10 The Prosecution, please.

11 MR. MACDONALD: Thank you, Single Judge. Present with me today
12 are Ms. Florence Darques-Lane, Ms. Krisztina Varga, Mr. Ibrahim
13 Yillah, and myself, Eric Macdonald.

14 MR. PREIRA: Good afternoon, Madam President. On the Registry
15 bench today, I'm accompanied by Bibiana Becerra, my colleague,
16 Mr. Mbaye, and myself. Thank you.

17 JUDGE STEINER: Mr. Didier Preira, sorry, but just for the
18 record, you said, "Moi-meme," but I would like to have your name for
19 the record.

20 MR. PREIRA: Madam President, excuse me, I should have cited my
21 name. I am Didier Preira. I am the chief of the section of victims
22 and counsel.

23 JUDGE STEINER: Thank you very much.

24 Now, I would invite the Defence counsel to introduce himself and
25 his team.

1 MR. SLUITER: Good morning. My name is Goran Sluiter. I'm here
2 today with Caroline Buisman and Sophie Menegon. Thank you.

3 JUDGE STEINER: Thank you very much. Welcome to, Mr. Sluiter,
4 the first appearance before this Pre-Trial Chamber I. You are very
5 welcome.

6 So first of all, I will emphasise that this hearing will focus on
7 the issue of disclosure and inspection on the one hand and on the
8 process of communication of the evidence on which the parties intend
9 to rely at the Confirmation Hearing. I'm aware of the several pending
10 applications, prosecution's applications, pursuant to Rule 81(2) and
11 (4) filed on 14 January 2008. Due to the ex parte nature of these
12 applications, it will not be subject of this hearing. Moreover, today
13 is the deadline for any additional motion by the Prosecution pursuant
14 to Rule 81(2) and (4) of the Rules concerning documents on which the
15 Prosecution intends to rely at the Confirmation Hearing.

16 The Single Judge would also like to inform the Defence that
17 immediately after this Status Conference is concluded, the Single
18 Judge will hold an ex parte hearing with the Prosecution and Victims
19 and Witnesses Unit in relation to issues concerning protection of
20 witnesses.

21 So I realise that on the Status Conference held on 14 December
22 2007, a number of logistical issues concerning Germain Katanga and the
23 Defence team were discussed. Thus, before focusing our attention on
24 disclosure process, I would like as a preliminary matter to follow up
25 on those issues with the Defence team. Besides, at the end of this

1 hearing, the parties will be given an opportunity to call the
2 attention of the Single Judge on any other issue related to this
3 matter.

4 Is that way of proceeding agreeable to the parties?

5 So let's start with the preliminary questions/matters.

6 The first one is the matter related to computer access by
7 Mr. Germain Katanga. In the Status Conference held on 14 December
8 2006, the Single Judge was informed of a number of issues concerning
9 the access by Germain Katanga to a computer in the Detention Centre.
10 I would like the Registry first and then the Defence to provide the
11 Single Judge with an update on the following issues:

12 First, the installation of a computer with the Ringtail programme
13 in the Detention Centre in order for Germain Katanga to have
14 unrestricted access to the evidence and materials disclosed between
15 the parties for the purpose of the Confirmation Hearing.

16 Second, the connection of such a computer with the office of his
17 counsel in order to avoid using CDs or pin drives or similar things.

18 Third, the gradual training of Mr. Germain Katanga in basic
19 computer software, such as Windows, and in most complex software such
20 as the Ringtail software itself.

21 And finally, the availability of a printer for Germain Katanga in
22 the Detention Centre.

23 So first I would like the Registry to explain the status of the
24 implementation of these procedures.

25 MR. PREIRA (interpretation): Madam President, as regards access

1 by Germain Katanga to IT tools, since our last meeting, the Registry
2 and more specifically the Information Communication and Technology
3 Section has concentrated on ensuring that Germain Katanga has all of
4 the hardware and software necessary for him to have access to
5 electronic communications. Now, he has at this point in time a
6 computer available to him in the Detention Centre, but I'm afraid I
7 cannot tell you exactly whether he has access to Ringtail on that
8 computer.

9 Now, I know that the ICT teams have been working on this for some
10 time, quite some time. I was not expecting this specific question at
11 today's hearing, but when the hearing is over, I could certainly
12 inform myself and provide the information to yourself and the parties.

13 As regards the computer training for Germain Katanga to teach him
14 how to use the computer, I can report that he has already had training
15 with colleagues from that section. At one point in time there was a
16 difficulty making available a member of that section full time to
17 provide Mr. Germain Katanga with all the training he would need. This
18 is quite a time-consuming task. What has been possible is to provide
19 Mr. Germain Katanga with software which allows him to teach himself.
20 This has been provided to him.

21 The computer has been provided to him, as I said, and according
22 to the latest information I have, that computer is connected to the
23 computer used by the team here at the seat of the Court. The team
24 currently has three computers --

25 MR. SLUITER: Your Honour, very briefly. There's a slight

1 translation problem for Mr. Katanga. He informed me already last week
2 that for the first session he had the impression it was going a bit
3 too fast. He now again informs me it's going a bit too fast, so I
4 would greatly appreciate it if those here present could adopt their
5 speech to the -- to the interpreter. I know it's not the
6 interpreters. It's very difficult to follow, so maybe we have to slow
7 down a little bit. Thank you.

8 JUDGE STEINER: Thank you very much. Please slow down.

9 MR. PREIRA (interpretation): Yes, Madam President. I take note.
10 I was saying that the team has three computers. Two of those
11 computers are entirely operational and equipped with all the software
12 necessary processing information and receiving documents. One
13 computer, however, is suffering recurrent problems, but I believe that
14 the ICT section is working on those difficulties as and when they
15 arise. Each time that a problem does arise, a member of staff is
16 deployed immediately. A tool has also been available -- made
17 available to Mr. Katanga at the Detention Centre. So, Madam
18 President, that is my report on the software and hardware available to
19 the Defence team. A printer has also been made available at the
20 Detention Centre. I am, of course, available to give you further
21 information, and as I have already said, perhaps after this hearing I
22 could provide a more detailed report on all that is available to
23 Mr. Katanga.

24 JUDGE STEINER: Thank you, Mr. Preira. So first I would -- soon
25 after this hearing I would like to have the more precise information

1 that you mentioned. And just one clarification: In relation to the
2 training of Mr. Katanga, you mentioned that someone to be constantly
3 available would be provided for Mr. Katanga has not been yet provided
4 and time is running. I would like to know if you have any idea when
5 this person that could be constantly available to Mr. Katanga will be
6 provided.

7 MR. PREIRA (interpretation): Madam President, we are mindful of
8 the need to act with haste. As I have mentioned previously, there is
9 a difficulty in terms of resources to find or identify a person who
10 can provide the necessary training to Mr. Katanga. There is a
11 language issue to be taken into account. It's important that the
12 person is able to communicate well with Mr. Katanga. So difficulty
13 has been encountered in identifying an appropriate member of staff.

14 We understand that we need to move as rapidly as possible, and I
15 would ask my colleagues in the section to act in accordance with the
16 instructions of the Chamber.

17 I wouldn't like to state a specific date, but I can certainly
18 assure you that the necessary steps are being taken to ensure that the
19 right resources are made available to Mr. Katanga to facilitate his
20 training.

21 JUDGE STEINER (interpretation): Thank you.

22 (In English) I would like to ask the Defence if they would like
23 to make any comments with respect to Mr. Katanga's training and access
24 to Ringtail, et cetera.

25 MS. BUISMAN: Madam President, I would like to add that in fact

1 we agree that everything is taken care of. The only problem we have
2 is that the documents are not yet available. So everything is
3 installed as far as I understood it for Mr. Katanga. It's just that
4 somehow the documents are not yet accessible. But I do know that
5 people are -- they are working on it. There's also a problem with
6 Internet at the moment, but I also know that they're working on it.

7 JUDGE STEINER: Sorry, what do you mean by "problem with
8 Internet"?

9 MS. BUISMAN: In our office we have at this moment no access to
10 Internet and we don't know the problem, but we do know that we have
11 been in contact with people from the IT, so I hope that this all will
12 be arranged. Thank you.

13 JUDGE STEINER: Thank you very much. So this was the second part
14 of the questions I had which now is related to the Defence team access
15 to all IT facilities and et cetera. If you could elaborate a little
16 bit more on Defence team access to IT facilities and training in
17 Ringtail and also in the last conference -- Status Conference on 14th
18 December, it was said that the Registry was going to make the utmost
19 effort to permit Mr. Hooper to travel to DRC at the earliest
20 opportunity, preferably by the end of January or beginning of
21 February. So I would like the Defence to explain or say something
22 about the composition of the Defence team, access to IT technological
23 facilities, and in terms of Defence team, whether the Defence counsel
24 has appointed any further assistants, investigators, interns, to work
25 with the Defence team, and whether the Defence is thinking to

1 undertake its first mission to the field, whether and when. So the
2 Defence has the floor.

3 MR. SLUITER: Yes, thank you. Regarding the composition of the
4 Defence team, there are some good news and some bad news. I'll start
5 with the good news. We have -- we are in the process of taking in the
6 team two resource persons. One of them is Mr. Nogo (phoen) and his
7 application is currently with the Registry. It has been submitted the
8 14th of January. We are also very well advanced in taking in another
9 person and we expect this will be completed in the coming days.

10 There are also some obstacles that I think it's only appropriate
11 to inform you at this stage. This is a difficult legal question and
12 it concerns the requirement imposed on the Defence by Regulation 67,
13 which obliges the Defence team to take in counsel who must have a
14 minimum of 10 years of experience. I have applied myself to the
15 Registrar to be put on the list of counsel. This application was
16 denied on the 2nd of January. And I've currently submitted an
17 application for review on the 16th of January. This has been filed as
18 a public document, so I suppose -- my understanding was that you would
19 be aware of it, as other participants in this courtroom. But my
20 information is it has not yet been made public. We are waiting that
21 this application is made public. And in this application there's a
22 reference to a possible effect of that application for this trial.

23 Whether or not this will be a problem for this trial is something
24 that we can only assess when the President has made a decision on this
25 matter. I have requested the Presidency to do this with the greatest

1 urgency, but of course the application has only been filed recently.

2 It raises, I think, some difficult legal issues, so I'm still awaiting
3 that issue. But once we have that decision, we can inform you better
4 than we can at this stage.

5 Then as to the preparation of the Defence regarding missions in
6 Congo, I think Ms. Buisman can better inform you on that matter, and
7 I'd gladly give the floor to her.

8 JUDGE STEINER: First, let me just clarify. You made a formal
9 request to the Presidency to be included in the list of counsel?

10 MR. SLUITER: Yes, that is correct, because that is an absolute
11 condition under the regulations, under the law of the Court, to be
12 appointed as counsel in the team of Mr. Katanga.

13 JUDGE STEINER: And as assistant to counsel?

14 MR. SLUITER: Well, that application has been granted. That's
15 also what I mentioned in my application for review. But in our
16 opinion, that's not the issue. The issue is that Mr. Katanga and his
17 lead counsel have a right to compose a Defence team as they see fit
18 and should not be imposed with -- or burdened with arbitrary and
19 unreasonable restrictions on this matter.

20 JUDGE STEINER: This request now is with the Presidency to be
21 decided?

22 MR. SLUITER: Yes, that's correct.

23 JUDGE STEINER: Thank you very much.

24 Please, you have the floor.

25 MS. BUISMAN: Yes, thank you. Regarding the investigations, we

1 would like to point out that we, first of all, are trying to get the
2 resource persons to The Hague to discuss with the client and then as
3 soon as possible in February, both myself and Mr. Hooper are planning
4 on going there. So that's the status of our investigations right now.
5 We have been in communication with various people in the Congo, so
6 it's going. That's the status right now. Thank you.

7 JUDGE STEINER: So it would mean that the Defence team has been
8 in contact, constant contact, with the Registry in relation to this
9 possible travel to DRC, because the arrangements as far as I know take
10 some time, including even security issues, et cetera.

11 MS. BUISMAN: That's right. We are aware of that and we do know
12 that it's about two, three weeks minimum before we can go. That's why
13 at this moment, because we're trying to get the people, the
14 investigators, here first. That's now our first step. We would like
15 to take it up this week with the Registrar to actually arrange that to
16 happen. And then at the same time, I think this as well this week,
17 we'll try to resolve this with the Registrar. Thank you.

18 JUDGE STEINER: Thank you.

19 Has the representative of the Registrar some comments mainly on
20 the investigators' appointment?

21 MR. PREIRA: (No interpretation).

22 (Interpretation) ... with their requests. And we shall file
23 everything that will be submitted to us in regard to the requirements
24 of this matter.

25 Regarding the matter that was raised by the Professor, Professor

1 Sluiter, he has filed an application. He has filed an application.
2 We are examining it. Having examined it, since Mr. Sluiter did not
3 meet all the criteria referred to in Rule 22 and Regulation -- Rule 22
4 and Regulation 77 of the regulations of the Court, Mr. Sluiter is
5 aware of this evaluation, the recent agreement on the events, and the
6 legal process. He was not in agreement. He appealed against it as
7 per Rule 72 of the regulations of the Court. And it seems to me that
8 in his appeal he was asking the President of the Court not to apply
9 Rule -- Regulation 77, which requires ten years of experience in terms
10 of trials.

11 For the Registry, we're going to respond to this appeal to the
12 President and then the Presidency will take a decision.

13 This is the information I wish to provide. Once more, from a
14 logistical standpoint, when there will be a complete team that will be
15 asking to conduct field missions, it will receive all the necessary
16 support for this purpose. Thank you.

17 JUDGE STEINER (interpretation): Thank you, Mr. Preira.

18 Now, has the Prosecution something in relation to this logistical
19 issues? If you want you have the floor.

20 MR. MACDONALD: Thank you, Your Honour. Yes. The only remark I
21 would make at this stage is that the Prosecution, once the Defence
22 team is in place, are hired and will be going to the field, the
23 Prosecution would appreciate if the names could be filed with the
24 Court for security reasons. We don't want to repeat past experiences.
25 I think in one case in Lubanga where an investigator approached

1 someone, and this person became scared and didn't know who it was, and
2 so on. Because inadvertently they approach people we may have met --
3 and of course that is a high likelihood - then of course we receive
4 calls, and then we are wondering who are these people, and then a
5 whole lot set of measures can be taken and start to prevent this. So
6 that is the basis of our request, Your Honour.

7 JUDGE STEINER: And of course the request is granted not only for
8 the reasons put forward by the Prosecution, but of course all members
9 of the Prosecution or the Defence team must be known to the Chamber.
10 So as soon as the Defence team is complete, the Chamber will have to
11 be communicated, even in relation to interns, also for security
12 reasons, notification of confidential documents. So this is something
13 that is necessary for the fairness and expeditious conduct of the
14 trial, in order to avoid any kind of problems.

15 So in continuation to our hearing, now we can start talking about
16 disclosure, and in relation to disclosure, I would like the
17 Prosecution to give the Chamber an overview of how the process of
18 disclosure has taken place since the last Status Conference held on
19 the 14th of December, and how the Prosecution envisages the process of
20 disclosure until 29th January, which is the deadline for the filing of
21 the charging document and list of evidence.

22 So I have a few points, and of course the Prosecution will
23 elaborate on these points, but anything that the Prosecution wants to
24 add will be welcome.

25 I would like to start with the evidence on which the Prosecution

1 intends to rely at the Confirmation Hearing.

2 So first, disclosure of statements of the witnesses on whom the
3 Prosecution intends to rely at the Confirmation Hearing, pursuant to
4 Rule 76 of the rules.

5 Second, in relation to inspection of other incriminating evidence
6 on which the Prosecution intends to rely at the Confirmation Hearing,
7 pursuant to Rule 77 of the rules.

8 Third, the Single Judge would like to know how many documents on
9 which the Prosecution intends to rely at the Confirmation Hearing are
10 currently covered by Articles 54, 72, or 93, confidentiality
11 obligations; whether requests to the authorisation of the providers
12 have been made; when answers are expected; and whether the Prosecution
13 foresees any problem in getting the consent of the providers, and in
14 order to keep the 30-day deadline required by Rule 121.

15 So this is the first part of our disclosure report and the
16 Prosecution has the floor.

17 MR. MACDONALD: Thank you, Your Honour. Now, in regards to the
18 statements, of course these were filed on the 14th, all of them, for
19 proposed redaction with the exception of one witness statement that is
20 being filed as we speak, simply because we couldn't file it on the
21 14th for reasons that it was simply not available, we could not -- I
22 mean, the statement itself was not available for production on the
23 14th of January.

24 So all the statements for which we're requesting redactions, and
25 from my list, Your Honour, the Prosecution intends to rely on 23

1 witnesses, some of whom may have provided one, two, or three
2 statements, so all the statements as of today are before you for
3 proposed redactions.

4 In relation to documents, the deadline was extended to today and
5 the documents, where we are requesting redactions, are being filed as
6 we speak. I think there's, if I'm not mistaken, six documents and a
7 series of additional documents relating to one person who provided a
8 diary to the Office of the Prosecutor, so a few chapters of his diary
9 for which we're requesting redactions. Now -- so those are for
10 requests for redactions.

11 As for the list of evidence, the list of evidence is almost
12 complete, meaning with other documents that do not need redactions.
13 And when I verified the information on Friday night, if my
14 calculations are correct, at the moment we would have about just over
15 200 documents we would rely upon. But these include witness
16 statements or transcripts -- one interview of one witness can break
17 down between six to 12 transcripts and one transcript equals one
18 document.

19 So just over 200. Actually, the number I have is 201, but I
20 prefer to say just over 200 because there's a few more that need to be
21 either incorporated or not.

22 There are no 54 -- the Prosecution at this stage is not on its
23 list of evidence will not be submitting any 54(3) material in the hope
24 that, you know, before the Confirmation Hearing these documents are
25 lifted or not by the providers. So all the documents that the

1 Prosecution is relying upon for the Confirmation Hearing have already
2 been either lifted or were never received under any condition of
3 receipt. Of course, there may be such documents that are
4 incriminatory that are currently received under Article 54(3)(e) and
5 requests have been sent with what the Prosecution thinks may be
6 potentially exonerating material, so that the requests are being made
7 at the same time for either potentially exonerating material or
8 incriminatory material. If and when received in relations to the
9 incriminatory material, we will revisit our position and maybe request
10 outside of the time period on a one-to-one basis if these documents
11 can be included, if ever. But at the moment the Prosecution is not
12 relying on any 54(3) material.

13 JUDGE STEINER: Thank you very much. So now we'll turn to the
14 evidence that the Prosecution must disclose to the Defence, although
15 he does not intend to rely on it at the Confirmation Hearing, and I'm
16 talking first about inspection of materials obtained from or belonging
17 to Mr. Katanga or that are otherwise material to the preparation of
18 the defence, pursuant to Rule 77 of the rules. I would like the
19 Prosecution, in particular, to address how much progress has been made
20 on the inspection of those documents obtained from or belonging to
21 Mr. Germain Katanga. Also, whether any problem has arisen when
22 implementing the system of inspection, including the pre-inspection
23 notes and the inspection reports put on place by the Single Judge in
24 the last Status Conference.

25 I would like to remind also in relation to disclosure of

1 potentially exculpatory materials, under Article 67(2) of the Statute,
2 I would like first the Prosecution to give a full update on the status
3 of the searches it has conducted to date, the number of documents
4 identified as of a potentially exculpatory nature or material for the
5 defence preparation of the Confirmation Hearing, how many of them have
6 been already disclosed or can be disclosed right away to the Defence,
7 and for how many, if any, the Prosecution foresees that redactions
8 must be necessary, and when it intends to make such requests.

9 In this point I would like to remind the Prosecution that the
10 report on the status of the disclosure of this exculpatory, or
11 potentially exculpatory materials, the Prosecution was requested to
12 bring each -- every two weeks a report, and the last one we had, if
13 I'm not wrong, has been on the 21st of December. So now we have more
14 than four weeks without any report. So I would like the Prosecution
15 to make a complete report on inspection under Rule 77 and disclosure
16 of potentially exculpatory materials.

17 MR. MACDONALD: Thank you, Your Honour. First of all, it is true
18 that we have not filed a report. The last one was on the 21st. We
19 were under the impression that because we were coming back for the --
20 initially for the Status Conference on the 14th, considering also the
21 holidays and the suspension of the calendar for maybe a week, that
22 this report would be made orally and thus this is why we didn't file a
23 document per se.

24 Now, I can make this report now. As the Chamber can appreciate
25 by the volume of information that we have provided on the 14th, a huge

1 effort and all the resources of the office have been used to present
2 those proposed redactions for the 14th of January in regards to
3 statements. Also, at the same time, to present the proposed
4 redactions to documents that are not statements that we're filing
5 today, again, a huge exercise also was done to review all the material
6 that we have in house, and also those took all the resources of the
7 office. And the process is still ongoing.

8 So we are identifying some PEXO material, but seriously not that
9 many. That's simply the nature of the evidence that was collected and
10 the nature of the facts of this case, we believe so.

11 Now, of course, because of the 29th of January deadline and the
12 deadlines for proposed redactions, the Prosecution has obviously been
13 concentrating a lot on its list of evidence and the documents that
14 need to be included on that list. We have approximately -- well, over
15 3,000 documents that have been initially analysed as being potentially
16 relevant out of all the collection that we have in the DRC situation,
17 and in the DRC situation there's about 25,000 documents or more.

18 So we were able to bring, using search-words and using Ringtail
19 and all the tools available, we were able to bring this at
20 approximately to 3,500 documents. Now, all those documents have now
21 been reviewed for incriminatory purposes, and obviously Article 77 and
22 also for PEXO, or potentially, sorry, exonerating evidence, "PEXO" for
23 short in our jargon.

24 Now, it is also I think here of importance, if we talk about PEXO
25 documents, potentially exonerating documents, sorry, that now that the

1 Defence has a copy of the arrest warrant application, now that they've
2 started to receive some material regarding witnesses' statements that
3 supported this arrest warrant application, that if they can provide us
4 with any idea of material that would be necessary in terms of
5 potentially exonerating or issues or defences - I understand they have
6 the right to remain silent and they don't need to disclose such
7 defences or issues - but obviously the Prosecution has an obligation
8 to identify what we think are PEXO material, but this may vary from
9 where you -- the perspective you come from. Our PEXO defences are
10 known within the rules of the statute. Also obviously, questions
11 affecting credibility of witnesses.

12 I understand today that Mr. Hooper is not present. Maybe this is
13 something that I can discuss with him, but I'm raising it now also. I
14 think that it's important to note that even though we have an
15 obligation to identify, I think it also helps if the Defence can
16 identify and tell us what search-words or anything they would need.

17 Now, we have also started disclosing, but not as many documents
18 maybe as we would have liked beforehand, because like I mentioned,
19 Your Honour, this is a huge exercise of the 14th and the 21st of
20 January that we had to meet. Today we have disclosed a few materials
21 and we are identifying these materials as we're going along. For
22 instance, all the incriminatory material that are on the list of
23 evidence that do not need redactions we'll be able to disclose very
24 quickly. And also under Rule 77, material has -- we have begun to
25 disclose some statements as indicated in the first decision at least

1 on redactions for one witness, and also additional witnesses we've
2 done -- we've done so. So it is -- and again today, Rule 77 material
3 has been filed.

4 Again, what is material to the Defence, well, we can presume, the
5 Prosecution can presume any documents written by Mr. Katanga himself
6 or signed, that we can identify and disclose. But we take a very
7 broad approach as what may be material to the Defence. So within
8 these 3,000 documents that have been identified as relevant or of
9 potentially relevance of a case against Mr. Katanga, we are disclosing
10 as much as of those 3,000 documents that we can. Obviously, those
11 that we're not relying upon that are totally incriminating, we do not
12 have any obligation to disclose technically. But again we may be
13 disclosing them under Rule 77 simply because they may be material to
14 the Defence.

15 Also in relations to other additional statements, we're not
16 relying upon that many redactions to be disclosed because they need
17 PEXO parts. I think it is important that we need to understand from
18 the Chamber -- sorry, apparently I'm going too fast for the
19 translation. Sorry. There's the question of the potentially
20 exonerating parts. How are we to deal with that? Requesting
21 redactions to the whole document and only leaving in the parts that
22 may be of potentially exonerating nature? So those are, again,
23 questions that need to be addressed and answers would be appreciated,
24 obviously, and guidance from the Single Judge.

25 The Single Judge can already appreciate in the statements that

1 we're relying upon that we've disclosed or requested redactions to
2 screening notes or investigators' notes sometimes because they may
3 fall within this bracket of potentially exonerating. So we filed them
4 immediately on the 14th, even though they are maybe a little bit less
5 relevance in terms of -- to be on the list of evidence. But since
6 they form part of the material that was gathered for one interview of
7 one given witness, we've taken the approach that we prefer to disclose
8 anything, everything that we can disclose to the Defence regarding
9 this witness.

10 So it is -- also, we have in terms of the document containing the
11 charges, and this is again where we are -- and the list of evidence.
12 The list of evidence is important because obviously it sources the
13 document containing the charges, so one goes -- the primary
14 importance, I would say, would be the list of evidence and documents
15 that are on that list, and from there you can finalise your document
16 containing the charges.

17 And as you know, and without going into the details at this stage
18 because this is a public hearing, there are protection issues and at
19 this stage there are question marks on which witness or which
20 documents the Prosecution can rely. So we're cutting -- we're a bit
21 between a rock and a hard place in terms of filing as to the latest
22 day possible at this stage on the 29th of January both the document
23 containing the charges and the documents that will be on the list of
24 evidence.

25 So in short, Your Honour, we have reviewed all the documents.

1 All, if not most, of them have been identified either as PEXO,
2 potentially exonerating, sorry, Rule 77, or incriminatory. For some
3 there has to be a secondary review to make sure that the initial
4 review was appropriate. And I would expect that this week and
5 obviously next week we'll be disclosing a lot of documents, much more
6 documents that do not need redactions, to the Defence either under
7 Rule 77 or that will be on the list of evidence.

8 JUDGE STEINER: Thank you very much. Has the Prosecution any
9 idea on the number of documents from a potentially exculpatory nature
10 that are covered by confidentiality obligations?

11 MR. MACDONALD: Now, in this -- our last update stands, Your
12 Honour. Figures may vary because obviously when we did this review
13 initially, some material may have been identified as potentially
14 exonerating. But in the end that were remotely exonerating.

15 For instance, I can give you an example, peace agreements. How
16 should one approach those? Are those incriminatory or potentially
17 exonerating? Well, depending on how you use those documents, they may
18 be viewed as incriminatory. So when confronting those situations,
19 again we're erring on the side of -- liberal side and seeing those as
20 maybe more potentially exonerating.

21 Again, the -- and again, not because the document is -- you have
22 documents that are both incriminatory, Rule 77, and exculpatory. It's
23 everything all at once. So you cannot disassociate. But, I mean,
24 purely exonerating document, like I said, there aren't that many. We
25 have identified some that are under 54(3). We have submitted those

1 requests and are awaiting a reply. But again quite often that same
2 information is of a general nature, can be found in other documents
3 that are not under 54(3), but still the list have been sent to the
4 different providers and obviously the main provider is the United
5 Nations, Your Honour. As you know quite well -- you're well aware of
6 how long sometimes the process can take.

7 JUDGE STEINER: Thank you very much.

8 I would like to ask the Defence, I remember at the last Status
9 Conference on the 14th of December, it was mentioned the importance of
10 the Prosecution being provided with keywords or -- in order to
11 facilitate the Prosecution in this search for potentially exculpatory
12 materials. I don't know if the Defence has taken a position in
13 relation to this.

14 MR. SLUITER: Yes, thank you, Your Honour. I've been listening
15 to the Prosecutor. I understand to some degree his position.
16 However, I would object, but maybe I've misunderstood him, to
17 analysing the scope of the disclosure duty in light of the position of
18 the Defence. And in case of any doubts as to whether something could
19 be exonerating or could be incriminating, I think it is the position
20 that it should be disclosed to the Defence, especially in this new
21 system of international criminal justice where the Prosecutor has a
22 clearly and firmly established objective role in the collection of
23 evidence. And I would like to leave it at that.

24 JUDGE STEINER: Thank you. A document if at the same time
25 potentially exculpatory and incriminating, the Prosecution of course

1 have the obligation to disclose. If the Prosecution does not intend
2 to rely on the document, the document is made available to the Defence
3 by the system of inspection. So this is also an agreement between
4 Prosecution and the Defence on the dates and sites for inspection of
5 documents that could be for the preparation of the Defence. Whether
6 documents that the Prosecution does not intend to rely but could be of
7 the interest for the Defence.

8 I don't know if I clarified this point to Defence counsel.

9 MR. SLUITER: Yes. That concerns the Rule 77 inspection and
10 things that are material to the Defence. There are already some
11 examples where we cooperate in good order with the Prosecutor in that
12 area.

13 JUDGE STEINER: So before we go further in this Status
14 Conference, I would like first to ask the Prosecution that potentially
15 exculpatory evidence that needs a redaction, these requests for
16 redactions to be filed as soon as possible. So this is the first
17 request for the Single Judge.

18 In relation to documents that do not need redactions, documents
19 in general that the Prosecution has said it is in a position to start
20 disclosing to the Defence, that the Prosecution could make its utmost
21 efforts to do this disclosure as soon as possible also.

22 And finally, in relation to the reports on exculpatory material,
23 every two weeks, I would like the Prosecution to comply with this
24 request in order to -- for the Single Judge to be updated in a
25 constant way of the evolution of this part of the disclosure process.

1 I would like now to ask Mr. Preira, I don't know if you were able
2 to give me the information I want. It's about the process of filing
3 -- the communication of evidence, the filing of originals and
4 electronic copies of the Prosecution's incriminating evidence, if any
5 filing has taken place to date. But this is an information that Court
6 Management would be in a better position to give.

7 MR. PREIRA (interpretation): Madam President, I note your
8 question, but I fear we're not in a position at this point in time to
9 give you a reliable answer. Please do excuse us. We can provide it
10 afterwards.

11 JUDGE STEINER (interpretation): Thank you.

12 MR. MACDONALD: Yes, we have, Your Honour. We have filed when
13 disclosing the statements in redacted form to the Defence, at the same
14 time a filing was done with Registry for the original statements in
15 unredacted form to be kept ex parte, since there are proposed
16 redactions. So yes, the originals of any incriminatory material is
17 being disclosed in its original form to Registry.

18 JUDGE STEINER: So before going to the final observations of the
19 parties, the Single Judge is working on the assumption that the
20 Prosecution will meet the 29th January deadline to file the charging
21 document and list of evidence, the evidence he intends to rely on at
22 the Confirmation Hearing. If there is any problem in this regard, I
23 think this Status Conference is a good opportunity for the Single
24 Judge to be briefed right now by the Prosecution, if he foresees any
25 problem in complying with this deadline.

1 MR. MACDONALD: Like I alluded to earlier, Your Honour, the
2 difficulty we're facing is in terms of protection. Now, obviously
3 this is a public hearing and I don't want to get into the details.
4 But it will have an impact on our document containing the charges. If
5 a statement doesn't -- cannot be included on our list of evidence for
6 whatever reason that has to do with protection or that there's no
7 certainty, one affects the other.

8 So we are working to meet the 29th deadline. We are. But at
9 this stage, and this is maybe a question that can be -- it has to do
10 with protection of witnesses, Your Honour. It has to do with
11 protective measures. So if a witness, for whatever reason, we cannot
12 rely on, well, then, he's not on our list of evidence, then we cannot
13 rely on him, we can't use him. That has an effect, an impact, on how
14 extensive we can be in our document containing the charges.

15 So that's the best answer I can give you at this stage, Your
16 Honour. That yes, we're trying to meet the 29th deadline, but if we
17 cannot, obviously the Chamber -- well, will know indirectly because I
18 understand that ex parte we'll be discussing these protective
19 measures.

20 JUDGE STEINER: Thank you very much.

21 So, of course, the discussion in depth in relation to witnesses'
22 protection will be made in the second part of this hearing, in a
23 closed session, ex parte with the Prosecution. But since the Defence
24 is here, I would like to say in advance that in case, after the
25 updating to be given by witnesses -- Victims and Witnesses Unit in the

1 second part of this hearing, in case the Prosecution decides to point
2 out the problems in meeting the deadline or the impossibility of
3 meeting the deadline, the Prosecution will be given no more than 48
4 hours to file any motion on this sense and then the Defence will have
5 no more than 48 hours to respond, taking into account that 29th of
6 January is next week. So the Chamber needs to have Prosecution and
7 Defence views in any request in order to decide in a proper time.

8 Is that correct?

9 MR. MACDONALD: Yes, it is -- it is correct, Your Honour. Of
10 course, quite understandable. And I spoke to Ms. Buisman earlier this
11 afternoon and I will not go into the details of these discussions, but
12 obviously we touched upon that subject, Your Honour. And we will see
13 what happens following our closed session hearing and so on, and then
14 I will get in touch with the Defence and we will present our views.
15 I'll limit myself to this at this stage.

16 JUDGE STEINER: Thank you very much. I very much appreciate that
17 the Prosecution and the Defence can discuss the issue. It's a very
18 important issue not only for the Prosecution but maybe in the future
19 for the Defence; that maybe the Defence will have to request
20 protective measures for its witnesses and taking into account the
21 normal difficulties that a Court can have even to go to the field and
22 provide for protection.

23 So I think it's the best way of conducting this issue, is to have
24 a Prosecution information on this issue and then to listen to the
25 Defence, but no more than 48 hours each because the Chamber needs to

1 have some time to analyse the matters and to decide upon them.

2 So having said that, I would like to ask first the Prosecution
3 and then the Defence if they have any final observations or any other
4 issue to bring to the attention of the Single Judge, any additional
5 matter. The Prosecution first.

6 MR. MACDONALD: I have no additional comments, Your Honour, at
7 this stage.

8 MR. SLUITER: We have no observations, Your Honour.

9 JUDGE STEINER: Thank you. Does the Registrar have something to
10 add? Please, Mr. Preira.

11 MR. PREIRA (interpretation): Madam President, I would like to
12 return to a question which was put at the outset of this hearing, and
13 that is access to Ringtail by Mr. Katanga. I have now received
14 specific information, and I would like to relay it to the parties to
15 the proceedings. I can confirm that Katanga has a computer which is
16 configured with Ringtail and Katanga receives training and has done so
17 for some time now two to three times a week. This is software
18 training.

19 However, given the fact that Mr. Katanga's computer knowledge is
20 very limited, it is important that he first acquires the basic
21 practical skills in computer use before going on to be trained to use
22 Ringtail satisfactorily.

23 We must emphasise that in any case the Defence team has a case
24 manager. This case manager can assist Mr. Katanga as and when
25 necessary, assist him in uploading documents, for instance, which are

1 put on the system. Thank you.

2 JUDGE STEINER: Mr. Preira, but this, in my view, is one more
3 reason to have as soon as possible someone available to help
4 Mr. Katanga in assessing documents through Ringtail. Even though he's
5 not trained, but having someone available to be called at any time to
6 assist Mr. Katanga to have access to the documents that the
7 Prosecution is going to file. The Chamber would very much appreciate
8 the Registrar's efforts in this matter.

9 MR. PREIRA (interpretation): Madam President, we note the
10 Chamber's request and shall act on it. Thank you.

11 MS. BUISMAN: Sorry, can we add one little thing there?

12 JUDGE STEINER: Please.

13 MS. BUISMAN: I don't think we are aware of any access for the
14 case manager to the computer facilities of Mr. Katanga, so although we
15 would be happy to help in this respect, I just don't think that's our
16 position. Thank you.

17 JUDGE STEINER: Mr. Preira.

18 MR. PREIRA (interpretation): I confirm that the computer is
19 connected to a computer which is here and therefore the Defence team
20 can have access. This is the information which has been provided to
21 me by my colleagues from the Information and Communication Technology
22 Section. Therefore, members of the team, including the case manager,
23 can use that particular computer to have access.

24 JUDGE STEINER: Mr. Katanga or the case manager or both?

25 MR. PREIRA (interpretation): Mr. Katanga and the case manager.

1 The computer is connected to one of the computers here at the team
2 office at the seat of the Court.

3 MS. BUISMAN: I have nothing to add, thanks.

4 JUDGE STEINER: So I think if you have any doubts in relation to
5 these details, so after the hearing, even with IT personnel maybe, the
6 Defence team could have a more precise information on that.

7 So if there is nothing else to be discussed during this Status
8 Conference, I would like to thank the Prosecution team, the Defence
9 team, the representatives of the Registrar, of the Victims Unit, the
10 interpreters as always. And because the second part of the hearing
11 is -- not the second part. The following hearing will be a hearing ex
12 parte only with the Prosecution, I consider this Status Conference
13 adjourned. Thank you very much. We will resume in half an hour --
14 resume, no, start the hearing in half an hour.

15 MR. MACDONALD: Sorry, with your permission your Honour, would it
16 be possible to start at 4.00? I would request 45 minutes. I've
17 received a note to have a very quick meeting with the prosecutor.

18 JUDGE STEINER: Very well. At 4:00.

19 MR. MACDONALD: Thank you.

20 The Status Conference adjourned at 3:15 p.m.

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