

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 Tuesday, 1 April 2008

6 (Mr. Katanga not present in court)

7 The hearing starts at 2.13 p.m.

8 COURT USHER: All rise. The International Criminal Court is now
9 in session.

10 SINGLE JUDGE STEINER: Good afternoon. First I would ask the
11 security officers to bring the detainees into the room.

12 Any problem with Mr. Katanga?

13 MR. HOOPER: Yes. There's been a slight mishap this morning --
14 or this afternoon which has meant that he's come from the prison -- well,
15 he came from the prison with his jacket and his jacket has disappeared,
16 and he feels it is a marked disrespect to the Court to appear without.
17 And he's in any event upset that he's improperly dressed and we can
18 continue in his absence.

19 SINGLE JUDGE STEINER: Before I got into the room I was informed
20 that a jacket has been provided for Mr. Katanga. Could, please, the
21 court officer to --

22 MR. HOOPER: In fact, I've provided him with my jacket, but I
23 can't blame him for not wanting to wear it. In any event, we think we
24 can anticipate the matters that are going to be raised this afternoon,
25 and we can certainly carry on without him and we'll keep him fully

1 informed.

2 SINGLE JUDGE STEINER: So in this case I would like to -- for the
3 Registry to provide a -- at least to search for the reasons for the
4 disappearance of this jacket, because this is not something that would
5 happen.

6 MR. VAATAINEN: Certainly, your Honour. We will look into that
7 and we'll report back to you.

8 SINGLE JUDGE STEINER: To me and to Mr. Katanga's Defence,
9 please.

10 MR. VAATAINEN: Yes.

11 SINGLE JUDGE STEINER: So I would like to welcome in this case
12 Mr. Mathieu Ngudjolo -- oh, sorry. I would ask first the court officer
13 to call the case.

14 COURT OFFICER (interpretation): Situation in the Democratic
15 Republic of Congo, the Prosecutor versus Germain Katanga and Mathieu
16 Ngudjolo Chui, ICC-01/04-01/07.

17 SINGLE JUDGE STEINER: Thank you very much.

18 So again I would like to welcome Mr. Mathieu Ngudjolo Chui, both
19 Defence teams, the Prosecution teams, and I would like to ask first the
20 Prosecution and then both Defence teams to introduce themselves.

21 MR. MACDONALD (interpretation): Good afternoon, your Honour.
22 Eric Macdonald of the Office of the Prosecutor. I shall be assisted
23 today by Anneliek Hendriks, Dianne Luping, and Ibrahim Yillah.

24 SINGLE JUDGE STEINER: The Defence of Mr. Katanga.

25 MR. HOOPER: David Hooper, assisted by Sophie Menegon and

1 professor Goran Sluiter.

2 SINGLE JUDGE STEINER: Thank you. And the Defence of Mr. Mathieu
3 Ngudjolo Chui.

4 MR. KILENDA (interpretation): Thank you, your Honour. As you
5 see I'm delighted to tell you that since last -- as of last week my team
6 is complete. To my right we have Ms. Maryse Alie, who is a barrister
7 before the Brussels bar, and to my left, Aurelie Roche, who is my case
8 manager.

9 SINGLE JUDGE STEINER: Thank you very much.

10 And the representatives of the Registry.

11 MR. VAATAINEN: Good afternoon, your Honour. My name is Simo
12 Vaatainen. I'm here as officer in charge of regional of court services,
13 and with me, Mr. Anders Backman, Chief Custody Officer; Esteban Peralta
14 Losilla, Chief, Defence Support Section; Ms. Alvaro Flores Diaz, an
15 assistant from ICT; and Bibiana Becerra Suarez, who is the Legal
16 Coordinator of the Division of Court Services.

17 SINGLE JUDGE STEINER: Thank you very much.

18 As provided for in the decision on the Defence request for leave
19 to appeal the decision of the Single Judge concerning languages,
20 Mr. Germain Katanga would be provided at this hearing, in accordance with
21 Regulation 61(1)(D) with liaison interpretation. Mr. Katanga is not
22 present, but anyway I would like for -- just for the record to make it
23 sure that his liaison interpretation is being provided at this hearing,
24 and also that this same liaison interpretation is available to Mr.
25 Ngudjolo in case he wishes to follow the hearing through Lingala liaison

1 interpretation.

2 So first of all, I would like to emphasise that this hearing will
3 focus on the process of disclosure and inspection and on the process of
4 communication of evidence on which the parties intend to rely at the
5 Confirmation Hearing. This hearing is also -- has also the purpose of
6 listening to both Defence counsels on issues related to the composition
7 of Defence teams, their access to information, materials and evidence,
8 their training on Ringtail and other tools that are necessary for the
9 preparation of the defence for the Confirmation Hearing, and any other
10 issues related to such preparation for the Confirmation Hearing.

11 The Single Judge would also like to inform both Defence teams
12 that immediately after this Status Conference is concluded, the Single
13 Judge will hold an ex parte hearing with the Prosecution and Victims and
14 Witnesses Unit in relation to issues concerning protection of Prosecution
15 witnesses.

16 Today is the first hearing since the Chamber has joined the case
17 of the Prosecution and Germain Katanga and the Prosecution against
18 Mathieu Ngudjolo Chui. I'm aware of the applications for leave to appeal
19 by the Defence of Mathieu Ngudjolo on the decision on the joinder and on
20 the second decision on redactions, as well as pending applications
21 pursuant to Rule 81(2) and (4) filed on 21 January 2008. The Chamber and
22 the Single Judge will be ruling on these applications in due time and
23 these matters will therefore not be discussed at this hearing.

24 Today is not only the first hearing in the joint case but also
25 the first hearing with Mr. Kilenda as the permanent counsel for Mathieu

1 Ngudjolo. Thus, before focusing our attention on the disclosure process,
2 I would like, as a preliminary matter, to address some logistical issues
3 concerning Mr. Mathieu Ngudjolo Chui and his Defence team. Besides, at
4 the end of the hearing, the parties will be given an opportunity to call
5 the attention of the Single Judge on any other issue.

6 Is this way of proceeding agreeable to the participants of this
7 hearing?

8 So before I start with some preliminary matters, I just would
9 like to inform you that Mr. Katanga's jacket is on the way from the
10 prison and the security will give it to Mr. Katanga as soon as the jacket
11 arrives at the court. So the problem of the jacket, I think it is
12 solved.

13 So, first I would like as a preliminary matter to talk about
14 computer access by Mr. Mathieu Ngudjolo Chui and the Defence team.
15 Maitre Kilenda, my colleagues and I are aware that you are undertaking an
16 assignment in the International Criminal Court which involves new
17 procedures that you may not be very familiar with. Nevertheless, for
18 your information, the Chamber and the Single Judge have insisted that as
19 soon as you were appointed, and of course having regard to the full
20 respect for the rights of Mr. Mathieu Ngudjolo, under Article 67(1) of
21 the Statute, the Registry should ensure that the Defence team will be
22 fully operational and will have the necessary access to data bases and
23 training in software as soon as practicable, and therefore you're very
24 welcome to this court, Maitre Kilenda.

25 So starting in this hearing I would like from the representatives

1 of the Registrar, if they could give the Single Judge an idea on how long
2 it will take to have the Defence team of Mr. Mathieu Ngudjolo Chui with
3 all structure and all needs in terms of personal computer IT training, et
4 cetera, and also to give us a brief explanation on the arrangements for
5 travel to the field in the case the Defence so wishes, how long it would
6 take to have everything arranged for this eventual travel to the Congo.
7 So as a preliminary matter I would like to listen from the Registry about
8 these arrangements.

9 MR. VAATAINEN: Your Honour, with your permission Mr. Alvaro Diaz
10 will address the IT aspects and Mr. Esteban Peralta Losilla will talk
11 about the travel arrangements to the field.

12 MR. DIAZ (interpretation): Your Honour, we have provided the
13 necessary IT equipment to Mr. Ngudjolo's team. We have also provided
14 them with the accounts they need for access to the network and the shared
15 space. We have set up or provided access to evidence analysis tool,
16 Ringtail, so they can begin to receive material. This process should be
17 complete by the end of this week. We've already offered them the
18 opportunity for training, and we expect that that will -- training will
19 take place in the coming days as and when the Defence team is available.

20 SINGLE JUDGE STEINER: Thank you. Mr. Kilenda, would you like to
21 add anything to this explanation from Registry in relation to IT
22 technology?

23 MR. KILENDA (interpretation): Yes, your Honour, thank you. As
24 you said yourself and as the Registry has said, our team has just been
25 put together. There are a number of things which are not yet in place.

1 We do not yet have Ringtail so we are not in a position to read the
2 incriminating evidence and we have not yet had our training. Currently
3 only one member of our team, the case manager, has an operational log-in.
4 We are satisfied to hear from the Registry that all necessary steps are
5 being taken to ensure that our team can be up and running and working as
6 it sees fit in due course.

7 We would like to take this opportunity to thank you and the
8 Registry for your assistance. We hope that in the coming days we will
9 indeed receive training and that we will then be able to work fully to
10 defend the interests of our client. Thank you, your Honour.

11 SINGLE JUDGE STEINER: Thank you.

12 I'm informed that Mr. Katanga is waiting for permission to enter
13 the courtroom, so I would like to ask the court officers to introduce
14 Mr. Katanga in to the courtroom.

15 (Mr. Katanga enters the courtroom)

16 SINGLE JUDGE STEINER: So I would like to welcome Mr. Germain
17 Katanga into this courtroom, and I would like again to inform Mr. Katanga
18 that according to Regulation 61(1)(D) of the regulations, he is being
19 provided with liaison interpretation on channel 6 with that -- I think
20 Defence counsel could be sure that Mr. Katanga is informed that this
21 liaison interpretation is being provided. Thank you.

22 Maitre Kilenda, just in order to make it clear, you mentioned
23 that you didn't have access to any of the incriminating evidence until
24 now. So is that correct or you didn't have access through Ringtail but
25 you have hard copies or ...

1 MR. KILENDA (interpretation): We don't have access to Ringtail.

2 SINGLE JUDGE STEINER: In relation to the incriminating evidence
3 that has been disclosed, you didn't receive hard copies?

4 MR. KILENDA (interpretation): Some time ago we received a number
5 of documents on CD-ROM in relation to the proceedings against my client
6 in the Democratic Republic of the Congo. To my knowledge, we don't yet
7 have the Katanga record on paper.

8 SINGLE JUDGE STEINER: Could the representative of the Registry
9 inform about why at least a hard copy of the evidence already disclosed
10 has not been given to Mr. Ngudjolo's Defence.

11 MR. VAATAINEN: Your Honour, we would like to ask the court
12 officer to explain this because they are aware of these facts.

13 COURT OFFICER (interpretation): Thank you, your Honour.

14 In relation to the decision establishing a calendar in the case
15 against Germain Katanga and Mathieu Ngudjolo Chui, that decision was
16 implemented.

17 Turning now to access through Ringtail, incriminating evidence is
18 filed by the Office of the Prosecutor with the Court Management Section
19 which simply uploads it into the Ringtail system. That system has been
20 configured based on the decisions taken in the case of the Prosecutor
21 versus Thomas Lubanga. The Prosecutor files original and electronic
22 documents with the section and signs the chain of custody form.
23 Thereafter, the CMS is the custodian and the documents are archived in
24 the archives of the Registry and the Court Management Section uploads the
25 documents in the Ringtail system. When that happens the Office of the

1 Prosecutor is informed. After the uploading, it is the Office of the
2 Prosecutor who decides who has access to those documents through
3 Ringtail.

4 If you so wish, I can inform you of which documents have been
5 filed by the Prosecutor and uploaded by our section into the Ringtail
6 system. That said, for the time being, no paper versions have been
7 created of the incriminating evidence and distributed by CMS.

8 SINGLE JUDGE STEINER: Thank you very much.

9 So just before we go ahead with the other issues, I just once
10 again would like to confirm, because I have here the Prosecution filing
11 dated the 20th March, 2008, in which the Prosecution informs they
12 disclosed to the Defence of Mathieu Ngudjolo Chui all the material
13 disclosed to date to Mr. Germain Katanga, pursuant to Articles 61(3)(B)
14 and 67(2) of the Statute and Rule 77 of the Rules of Procedure and
15 Evidence, in accordance with the order contained in the decision
16 establishing a calendar in the case against Germain Katanga, Mathieu
17 Ngudjolo Chui. And then we have as annexes some packages 1 to 6 related
18 to incriminating evidence, pages 1 and 2 related to potentially
19 exculpatory evidence, and packages 1 to 7 related to Rule 77 documents.

20 I must understand that all these documents were disclosed in the
21 Ringtail format and therefore the Defence of Mathieu Ngudjolo has no
22 access to any of these documents to date; is that correct?

23 MR. KILENDA (interpretation): We received CDs and we hope to
24 read them, but Ringtail is not yet up and running. Indeed, in line with
25 Rule 77, we can read the documents on paper.

1 SINGLE JUDGE STEINER: Mr. Macdonald, do you have any comments in
2 relation to this filing in compliance with the order of the Chamber?
3 Just to clarify.

4 MR. MACDONALD: Yes. Like mentioned in filing number 337, your
5 Honour, we, and I met personally with my colleague Mr. Kilenda, informing
6 him and explaining to him that we were disclosing under the -- following
7 the e-court protocol, trying to summarise briefly what the e-court
8 protocol was all about, and informing him that obviously these documents
9 were unfortunately only readable with the use of Ringtail, although Rule
10 77 materials are in PDF format, so they can be read. So at least the
11 Rule 77 documents, at least the Defence have access to.

12 I understand that Mr. Kilenda, I asked him, Do you have access to
13 Ringtail, and he said, No, not at the moment. It's being worked on and
14 it should happen in the next two weeks. And the conversation was left at
15 that, your Honour.

16 The only I can say: Everything that has been disclosed to
17 Mr. Katanga has been disclosed now to the Defence team of Mr. Ngudjolo
18 and also some documents that were disclosed to Mr. Ngudjolo are now --
19 were disclosed to the Katanga Defence team, and it is now our policy to
20 disclose the same material obviously since it's a joint case, even though
21 some material may be more relevant to Mr. Katanga or Mr. Ngudjolo,
22 depending on their requests.

23 SINGLE JUDGE STEINER: Thank you very much. So the Registry can
24 ensure that by the end of this week, not only the Ringtail programme will
25 be installed but the training will be completed for the Defence of

1 Mr. Ngudjolo to have access to all materials already disclosed?

2 MR. DIAZ: Yes, your Honour. By the end of this week the
3 Ringtail system will be in place and we will provide the training as
4 necessary.

5 SINGLE JUDGE STEINER: Thank you very much.

6 In our last hearing where only the Defence for Mr. Germain
7 Katanga was present, we discussed the installation of a computer with the
8 Ringtail programme in the Detention Centre in order for Germain Katanga
9 to have access to the evidence and materials disclosed between the
10 parties for the purpose of the Confirmation Hearing, the connection of
11 such a computer with the Office of Public Counsel for the Defence in
12 order to avoid using CDs or pin -- pin drives, the gradual training for
13 Germain Katanga in basic computer software, such as windows and most
14 complex software such as Ringtail, and the availability of a printer for
15 Germain Katanga in the Detention Unit. So I would like to have an update
16 on these issues in relation to Mr. Katanga, first by his Defence counsel
17 and then by the Registry and then also for the Registry to inform the
18 Chamber of the same -- the same issues related to Mr. Ngudjolo.

19 Mr. Hooper.

20 MR. HOOPER: Yes. The system has I think just recently been put
21 into effect as a consequence, first of all, of the hardware and the
22 relevant software being installed but also, as I understand it, on
23 Mr. Katanga attaining a sufficient standard, albeit as a debutante, in
24 terms of accessing the material. That's underway.

25 In terms of training, he receives training now several times a

1 week and his IT instructor informed me when I asked him that he was
2 learning it quicker than I was. But of course it's just at the beginning
3 of a whole new form of communication for him and it does take -- it does
4 take time.

5 One factor that I think could be usefully addressed would be the
6 provision to Mr. Katanga of some form of typing -- software typing
7 instruction which we're all familiar with exists, and if one could be
8 obtained suitable for a French keyboard which he's effectively obliged of
9 course to use, that would be a useful asset and something that he could
10 contribute some time for -- towards over the next month or two.

11 So that's my suggestion in terms of perhaps advancing his skills,
12 not just in understanding access but also being able to actually utilise
13 the typing aspect, as it were, at the facility. Otherwise, I don't think
14 we've met with any difficulties. As I say, we're right at the early
15 stages of utilising it so we'll keep the Court informed appropriately.

16 SINGLE JUDGE STEINER: Thank you very much.

17 The representative of the Registry on such matters, not only in
18 relation to Mr. Katanga but advancing the -- providing Mr. Ngudjolo with
19 the same facilities.

20 MR. DIAZ: So, as Mr. Hooper says, the setup for the Detention
21 Centre and the configuration of Ringtail for Mr. Katanga has been
22 completed, and we hope to have the same setup in place two weeks from now
23 for Mr. Ngudjolo. That means the hardware and software that is required
24 and the connection link to the cell in the Detention Centre.

25 This said, Mr. Ngudjolo has been offered the same basic training

1 I think in the detention centre, and once he has obtained a sufficient
2 level we can proceed with the e-court application training as well.

3 SINGLE JUDGE STEINER: And about the suggestion made by
4 Mr. Hooper?

5 MR. DIAZ: Your Honour, we will investigate if such a software is
6 available in the Court, and if not we can try to procure it for the --
7 for Mr. Katanga.

8 SINGLE JUDGE STEINER: Thank you very much. Now, in relation to
9 travels of the Defence teams to the DRC, I would like to know from both
10 Defence teams whether and when they are thinking to undertake missions to
11 the field. I would like to recall the hearing of 21st of January where
12 the Defence for Germain Katanga has informed the Single Judge that the
13 Defence was trying to get persons, investigators, to discuss with
14 Mr. Katanga and were planning to go to DRC. So I would like to have an
15 update on Mr. -- the Defence team of Mr. Katanga and if the Defence team
16 of Mr. Ngudjolo Chui can inform the Chamber about whether and when it
17 would intend to go to the field. And just reminding that these
18 arrangements for this kind of travel sometimes take -- take long time.
19 Therefore, the Defence -- if one of the Defence teams is planning to go
20 to the field, the arrangements should start with the Registry right now.

21 So first I would like to listen from Mr. Katanga's team and then
22 from Mr. Ngudjolo's team.

23 MR. HOOPER: Yes. First of all, in terms of investigator, we
24 have in fact not an investigator but we do have someone I think who's
25 nominated as a person of resource who's assisting us. My legal

1 assistant, Caroline Buisman, has been in the Congo for the past two weeks
2 and returns from Ituri via Kinshasa tomorrow, or late tomorrow. Because
3 of the limited funds available for investigations and the relative, as it
4 were, long haul to go to trial and into trial, we're being at the moment
5 somewhat cautious in terms of investigations. We've taken the view that
6 though it's very worthwhile at least one member of the team going there
7 pre-confirmation, it probably makes better sense to perhaps expend
8 greater energies after any confirmation process and when the charges are
9 clearly defined and the evidence is perhaps clearer to anticipate.

10 But we've met with no particular difficulties, and I understand
11 that certainly as far as the people of Ituri are concerned, they've been
12 extremely helpful and accommodating and we don't at the moment foresee
13 any particular difficulties, at least in the physical aspects of going to
14 Ituri and visiting it. We hope that the issue of budget, because we feel
15 it will be placed under strain in due course - certainly from my
16 experience in other investigations in other cases in Africa - and we hope
17 that any issues that do arise in respect of that will be attractive to
18 the Court in terms of the assistance we might be asking for. So thank
19 you.

20 SINGLE JUDGE STEINER: Maitre Kilenda.

21 MR. KILENDA (interpretation): Thank you, your Honour.

22 I must admit that the members of my team and I are yet to discuss
23 the possibility of conducting field investigations in the DRC. To come
24 to such a decision we must peruse the documents available here in The
25 Hague at this time, irrespective of our client's case record, discuss

1 with him, and then see what material we can gather in the DRC.

2 For the time being I can say that it would be possible to carry
3 out such a mission to Kinshasa, but we want to do so usefully. Since we
4 have not yet studied the entire case record here in The Hague, we do not
5 see the usefulness of considering in the short term or immediately after
6 the Confirmation Hearing, if there will be such confirmation, the
7 possibility of conducting such a mission.

8 With regard to an investigator, we are yet to appoint one. But I
9 can already say that our client wishes to have an investigator who will
10 be based in Bunia itself. He has proposed a name to us. In the next 48
11 hours, my case manager will contact the competent services of the Court
12 to find out more about the possibility of appointing such an investigator
13 who is not currently on the list of investigators of the Court.

14 So, in summary, we're not excluding outright a trip to the
15 Congo. However, we shall consider that and discuss this with the members
16 of the team, and at the appropriate moment you will be informed. Thank
17 you.

18 SINGLE JUDGE STEINER: Thank you.

19 Has the Registry something to add to these issues related to
20 possible mission to the field?

21 MR. LOSILLA: Your Honour, the Registry, and in particular the
22 Defence Support Section, who has already explained to each counsel and in
23 particular in the document that they received upon their appointment the
24 necessary steps to proceed to travels to the field, it's ready to set up
25 any visit and organise any visit in coordination with the team and the

1 relevant sections of the Court as soon as we receive the request.

2 SINGLE JUDGE STEINER: Thank you very much.

3 So I already noticed that the Defence teams, both Defence teams,
4 have more members, and I would like to know first from the Defence team
5 of Mr. Katanga and then from the Defence team of Mr. Ngudjolo whether
6 they still wish to appoint any further assistants, investigators,
7 interns, for the Defence and under which conditions.

8 Mr. Hooper.

9 MR. HOOPER: Well, certainly we hope to increase our effective
10 capacity by taking on and having appointed further persons to the team.
11 At the moment we are in a pre-confirmation stage. It's taken longer than
12 we had originally anticipated because, Madam Judge, you'll well recall
13 that our Confirmation Hearing was originally to take place at the
14 beginning of February, at the beginning of March.

15 And one particular aspect is that we have Professor Goran Sluiter
16 assisting us, and we regard it as both a great -- we're very grateful for
17 his experience and advice, particularly as we're operating, as you said
18 at the outset. In respect of Maitre Kilenda and that is that we are
19 operating in a new institution. We're all, to a great extent, feeling
20 our way, and of course the Defence have had very much less opportunity to
21 begin to feel their way than those who are our opponents in the
22 Prosecution.

23 It's therefore, we feel, a matter of regret that we are limited
24 in what we would consider to be reasonable resources - and this is not
25 said, may I say, in any spirit of criticism because we also recognise

1 that there are financial limits imposed here - but sometimes perhaps they
2 cut rather too deeply into those assets available to the Defence. Of
3 course we would say that, wouldn't we?

4 For example, Professor Sluiter, who is, we consider, a great
5 asset to us, and we hope in fact to the Court as well in due course, is
6 assisting us and contributing a considerable amount to our thinking, but
7 he has to do so on the basis that he generously has offered us at the
8 moment of being a pro bono member of this team. And it's a great regret
9 to us that no way seems to be available to place him on a proper, if I
10 may say, professional basis within the team.

11 We've held our silence on this, really, but as your Honour has
12 kindly invited us to mention areas such as this, we mention it now. And
13 of course we're now in a position where we have a Confirmation Hearing in
14 two months' time, we have a case that is to some extent further burdened
15 by another person being co-charged with us, and we are still of course in
16 a state of advancing jurisprudence within this court and finding our way,
17 as others are. So we hope that the Registry, and perhaps I don't know if
18 it's appropriate, but perhaps with some encouragement we hope from the
19 Court might be able to look more benignly on our application to have
20 Professor Sluiter put on, as I say, a proper and professional footing
21 within our team. So that is the only concern I think I can raise at the
22 moment.

23 In terms of future appointment of persons, that has to wait of
24 course until we move under the system that we're working within to the
25 next stage post -- as and when we do, of post confirmation. Thank you.

1 SINGLE JUDGE STEINER: Thank you, Mr. Hooper. Before I give the
2 floor to the Defence for Mr. Ngudjolo, I would like to listen from the
3 Registry in relation to what has been said by Mr. Hooper, the appointment
4 of Mr. Professor Sluiter as a member -- official member of that team.

5 MR. LOSILLA: Yes, your Honour. Indeed, Mr. Hooper announced in
6 his filing number 233 that he was going to apply to the Registry for
7 additional resources, which he did by his letter of 20th of February.
8 The day after, on the 21st of February, I had a meeting with Mr. Hooper
9 in which I explained that the Registry was not in a position to take a
10 decision because he didn't have enough information from the letter he had
11 submitted, and I suggested to him that he put a more detailed request to
12 us. I even suggested that he use the new -- the adjustments of the legal
13 aid system approved last year where a number of objective factors are
14 defined to base a request of additional resources and that the Registry
15 grant such additional resources. I confirmed that stance of the Registry
16 in my letter of 5th of March, 2008, and we are waiting for Mr. Hooper to
17 react to those suggestions.

18 SINGLE JUDGE STEINER: Thank you very much.

19 Mr. Hooper, would you like to add something?

20 MR. HOOPER: No. I'm gratified with what I take to be perhaps an
21 optimistic note that's been struck there, and I will pursue it. Thank
22 you very much.

23 SINGLE JUDGE STEINER: Thank you.

24 Maitre Kilenda, you have the floor.

25 MR. KILENDA (interpretation): Thank you, your Honour. For the

1 time being my team and I do not consider -- are not considering the
2 appointment of another legal assistant or case manager, for instance, to
3 come -- to add to our team. As I said at the beginning of this hearing,
4 my team has just been formed and I must admit that I am satisfied with
5 the work of the two members -- other members of my team. This, however,
6 does not mean that in the future we will not consider increasing our team
7 in light of some of the limits that we might encounter in the course of
8 the work that we will be doing.

9 I would just like to inform you that in the past days I asked my
10 case manager to consider whether it was possible for us to contract the
11 services of an intern who might, in one way or another, provide us with
12 some assistance.

13 SINGLE JUDGE STEINER: Thank you very much.

14 The Registry has something to add to these comments?

15 MR. LOSILLA: Yes, your Honour, we have received today this
16 request from the case manager of the Ngudjolo team for the assistance of
17 an intern, and we are looking into it.

18 SINGLE JUDGE STEINER: And in your view, how long would it take
19 for the Registry to give a positive answer to Maitre Kilenda.

20 MR. LOSILLA: Your Honour, that will depend on the available
21 resources inside the internship programme of the Registry. I have no
22 information at this point, and I will indeed inform the Chamber as soon
23 as we have this information.

24 SINGLE JUDGE STEINER: I would very much appreciate that. Thank
25 you.

1 So now I would like to advance on disclosure issues. So first I
2 have a few remarks on this issue before I give the floor to the
3 Prosecution to make its report on disclosure.

4 So the first disclosure notes in the joint case was filed as per
5 the decision establishing the calendar in the joint case, and therefore
6 the system of disclosure between the Prosecution and both Defence is in
7 motion. I would like for this hearing to clarify some points in this
8 regard, especially for Mr. Kilenda, Maitre Kilenda, so as to start
9 operating with a clear disclosure system from now on which is a system
10 that differs a little bit of the national systems on disclosure.

11 This is important because the starting date of the Confirmation
12 Hearing has been scheduled for the 21st of May, 2008, and the Chamber
13 does not intend to postpone such a date unless unforeseen and exceptional
14 circumstances arise in the coming weeks.

15 So most for the knowledge of Maitre Kilenda and because this is
16 his first Status Conference as permanent counsel for Mr. Ngudjolo Chui, I
17 would like to inform that the Single Judge intends to follow the
18 practices on disclosure that were followed for the purpose of the
19 Confirmation Hearing in the case of the Prosecution against Mr. Thomas
20 Lubanga Dyilo.

21 For this reason I would like to bring to the attention,
22 especially to Mr. Kilenda, the decision of the system of disclosure
23 issued by the Single Judge on 15 May 2006, the decision on the general
24 principles concerning disclosure matters issued on 19 May 2006, and the
25 decision of the Appeals Chamber of 13 October 2006 that relates to the

1 latter.

2 Also, the transcripts of the hearing held on 23 June 2006 are
3 relevant because there a system of pre-inspection and inspection under
4 Rule 77 of the Rules is set out.

5 Finally, the Single Judge would like to inform Mr. Kilenda that
6 the draft protocol on the presentation of evidence used in the
7 confirmation of the charges in the case of Prosecution versus Thomas
8 Lubanga Dyilo will also be used in the present proceedings. Therefore, I
9 would strongly recommend to Maitre Kilenda to have access as soon as
10 possible to all these previous decisions and transcripts in order to be
11 acquainted with the system on disclosure and inspection that is already
12 in place.

13 As already said, the starting date of the Confirmation Hearing
14 has been set for the 21st of May, 2008. Hence, according to Rule 121,
15 paragraph 3, of the Rules, the Defence must get access to all evidence on
16 which the Prosecution intends to rely at the Confirmation Hearing 30 days
17 in advance. That means by 21st April 2008. Then, according to Rule
18 121(6) the Defence will have until 15 days prior to the Confirmation
19 Hearing to file its list of evidence.

20 We will have time to discuss later on questions related to the
21 calendar for the filing of the Defence list of evidence and of the
22 Defence's requests, if any, for authorisation of redactions pursuant to
23 Rule 81 of the Rules in the evidence on which the Defence, both Defence
24 teams, intends to rely at the Confirmation Hearing.

25 With this I conclude these preliminary remarks. And now I would

1 like to ask the Prosecution first whether it has any comments in relation
2 to these aspects of the preliminary remarks and then to give an overview
3 of how the process of disclosure has taken place since the last Status
4 Conference on 21st January 2008 and more specifically since the decision
5 establishing a calendar in the joint case, and how the Prosecution
6 envisages the process of disclosure until the next Status Conference to
7 be held in two weeks -- to be held in two weeks.

8 So let's start with the report on the disclosure of evidence on
9 which the Prosecution intends to rely at the Confirmation Hearing. So
10 the Prosecution has the floor. I would like the Prosecution to start
11 talking about the statements of witnesses on which the Prosecution
12 intends to rely at the Confirmation Hearing, pursuant to Rule 76, and
13 inspection of other incriminating evidence, pursuant to Rule 77. The
14 Prosecution has the floor.

15 MR. MACDONALD: Thank you, your Honour.

16 All the -- I think it's a two-step approach to answer your first
17 question on statements the Prosecution intends to rely on for purposes of
18 the Confirmation Hearing. All these statements have been submitted to
19 the Single Judge for proposed redactions, and as the redactions -- as the
20 decision on the proposed redactions, namely, the first, second, and third
21 decision so far are being rendered, then the statements are being
22 disclosed to the Defence. Like I said earlier, so far everything that
23 has been disclosed to Mr. Katanga has been disclosed to Mr. Ngudjolo on
24 the 20th of March.

25 Now, in terms of Rule 77, again, following your decision on

1 certain documents relating to Rule 77, namely, Witness 12, for instance,
2 or other witnesses, we are disclosing -- Witness 4 of the arrest warrant
3 application, we are and have disclosed these statements. Of course our
4 disclosure goes beyond just the statements. It goes also to documents.
5 Again, documents that needed redactions for the purposes of the
6 Confirmation Hearing, as said in the case against Mr. Katanga, were
7 submitted for redactions in January. Again, as your decisions will be
8 issued on these, they will be disclosed to both Defence.

9 There are some documents that were of public nature or didn't
10 need any redactions that had been disclosed to Mr. Katanga and
11 Mr. Ngudjolo. I'm talking about documents again that we intend to rely
12 on for the purposes of the Confirmation Hearing.

13 Now, beyond these documents, today we're filing -- we're making a
14 filing, obviously for one additional statement, one additional document,
15 and the Single Judge will be able to appreciate why we're doing that, by
16 the -- by reading the document or the statement itself. But -- and also
17 a revision of one or two other documents because of now the new
18 situation, without going into details at this public -- in this public
19 hearing, the new situation regarding 166 and 233, this has impact on
20 other statements and lifting of maybe redactions to other statements. So
21 we're addressing those issues in our filing of day, the 1st of April, the
22 deadline that we had to submit any new statements or additional documents
23 the Prosecution intends to rely on. So it's very limited documents, your
24 Honour.

25 Beyond that, we were also -- we are also and making reports, and

1 we've made these reports, obviously filed these reports with the Court,
2 on a confidential basis because they relate to material or evidence that
3 will be subject to admissibility at confirmation, but we are also
4 disclosing these documents to the Defence.

5 Now, in the next two weeks, this week we intend to disclose
6 approximately 430 documents to the Defence, to both Defence teams, that
7 are either of an incrim, PEX0, or Rule 77 nature. We're expecting around
8 270 documents of incriminatory nature that we don't intend to rely on for
9 the purposes of the Confirmation Hearing necessarily, and also Rule 77,
10 160 documents, and are a few -- just a few PEX0 documents.

11 SINGLE JUDGE STEINER: I'm sorry to interrupt you. Please
12 translate PEX0, namely to the Defence of Mr. Ngudjolo.

13 MR. MACDONALD: I'm very sorry. PEX0, within the Office of the
14 Prosecutor, relates to potentially exonerating evidence. So for short,
15 "PEX0." So yes, sorry.

16 What I want to indicate in relation to potentially exonerating
17 evidence is that even though we're disclosing incriminatory material or
18 Rule 77 may sometimes contain also what may be understood by the Defence
19 as potentially exonerating evidence. So we are -- the purely potentially
20 exonerating documents, there are not that many. I mean, quite more often
21 than none, documents contain either incriminatory or potentially
22 exonerating information or are of Rule 77 nature with potentially
23 exonerating information.

24 There's one question I think that needs to be addressed, and I'm
25 just flagging it here, which is something maybe that should be discussed

1 more at length obviously into a closed-session setting. It relates to
2 documents that we want to disclose either under the category of
3 potentially exonerating or Rule 77 that need redactions, that we believe,
4 that the Prosecution believes, need redaction. These are documents that
5 we don't intend to rely on for the purposes of the Confirmation Hearing
6 but that we would like to disclose to the Defence, but we are worried
7 about protecting some information within these statements.

8 I understand the Trial Chamber has a different approach. The
9 Trial Chamber in Lubanga -- has maybe a different approach than the
10 approach that was followed in Lubanga. Maybe, as a way, and I'm just
11 putting this forward, the Prosecution, be it for statements or
12 documents -- I'll start with documents. The Prosecution could on its own
13 propose redactions and then disclose them to the Defence without going
14 through the acceptance of the Court in that process. I'm saying this in
15 the sense that in some national systems that's the way the procedure
16 works.

17 Now, in terms of statements, obviously this is more of a tricky
18 situation. What the Prosecution would like to do when it can -- it's
19 statements we don't intend to rely on. It's statements for whom --
20 witnesses we don't intend to call, but may have, like I mentioned, Rule
21 77 or PEX0 value, potentially exonerating value. What we will be
22 submitting are summaries containing the potentially exonerating
23 information or Rule 77 information to be disclosed to the Defence. So
24 these statements have to -- or summaries have to -- there's, again, the
25 option. We can prepare them, disclose them to the Defence, or we can of

1 course go via yourself, your Honour, for your approval of these summaries
2 so then they can be disclosed to the Defence.

3 Now, again, just to make myself clear, these are not witnesses
4 that we intend to rely on. These are not witnesses that we intend to
5 call. These -- this is information we believe should be disclosed to the
6 Defence under 67(1)(A) -- sorry, 67(1) or Rule 77.

7 There is another matter I would like to address which was touched
8 upon by yourself, your Honour, in your preliminary remarks. The question
9 of the e-court protocol. As mentioned, it's a draft protocol which has
10 evolved, again before the Trial Chamber, and the Trial Chamber now has
11 maybe a different approach, mainly to subjective metadata, contrary to
12 objective metadata, and also in relation to Rule 77 documents. The
13 current practice before the Pre-Trial Chamber is that Rule 77 material do
14 not come with the Ringtail metadata. They are simply PDFed in a PDF
15 format and disclosed to the Defence.

16 Now, before the Trial Chamber in the Lubanga case, this protocol,
17 Rule 77 documents now come with the metadata available in Ringtail and
18 are searchable via the Ringtail system. The e-court template in terms of
19 disclosure is still limited to incriminatory material, meaning linking it
20 to either the document containing the charges or the charging document
21 because it's before the Trial Chamber.

22 Now, in relation to this last point, I just want to indicate
23 that, first of all, we have not -- I mean, since the 20th of March, we
24 haven't disclosed new documents, apart from the Rule 77 documents to
25 Mr. Ngudjolo. But in relation to incriminatory material, we have to link

1 it, according to the protocol, to the document containing the charges.
2 This document at this stage is not available for the joint case, so what
3 we propose to do is to go back to the arrest warrants, just like it was
4 done in the case of Mr. Katanga before the document containing charges
5 was available, meaning we'll link the information to the e-court template
6 to these pages of the arrest warrants of both -- in both cases. These --
7 I've again verified. These warrants are identical, except starting maybe
8 at page 5 or 6 -- first of all, they are both eight pages. They follow
9 the same structure. The same information is there. It's just that one
10 is for Mr. Katanga, the other is for Mr. Ngudjolo. So in the -- the
11 paragraphs are the same. We can link the documents in the same way to
12 the same pages.

13 When there would be a difference, meaning information more
14 relevant to Mr. Katanga or Ngudjolo in the incriminatory -- in this
15 incriminatory document, there's a free-text field that we will populate,
16 indicating that, you know, this refers to, let's say, page 7 of Mathieu
17 Ngudjolo's arrest warrant so that both parties will know to which -- the
18 relevance of this document in relation to both arrest warrants.

19 Once the document containing the charges is filed, your Honour,
20 obviously disclosure obligations continue, then we will link any
21 incriminatory material to the new document containing the charges. That
22 is to be filed at the latest on the 21st of April.

23 In very brief summary, this is what I have to report to the
24 Chamber on disclosure.

25 SINGLE JUDGE STEINER: Thank you very much. There are many

1 issues that still need to be discussed, starting by the disclosure to the
2 Defence of documents redacted by the Prosecution without authorisation by
3 the Chamber, that measure that has been already denied in the Lubanga
4 case. So I think it would be maybe appropriate for the Prosecution, if
5 the Prosecution intends to disclose redacted materials, to justify before
6 the Chamber the change of approach, because this practice has already
7 been rejected in the Lubanga case.

8 In relation to the summaries, the Chamber is about to rule on the
9 first requests for summaries. As decided by the Appeals Chamber, the
10 Prosecution doesn't need authorisation of the Chamber of course to
11 disclose summaries instead of evidence itself, but the Prosecution needs
12 authorisation of the Chamber in order not to disclose the identity of the
13 person from which summaries were prepared. So in case the Prosecution
14 intends to disclose summaries of statements, the Prosecution must comply
15 with the deadlines given in order to request redaction or non-disclosure
16 of the identity of the persons that gave the statements and for which
17 only summaries the Prosecution intends to present to disclose only
18 summaries, in case of anonymity.

19 MR. MACDONALD: Yes, if you'll permit me, on this last point,
20 your Honour, I'm not referring to witnesses, witness statements that the
21 Prosecution intends to rely on for the purposes of the Confirmation
22 Hearing. That, we're done today, our final filing on this, adding one.
23 I'm referring to disclosure, pure disclosure of either Rule 77 or
24 potentially exonerating information.

25 Now, in the course of our investigation, obviously we've

1 interviewed a number of witnesses and we have also to be objective in
2 conducting the investigation. So in that course of action we meet some
3 witnesses. Now, this potentially exonerating information we want to
4 disclose to the Defence, but we want to protect the identity of these
5 witnesses. For us at this stage what is important is for the Defence to
6 have the information. Once the Defence has the information, this may be
7 relevant to their case or not. That's for them to decide. Of course, we
8 presume based on the general obligations that we have that this
9 information may be potentially exonerating to our case theory or
10 according to the rules.

11 So I just want to make sure that we're in the same --

12 SINGLE JUDGE STEINER: And that leads me to the same question in
13 relation to potentially exculpatory information, that in documents or
14 statements that are covered by confidentiality obligations. I would like
15 to know or have from the Prosecution an idea, if the Prosecution have an
16 idea, on how many documents the Prosecution intends to rely at the
17 Confirmation Hearing that are still covered by its confidentiality
18 obligations.

19 MR. MACDONALD: Now, in relation to Article 54(3)(E) material,
20 your Honour, again, the previous list of evidence that was produced in
21 the case of Mr. Katanga when he was alone is the same -- pretty much the
22 same list that we'll be relying on. A few documents may be added,
23 subtracted or -- but essentially it definitely should not be more than
24 what is already on that list. Those are -- I mean, there are no 54(3)
25 documents that the Prosecution intends to rely on that we're still

1 awaiting for lifting. That's number one.

2 Our process from the very beginning has been to, first of all, do
3 a first analysis of all the 54(3) material with an eye on potentially
4 exonerating information. So we did this in three tiers. First of all,
5 looking at potentially exonerating. So we've identified those as
6 potentially exonerating. Then there was a second review, looking at
7 these same documents with an incriminatory eye. And then also Rule 77.
8 And then when that was done, again we're reviewing the same documents to
9 see if our first review of incriminatory, potentially exonerating, Rule
10 77, was appropriate.

11 So our numbers -- this explains why our numbers at the moment may
12 fluctuate from one report to another, meaning that a document that was
13 only potentially exonerating in the first place is now being changed with
14 also -- well, it could be incriminatory but it contained potentially
15 exonerating, so we're requesting for lifting. At the moment we have
16 identified approximately 180 documents. We've sent these requests, but
17 unfortunately, as you know, the providers, be it sometimes NGOs, the
18 United Nations, the United Nations' agencies, or more specifically in our
19 case the MONUC mission in Congo, it takes a while for them to process
20 these requests. If I take the example of the UN, it goes to New York, it
21 stays in New York for a while, goes down the different floors, I presume,
22 in New York, then it's sent to the field, the MONUC mission in field in
23 Kinshasa, and then it's sent to sometimes afterwards maybe Bunia, and
24 then it goes back to New York and then it comes to us, and then sometimes
25 they come back with "lifting refused."

1 What we're looking also at the moment is when these documents are
2 refused, is the same type of information that is potentially exonerating
3 found elsewhere in other documents or available already in the case
4 before going back to the MONUC again, saying, Well, can you, maybe,
5 review your decision.

6 Now, NGOs are definitely of a more difficult situation. Most
7 often, more than none, they refuse simply to lift it because they're
8 still in the field, they're still active, they're still working, and
9 they're very much concerned with security issues.

10 So yes, so far when exonerating documents are lifted, they're
11 being disclosed to the Defence. So far there have not been that many.
12 In total I think we have four documents. Two have already -- of purely
13 potentially exonerating nature. We're disclosing them to the Defence.
14 Two have been disclosed and two more will be disclosed in the next
15 package that will be disclosed this week. So this is the state of the
16 54(3) material. The Prosecution is relying on 54(3) -- previously
17 54(3)(E) material that has been lifted in the past, but we're not waiting
18 for an answer for the list of evidence. We're satisfied with the
19 documents that we have.

20 SINGLE JUDGE STEINER: So just to remind the Prosecution that any
21 issue related to disclosure of materials under -- protected under Article
22 54(3)(E) should be brought to the attention of the Single Judge as soon
23 as possible in order not to cause any delay in the disclosure
24 proceedings.

25 I would like also from the Prosecution to give an overview to the

1 Single Judge in relation to inspection of materials obtained from or
2 belonging to Mr. Katanga or Mr. Ngudjolo Chui, pursuant to Rule 77. How
3 much progress, if any, has been made in relation to inspection, what
4 problems, if any, that is arising when implementing the system of
5 inspection. So just to complete the picture of the disclosure process.

6 MR. MACDONALD: Very briefly, there has not been any inspection
7 yet by either Defence teams. Again, why, your Honour? Because we're
8 providing pre-inspection in the form of a copy of the document in
9 question, and in one of the correspondence I had with the Katanga Defence
10 team, without going into any confidential matters, we've said, Please
11 have a look at the current documents and if ever you want to see the
12 originals, we'll be very happy to provide for the inspection in person of
13 these documents. So this is where we stand.

14 We do not have any -- falling under the category of Rule --
15 sorry, inspection, we don't have any tangible objects, your Honour, that
16 we intend to produce at the Confirmation Hearing. It's mainly paper
17 documents and these are provided in electronic copy.

18 SINGLE JUDGE STEINER: So on these issues related to disclosure,
19 I would like to listen first from Mr. Hooper and then from Maitre Kilenda
20 if they have any comments, doubts, or complaints.

21 MR. HOOPER: Well, for that much of that matter, I don't think
22 it's obviously for us to interfere with the protocols that have been
23 established between the Chamber and the Prosecution in respect of
24 disclosure. It seems to be operating relatively well from our end, if I
25 can put it like that.

1 In terms of this other issue, though, of self-redaction by the
2 Prosecutor, I'm a little unclear. It might be helpful to know how many
3 documents that relates to. This is the suggested adoption of a protocol
4 where material that isn't going to be used at confirmation is provided to
5 the Defence but is redacted first by the Prosecution under its own
6 criteria and served on us, presumably done to save a burden on the
7 Chamber, as I would interpret that, which I well understand not to be
8 inappropriate. But we're a bit concerned, particularly as it may relate
9 to, for example, exculpatory material. I mean, how many documents are we
10 talking about here? What are the numbers? I may have missed -- perhaps
11 Mr. Macdonald was good enough to give us those numbers. I may have
12 missed it in the flow. So if I can be reminded if that was the case, I
13 would be grateful.

14 MR. MACDONALD: Very preliminarily, your Honour, we're looking
15 at, including Rule 77 and potentially exonerating -- sorry, potentially
16 exonerating, seven; Rule 77, 40. Again, we are -- 40, in total 47. We
17 are not -- this is a suggestion. We are not proposing -- this is not the
18 procedure at the moment. The procedure at the moment is obviously we
19 need to go through the Chamber to get approval. But my colleague is
20 right, your Honour. To save time to the parties involved, one option
21 could be to revise this procedure where the Prosecution could apply
22 redactions, or at least -- sometimes it's redaction to the name of a
23 person. It's redaction to a third -- a third party. It's protecting
24 someone. Sometimes it's very -- it's one name. It's a very limited
25 redaction when we're talking about documents. The redactions that are

1 definitely more extensive are to statements. Statements, that's another
2 issue. But when we're talking about documents, that's what we are
3 proposing. Of course, if we understand the decision is there, it is in
4 place. It was denied during the Lubanga case. But if the Chamber is
5 inclined to review its position, that could be a possibility -- a way of
6 proceeding for documents. But then again, we're very -- we can -- we'll
7 obviously submit ourselves to and follow the decision, and we can submit
8 proposed redactions.

9 SINGLE JUDGE STEINER: Mr. Hooper, are you happy with the answer?

10 MR. HOOPER: Well, we've no objection. We can give that a go.
11 There can be a degree of perhaps some supervision on a Chamber on a
12 selective basis or whatever. The documents can perhaps pass through the
13 Judges' hands. But we've got no objection if that's a matter that is
14 followed, because we recognise that often, you know, you can sniff when
15 there's something interesting there that you need and we can always come
16 back to the Court, to the Chamber, and ask for it.

17 It might be -- I don't know if this is too much of a burden for
18 the Prosecution, but if they do make these self-redactions and serve
19 these documents on us, if it is just the occasional name of an NGO or
20 name of a person, if it isn't apparent from the redaction -- the size of
21 the redaction often on the document, perhaps the Prosecution could just
22 provide us with a note of some criteria that they've applied. It just
23 helps to fill in the speculation, as it were. I have no objection if
24 something like that is followed for our part.

25 SINGLE JUDGE STEINER: Thank you.

1 Just one clarification for the Prosecution. I didn't say that
2 the Chamber was inclined to review the position. I said that if the
3 Prosecution intends to -- for this position to be reviewed, the Chamber
4 would ask the Prosecution to provide the Chamber with more details and
5 information on the methodology to be used in case the Chamber decides to
6 review its position. Until now, until this moment, any kind of
7 redactions are to be authorised by the Single Judge or the Chamber, and
8 this is something that I would like to make it clear.

9 Maitre Kilenda, would you have some comments in relation -- you
10 have already said that you haven't had access to materials already
11 disclosed to Mr. Katanga, but probably by the end of this week you will
12 be able to access all these documents. But do you have any comment or
13 concern about the system which we are discussing now?

14 MR. KILENDA (interpretation): Thank you, your Honour.

15 For the time being we don't have many comments to make. But in
16 light of what we have heard, the Defence of Mr. Ngudjolo would like to
17 have further information from the Prosecutor. Does the Prosecutor have
18 no exonerating documents?

19 SINGLE JUDGE STEINER: That's what I understood, but anyway I
20 would like to give the floor to the Prosecution to make it clear to the
21 Defence the situation in relation to exculpatory materials or evidence.

22 MR. MACDONALD: Again, and I have explained this to my
23 colleague --

24 (Interpretation) I will speak French. During the meeting with
25 Mr. Kilenda, I explained to him that when we communicate evidence, it is

1 indicated what is in that evidence. Some incriminating evidence contains
2 some content which is exculpatory. Do we have many documents which are
3 totally exculpatory? No, we do not have many, but that is due to the
4 nature of the case.

5 The evidence is collected in the field. It is then analysed and
6 then provided to the Defence. It is true that there is evidence which
7 falls under Rule 77 which also contains exculpatory content, but purely
8 exonerating documents from various entities or parties, no, there are
9 very few, because more often than not exonerating content appears in
10 documents of a mixed nature.

11 So I hope that I have been clear and that there is no further
12 confusion on this matter. These are the specifics I wanted to get
13 across, as I did already indicate in my introductory comments.

14 SINGLE JUDGE STEINER: As to the documents that are mainly or
15 exclusively exculpatory, you say that there are very few. Have these
16 documents been already disclosed, or not?

17 MR. MACDONALD: Yes, your Honour. We're disclosing them as we --
18 as we can. And again we'd like to disclose, like we've said, some of
19 these statements that contain potentially exonerating information but
20 that we need to proceed to the summaries and the identities of these
21 witnesses should not be disclosed to the Defence. But of course we're
22 always disclosing the documents as we find them.

23 SINGLE JUDGE STEINER: Maitre Kilenda.

24 MR. KILENDA (interpretation): Thank you, your Honour. Our team
25 is of the view that all redactions should be submitted to the Chamber.

1 SINGLE JUDGE STEINER (interpretation): It's true.

2 MR. KILENDA (interpretation): It is our view, it is a matter of
3 safe guarding the rights of the Defence. Above all, if in the coming
4 days we will need to carry out our own investigations in the field.

5 SINGLE JUDGE STEINER: Thank you, Maitre Kilenda.

6 So I would like just to finalise in this part to remind the
7 Prosecution that in relation to the materials covered by confidentiality
8 obligations under 54(3), the Prosecution has to file a report each and
9 every two weeks to the Chamber. The last one was filed on the 25th of
10 March and we are waiting for the next one in two weeks from -- starting
11 from 25th of March.

12 I have a question for the representative of the Court Management
13 Section on the observation about the process of filing of the originals
14 and the electronic copies of the Prosecution's incriminating evidence, a
15 report on how many filings have been made -- have taken place to date.

16 COURT OFFICER (interpretation): Yes, your Honour. So far the
17 Office of the Prosecutor has filed six series of incriminating evidence:
18 The 13th of December 2007, 17th of September, 4th of February 2008, 4th
19 of January 2008, and the 11th of March 2008.

20 There was a mistake in one of the filings of the 4th of February,
21 2008. The Office of the Prosecutor was contacted and requested to submit
22 a new filing to CMS so that it could be uploaded into the Ringtail
23 system.

24 Regarding the second package, the second series that is of
25 documents, that is, the 17th of December, there was one metadata field

1 that was left blank in regard to the date of registration which was not
2 filled by the Office of the Prosecutor. We uploaded this document and we
3 are waiting for this information so that we can enter the metadata into
4 the required field.

5 SINGLE JUDGE STEINER: Thank you very much. That shows how
6 important is the preparation of the Defence team on the Ringtail process.
7 That's why I would like to emphasise to the Registry the urgency of the
8 implementation of all necessary measures for the Defence of Mr. Ngudjolo
9 to have access and be trained in Ringtail, and for Maitre Kilenda to be
10 available, if possible, this week in order to be trained on the Ringtail
11 and finally to have access to all materials and evidence already
12 disclosed to Mr. Katanga.

13 So I would like first the Prosecution and then both Defence
14 teams, if they have any comment or want to raise any issue in relation to
15 any of the questions dealt with by the Prosecution or otherwise related
16 to the disclosure process.

17 The Prosecution.

18 MR. MACDONALD: Yes. If I may have the opportunity to respond to
19 maybe one of the concerns that Mr. Kilenda has at the moment, and
20 afterwards I may even encourage my colleague, Mr. Hooper, to explain the
21 process to maybe Mr. Kilenda about redactions, about the -- maybe the
22 suggestions that we will be making in relations to documents to the
23 approval of these redactions.

24 Now, what we're proposing is that we disclose in a redacted
25 form -- like I said earlier, sometimes it's a name, it's a place, it's a

1 name of an NGO, a witness. It's a limited redaction. The Defence looks
2 at the document. And then afterwards, if for any reason the redaction
3 becomes important to the Defence to see what is behind that redaction for
4 any reason, then we come back before the Judge and discuss and debate the
5 lifting of that redaction or not. That is what Mr. Hooper was just
6 referring to earlier when he mentioned that of course it is sometimes
7 more important to have the information first and then see if it's needed
8 or not to go --

9 And again, I want to stress, to answer Mr. Katanga and also to
10 reassure Mr. Kilenda and also to inform your Honour that the proposed
11 redactions would be on the same basis that they're requested at the
12 moment and they're being granted in the decisions. I understand there's
13 an appeal, but -- so the only people that I see that could fall on a
14 category that of course the Chamber would maybe want to approve is the
15 innocent third parties category that is currently under appeal. But if
16 not the, the redactions would be, like mentioned, could be the names of
17 NGOs, could be the name of a witness, could be such things.

18 I'll give you one example. It could be a witness that has been
19 interviewed previously by the Prosecutor from the Tribunal de grande
20 instance in Bunia in relation to another incident that may have
21 information as to Rule 77 for Katanga or Ngudjolo but we're redacting the
22 name of that witness. The information is there. So that's one example
23 of what I'm talking about, a document. So this is why -- do we need to
24 go through the whole process? Or can we just proceed with the disclosure
25 and if there are problems, then we can go back to the arbitrators, that

1 are the Single Judge or the Pre-Trial Chamber.

2 SINGLE JUDGE STEINER: Mr. Hooper.

3 MR. HOOPER: Well, I'm certainly not going to give any advice to
4 Mr. Kilenda. He's quite capable of looking after himself. I know that.

5 SINGLE JUDGE STEINER: But any other comments on the -- any of
6 the issues discussed during this hearing?

7 MR. HOOPER: No, thank you.

8 SINGLE JUDGE STEINER: Maitre Kilenda.

9 MR. KILENDA (interpretation): Thank you, your Honour. I shall
10 leave the Chamber to judge for itself.

11 SINGLE JUDGE STEINER: So before adjourning this hearing, I would
12 like to make it sure that the Single Judge is working on the assumption
13 that the Prosecution will meet the 21st April deadline to file the
14 charging document and the list of evidence he intends to rely on at the
15 Confirmation Hearing. So if there is any problem in this regard, the
16 Single Judge would like to be briefed right now or as soon as possible by
17 the Prosecution. Any comment on this issue?

18 MR. MACDONALD: Right now we will meet the deadline, your Honour.
19 Again, this is in three weeks' time and we don't foresee not meeting this
20 deadline at this time.

21 MR. HOOPER: Madam Judge, on general matters, if I can just
22 indicate, I feel it appropriate the Defence, if it can, should indicate,
23 and I will, that as far as the -- our position is with the Confirmation
24 Hearing, subject of course to seeing what the final witness and evidence
25 is proposed to be provided to the Chamber, subject to that of course,

1 that at this stage certainly we're not minded to intervene, if I can put
2 it like that, in the confirmation process. We're not in that respect
3 minded to call witnesses, for example, and any submissions we would make
4 would be made briefly and in writing. So that's the -- if I can indicate
5 that in terms of I know what must be your concern as to what the future
6 holds.

7 Now, as far as the date is concerned, the 21st of May, we're as
8 anxious as the Chamber that that dates holds as a date for the
9 Confirmation Hearing to commence. However, I think there's one matter I
10 should properly draw to the Chamber's attention today and it may be that
11 it's not a matter that need or will disturb the realisation of that -- of
12 that date being the commencement date.

13 Basically, what it is is this: That we have identified clear
14 concerns relating to the arrest and detention of Mr. Katanga in DRC. We
15 have made requests of the DRC for assistance, but we haven't as yet
16 received that assistance. We will better know our position tomorrow or
17 the day after when Caroline Buisman returns from the Congo having made
18 further efforts to obtain material that we feel is relevant to our
19 position.

20 We anticipate that in any event later this week, or at the latest
21 by Monday of next week, we will be almost certainly submitting a motion
22 ex parte to the Chamber in respect of requests for assistance from
23 parties. We wouldn't be doing that if we didn't feel that that material
24 we were requesting was important and we are, as we understand a reading
25 of the rules, and I'm looking at Rule 122, 122(3) -- may I indicate these

1 concerns -- our concerns concern Article 59 and matters pertaining to
2 that with certainly as an immediate objective appropriate remedy. But
3 Rule 112(3), it says that a person, whether they intend to raise
4 objections or make observations concerning an issue related to the proper
5 conduct of the proceedings, we have to do it prior to the Confirmation
6 Hearing. Matters of admissibility and jurisdiction we can raise any
7 time, but this matter may be something that would appropriately be raised
8 before confirmation.

9 It might be that of course if we don't have material, for
10 example, if we're successful in requests for assistance, that the
11 assistance isn't forthcoming in time, for example, for those matters to
12 be considered by the 21st of May, despite their importance, it might be
13 possible for us to sustain an argument, or for the Chamber in fact to
14 accept an argument, that these are matters that could be raised after
15 confirmation, if we're not in a position properly to raise them before.

16 So that's the general landscape of difficulty and possible
17 alternatives to the difficulties that we face. As I say, we'll be in a
18 position to perhaps more better inform your Honour, we anticipate by
19 lodging of a motion of request, on Monday. But we'd appreciate that
20 that's only -- we're two months away now, we know, but it's time that
21 gets eaten up very quickly. That's the position. I thought I'd sort of
22 signpost that. I hope it assists.

23 SINGLE JUDGE STEINER: Thank you very much. And even
24 independently of the position or the answer brought by your assistant
25 that is coming now from Congo, the Defence team should be aware that the

1 Registry is in charge of providing Defence with all necessary assistance
2 in order to have cooperation for its requests. So the Registrar will be
3 also available to help in any kind of request for assistance for both
4 Defence teams.

5 MR. HOOPER: Yes. It may assist. Professor Sluiter points out
6 that in fact it's an application -- will be an application or concern
7 matters, rather, under Article 57(3)(B), and at the present time we
8 anticipate that these are not matters that the Registry would be in a
9 position that we can see to assist. That's not an avenue that would be
10 the avenue of assistance here. But as I say, I won't talk too much about
11 it. It will be very apparent, I think, in our almost certain application
12 to the Chamber, as I say, I can undertake to be lodged by Monday. Thank
13 you.

14 SINGLE JUDGE STEINER: Thank you very much.

15 Would the Registry like to add something to the issues discussed
16 at this hearing?

17 MR. VAATAINEN: No, your Honour.

18 SINGLE JUDGE STEINER: So if there are no other issues to be
19 discussed or matters to be discussed at this hearing, I would like to
20 thank the Prosecution, Defence team of Mr. Katanga and Defence team of
21 Mr. Ngudjolo, for their participation and cooperation at this hearing;
22 the representatives of the Registrar. As always, I would like to thank
23 the interpreters for their help. Once again, I would like to welcome
24 Mr. Katanga and Mr. Ngudjolo Chui to this hearing. A new Status
25 Conference will be scheduled for the next two weeks, but the parties will

1 be informed. So, again, thanking all of you very much, this part of the
2 hearing is adjourned, and we will resume in an ex parte hearing, in
3 closed session, in half an hour. Thank you very much.

4 The Status Conference adjourns at 3.58 p.m.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25