

1 International Criminal Court

2 Pre-Trial Chamber I

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

4 Status Conference - Open Session

5 Tuesday, 3 June 2008

6 The hearing starts at 2.10 p.m.

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

9 SINGLE JUDGE STEINER: Good afternoon. Please first of all I
10 would like the Court Officer to -- to bring the -- the security officers
11 to bring the detainees in.

12 (The detainees entered court)

13 SINGLE JUDGE STEINER: Let me first welcome Mr. Germain Katanga
14 and Mr. Mathieu Ngudjolo Chui, who are present at this hearing. And as
15 provisionally provided before and as decided now in the decision
16 implementing the Appeals Chamber judgement concerning languages issued
17 yesterday, Mr. Germain Katanga is provided at this hearing in accordance
18 with the Regulation 61(1)(d) of the regulation with interpretation into
19 Lingala. I have also been informed that this interpretation is available
20 to Mr. Mathieu Ngudjolo Chui if he so wishes.

21 So I ask please now the Court Officer to call the case.

22 COURT OFFICER: (Interpretation) Situation in the Democratic
23 Republic of the Congo, in the case of the Prosecutor versus Germain
24 Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07.

25 SINGLE JUDGE STEINER: I would like to welcome the Prosecution,

1 the Defence for Germain Katanga, the Defence for Mathieu Ngudjolo Chui,
2 the Legal Representatives of the Registrar, the Legal Representatives of
3 Victims. And I would like, please, all teams to introduce themselves
4 starting by the Prosecution.

5 MR. MacDONALD: Thank you, your Honour. The Office of the
6 Prosecutor will be represented today by Ms. Florence Darques-Lane,
7 Ms. Krisztina Varga, Ms. Anneliek Hendriks, Ms. Ian Bulmer, and myself
8 Eric MacDonald.

9 MR. SLUITER: Good afternoon, your Honour. For the Defence of
10 Mr. Germain Katanga, Sophie Menegon, Caroline Buisman, and myself, Goran
11 Sluiter. David Hooper apologises for not being present today at this
12 hearing. He will certainly attend the hearing of the 10th of June.

13 SINGLE JUDGE STEINER: Mr. Kilenda.

14 MR. KILENDA (interpretation): Thank you, your Honour. The
15 Defence of Mathieu Ngudjolo Chui is composed of Ms. Maryse Alie, a
16 barrister at the Brussels Bar and Legal Assistant in our team; Aurelie
17 Roche, our Case Manager; and I am Mr. Jean Pierre Kilenda, the permanent
18 Defence counsel of Mr. Ngudjolo and a barrister at the Brussels Bar.

19 SINGLE JUDGE STEINER: Thank you. Representatives of the
20 Registrar.

21 MR. DUBUISSON (interpretation): Thank you, your Honour. On the
22 Registry Bench I am accompanied by Fiona McKay representing the Division
23 of Victims and Counsel. Abdoul Aziz Mbaye, who is a lawyer in the
24 immediate office the Division of Victims and Counsel; and I am Marc
25 Dubuisson, Director of the Division of Court Services representing the

1 Registrar.

2 SINGLE JUDGE STEINER: Thank you. Legal Representatives of
3 Victims.

4 MS. BAPITA (interpretation): Thank you, Your Honour. I am
5 Ms. Bapita and I am representing a number of victims, 291, and two others
6 and I am assisted here by Paolina Massidda, the principal counsel of the
7 Office of Public Counsel for Victims.

8 MS. MASSIDDA (interpretation): Good afternoon, your Honour. The
9 OPCV has been asked to assist the two teams at this hearing and at future
10 hearings. The OPCV has set up two teams at the office because the
11 arrangements for participation as agreed by the Single Judge are
12 different for the two teams. Thus Ms. Caroline Walter shall be assigned
13 to Ms. Bapita and Orchlon Narantsetseg shall be assigned to Mr. Keita
14 and Mr. Gillissen. Mr. Gillissen is not present at this hearing.
15 Mr. Keita has informed us that he would be unable to attend this hearing.
16 We have also been informed that Mr. Gillissen should have been at the
17 hearing but we have not yet heard from him or seen him in the building.
18 We have tried to contact him but have not had a response. So if the
19 hearing judges it appropriate I could represent him at this hearing, but
20 I do not power of attorney in writing.

21 SINGLE JUDGE STEINER: Since you mentioned that both
22 representatives asked for your support, so I think I see no problem that
23 you represent the victims represented by Mr. Gillissen.

24 MS. MASSIDDA: Thank you.

25 SINGLE JUDGE STEINER: Thank you. So going to the agenda of this

1 Status Conference, we'll focus on the compliance of the calendar
2 established on the decision number 459 issued on 29th April 2008. Then
3 we'll move to the status of the compliance by the Prosecution with its
4 disclosure obligations for the purpose of the Confirmation Hearing. As
5 always, I would like to -- before starting the agenda to go into some
6 preliminary matters, most related to some logistical issues concerning
7 both Defence teams. So if this way of proceeding is agreeable to the
8 parties, we can then proceed. And then we'll start with the preliminary
9 matters.

10 And first I would like to listen to Maitre Kilenda. The issue
11 related to the appointment of an intern for its Defence team, that was an
12 issue discussed at last -- in the last Status Conference. I would like
13 to know if this question has been properly addressed by the Registry, and
14 also whether the Defence of Mr. Germain Katanga and Mathieu Ngudjolo Chui
15 have any further issues in relation to the composition of their teams and
16 then we'll go into the other logistical issues.

17 Maitre Kilenda, please.

18 MR. KILENDA (interpretation): Thank you, your Honour. We would
19 like to take advantage of this opportunity to thank the Registry, which
20 has taken all necessary steps to ensure that our intern could begin
21 working in our team. I'm therefore happy to inform you that since
22 yesterday Ms. Anne-Marie Belduva [phoen] has been working in our team as
23 an intern. So as you now see there are four members of the team and this
24 means that we shall be able to deal with the upcoming hearing in due
25 course. There are no further issues regarding the composition of our

1 team.

2 JUDGE STEINER (interpretation): Thank you.

3 MR. SLUITER: Thank you, no particular applications except for
4 the application for review which I submitted early January, mid-January
5 to be admitted as counsel is still pending with the Presidency. I have
6 requested the Presidency to take a decision well in advance of the
7 Confirmation Hearing because this would be in the best interests of
8 everybody, but no decision has been taken yet.

9 SINGLE JUDGE STEINER: Thank you. In relation to the composition
10 of Defence teams, I would like to ask the Registry if it has something to
11 comment on this or to add.

12 MR. DUBUISSON (interpretation): No, your Honour. We have no
13 comments to make.

14 SINGLE JUDGE STEINER: Thank you very much. Another issue that
15 has been discussed in -- in our last Status Conference was the issue
16 related to computer access and software training and mainly in relation
17 to Mr. Germain Katanga. At that Status Conference Mr. Hooper informed
18 the Single Judge that Mr. Katanga was having some difficulties in his
19 training because his training was being provided in English, the training
20 in -- in basic -- basic computer programmes. So I would like to listen
21 from the Defence of Germain Katanga whether this problem has been
22 properly addressed by the Registry.

23 MR. SLUITER: Yes. Thank you, your Honour. There is improvement
24 in this area, so it's -- we are informed that it's going better.

25 SINGLE JUDGE STEINER: Would the Registry like to add something

1 on this matter.

2 MR. DUBUISSON (interpretation): We have no comments.

3 SINGLE JUDGE STEINER: Mr. Sluiter when you mentioned improved,
4 that means that Mr. Katanga has already been training in -- in the
5 language that he understands; is that correct?

6 MR. SLUITER: That is my understanding that's the case.

7 SINGLE JUDGE STEINER: Thank you very much. The other issue
8 raised in the last Status Conference was in relation to the difficulties
9 faced by Mr. Katanga and Mr. Ngudjolo Chui, family members to be provided
10 with passports and visa in order to visit Mr. Katanga and Mr. Ngudjolo
11 Chui. I would like to listen from both Defence teams whether there has
12 been any improvement on this issue of passports and visas.

13 MR. SLUITER: Yes, thank you, your Honour. We are waiting for
14 more than two months for passports to be issued in the DRC. Apparently
15 there's no progress in this area. So this is a matter of concern. We
16 are still waiting, and we're not sure if and when passports will be
17 issued. So we're not sure what can be done in this area and how the
18 Court can assist. So we're hopeful of course that things will start
19 moving because it is a matter of concern.

20 SINGLE JUDGE STEINER: Thank you. Maitre Kilenda.

21 MR. KILENDA (interpretation): Thank you, your Honour. The
22 process is ongoing as regards Mathieu Ngudjolo. We don't have any
23 specific matter to raise. The passport issue persists. I had stressed
24 at the last Status Conference that the competent authorities at the court
25 needed to liaise with the Congolese authorities to ensure that passports

1 could be issued. I personally had somebody who travelled to Brussels
2 with documents.

3 Mr. Mathieu Ngudjolo has been in contact with those officers
4 following this issue, and he has been asked to ask his spouse to bring
5 photos. That is the current situation, and we rely on the competent
6 departments to ensure that the matter progresses.

7 SINGLE JUDGE STEINER: Registry, update the Chamber in relation
8 to the contacts that maybe have been made or not with the Congolese
9 authorities in relation to this issue.

10 MR. DUBUISSON (interpretation): Yes. We have taken good note of
11 the various recommendations and suggestions which have been made in
12 particular by Mr. Kilenda and others involved in this matter. We have
13 worked on similar issues for another detainee. We are familiar with the
14 issues involved in issuance of these documents also for the relocation of
15 witnesses, et cetera, and we rely on the Congolese authorities, but we
16 are mindful of the fact that we -- that the time is pressing and we would
17 like to see progress.

18 At this point in time a lawyer in our department is in contact
19 with the Congolese authorities, and we hope that this will yield results.
20 In any case, there will soon be a visit by the Registrar, I think that
21 will be in two or three weeks' time, and during that visit there will
22 also be discussions and this matter of passports and visas will be
23 addressed at a higher level.

24 SINGLE JUDGE STEINER: Thank you, Mr. Dubuisson.

25 I think in relation to the issues raised in the last Status

1 Conference, logistical issues, I don't have any other notes in my -- my
2 agenda. I would like to ask both Defence teams if they have -- whether
3 they have anything to add in relation to these logistical issues before
4 we go ahead with the agenda.

5 Mr. Sluiter?

6 MR. SLUITER: No thank you.

7 SINGLE JUDGE STEINER: Maitre Kilenda?

8 MR. KILENDA (interpretation): Your Honour, we have nothing to
9 add.

10 SINGLE JUDGE STEINER: So I have another issue to be discussed
11 before we go into the details of the calendar and the disclosure, and I
12 would like to call the attention, especially of the Legal Representatives
13 of Victims and the OPCV that as explained by Madam Paolina Massidda, we
14 have two members of the office for Public Counsel for Victims, one of
15 them assisting directly Maitre Bapita and the other assisting
16 Mr. Gillissen. On the other hand if I'm correct a member of the Office
17 of Public Counsel for Defence is assisting the Defence of Mr. Mathieu
18 Ngudjolo Chui from outside the courtroom through access to realtime
19 transcripts of the present hearing and communication with Defence counsel
20 through e-mail.

21 That was requested by Mr. Kilenda and was granted by the
22 Single Judge. Any problems in this communication, Maitre Kilenda?

23 MR. KILENDA (interpretation): That is correct but not directly
24 today. We know that there is a decision issued by your Chamber giving us
25 the right to have the Office of Public Counsel to follow the hearings in

1 realtime, but at this point we do not have a representative of this
2 office in the courtroom.

3 SINGLE JUDGE STEINER: There's no representative, but I would
4 like to check with you whether the Office of Public Counsel is assisting
5 you from outside the courtroom.

6 MR. KILENDA (interpretation): No, not for the time being.

7 SINGLE JUDGE STEINER: Has the Registry some comment on this,
8 because I thought it was for all hearings that the communication would be
9 open between Defence team and OPCD.

10 MR. DUBUISSON (interpretation): It is indeed. That is how we
11 understood this request. If the Office of Public Counsel for the Defence
12 is not assisting Mr. Kilennda regularly, which is what we thought, then I
13 wonder as to the decision that was being taken, because it would mean
14 that the decision was not taken advisedly.

15 SINGLE JUDGE STEINER: So I would ask the Registry soon after
16 this Status Conference to check with the Office of Public Counsel for the
17 Defence if there has been any misunderstanding in relation to the
18 decision of the Single Judge to have OPCD assisting Defence of
19 Mr. Ngudjolo Chui in all hearings. Thank you.

20 So --

21 MR. KILENDA (interpretation): Your Honour.

22 SINGLE JUDGE STEINER: Ms. Bapita.

23 MS. BAPITA (interpretation): Thank you, Your Honour, for giving
24 me the floor. With regard to this point, I'd like to draw your attention
25 to a point I wish to emphasise. The legal representative assisted

1 whether or not by the OPCV receives this service to alleviate a problem
2 of the Defence team, of the team. We do not have a case manager. We do
3 not have anyone or assistance to help us to follow the hearings, take a
4 note, make summaries while we are interested in putting a case to the
5 Court. In view of this, we decided -- we thought that the OPCD could
6 come and play that role. If the OPCV is doing this, it is because we do
7 not have this staff. When the Registry will provide this staff, then the
8 OPCD's problem -- or OPCV's presence in the courtroom will depend on a
9 case-by-case determination. I don't have an assistant, and I can't do
10 everything to make summary, follow the hearings, and participate, and
11 this has been going on since 2006, and I do not know why. Thank you.

12 SINGLE JUDGE STEINER: Thank you, Ms. Bapita. I was about to
13 give the floor to the Legal Representative of Victims on this issue but I
14 took note of your comments, but you have opportunity to go again with --
15 to bring again your comments after I just pose the question. I would
16 like to pose a question. I would like to listen from the Prosecution,
17 both Defence teams, the Registry, in relation to specific questions that
18 I would like to have the opportunity to pose. And the things that we
19 received recently, 97 applications for new victims to participate in
20 the -- in the case Prosecution versus -- Prosecution versus Germain
21 Katanga and Mathieu Ngudjolo Chui. The decision will be issued early
22 next week, and as a result of the decision it's very likely that the
23 number of legal representatives will increase.

24 So that's why I would like to listen from Prosecution and the
25 Defence for Germain Katanga, Mathieu Ngudjolo, the legal representatives

1 of victims, and then Maitre Bapita will have opportunity to renew its
2 observations, and the same as representatives of OPCV, on the following
3 matter: The possibility that members of the OPCV, in the same way as the
4 counsels of the OPCD are assisting Mr. Ngudjolo, that this assistance can
5 be made from outside the courtroom via access to realtime transcripts of
6 the hearings and e-mail communication, since as soon as we have more
7 legal representatives, we don't have by no way how to accommodate each
8 legal representative with a representative of the OPCV.

9 So I don't know whether the Prosecution and Defence teams have
10 any observations, but I would like to -- to gather their observations
11 because the Single Judge will have to decide on this issue as soon as
12 possible. So that's why in this hearing I -- I'm asking for observations
13 of the parties and participants. So starting by the Prosecution.

14 MR. MacDONALD: I understand, your Honour, that at the moment
15 OPCV is not representing any applicants or recognised applicants. So we
16 have no objection, your Honour, for OPCV to have the same access as the
17 OPCD has with the team of Mr. Kilenda, except if for some reason OPCV was
18 to represent a victim, a recognised victim, accepted victim in the case,
19 well then obviously the situation would be different we submit.

20 SINGLE JUDGE STEINER: Mr. Sluiter.

21 MR. SLUITER: Thank you. I see no immediate objections, but this
22 is a matter which we would like to reflect on more carefully.

23 SINGLE JUDGE STEINER: Mr. Kilenda.

24 MS. ALIE (interpretation): Your Honour, Mr. Kilenda has asked me
25 to take the floor on his behalf with regard to the OPCV's assistance. We

1 have no remarks at this point. Depending on how the applications are
2 accepted, then we will make submissions.

3 I just want to make some clarification regarding something that
4 was said about the OPCD. We did not make a formal request, a formal
5 request for the OPCD to attend this hearing, but we are putting your
6 decision to good use, and I would like to make this clear. Thank you.

7 SINGLE JUDGE STEINER: Thank you. Mr. Dubuisson.

8 MR. DUBUISSON (interpretation): I think we should examine the
9 problem from a broader perspective. Access to the hearing is access to
10 information. Some information is for the time being under seal. Some
11 hearings will be closed sessions. What was requested by the Office of
12 Public Counsel for the Defence refers not only to public hearings but
13 also possibly to closed hearings or other hearings.

14 So given that the same thing is granted to the OPCD and the OPCV,
15 does this implicitly recognise the fact that the victims or the office
16 may have access to all information under seal which will be discussed
17 within this courtroom? So for technical reasons it would be important
18 for us to know that, because on each occasion we will have to change
19 access rights, for example, to LiveNote, the transcript, and to other
20 information. So we would like to be sure that we are indeed talking
21 about the same thing when we talk about access to the hearing.

22 SINGLE JUDGE STEINER: We are just waiting for the expiring of
23 the deadline under the decision on the modalities of information in order
24 to start implementing such decision, which means that those non-anonymous
25 witnesses, not the witnesses themselves but their legal representatives

1 will have access to confidential materials and will be present at closed
2 sessions. So as soon as the decision enters into force, this will be the
3 pictures, so for those victims -- for those legal representatives of
4 anonymous witness, their support of the OTP can or could in theory be
5 made via e-mail also as access to the transcripts.

6 MR. DUBUISSON (interpretation): So as you put it, I am in
7 complete agreement.

8 SINGLE JUDGE STEINER: Thank you. Now I would like to listen to
9 ask if Maitre Bapita would have something else to add, and then I would
10 like to listen from Madam Paolina Massidda.

11 MS. BAPITA (interpretation): I have something to add. I would
12 like to emphasize the fact that the solution to this problem cannot
13 objectively be decided upon until the registry provides us with
14 assistance. Why do I say this? I am dealing with what Mr. Dubuisson's
15 concern regarding access to information and access to the hearing --

16 SINGLE JUDGE STEINER: Sorry to interrupt you, but you need to
17 speak a little slowly because of the translation into Lingala, the
18 interpretation into Lingala.

19 MS. BAPITA (interpretation): Thank you for your comment.

20 I was saying that the solution to this concern can only be
21 provided objectively when we have assistance in our teams because the
22 legal representative is the best judge of whether he or she will need
23 assistance of the OPCV for one hearing or another because the OPCV, the
24 service it is providing now it is providing because there are no
25 assistants. So if you deal with this during a hearing for -- as legal

1 representatives, the legal representative will be in a position to
2 determine whether he or she requires OPCV assistance or not. Then, if
3 you're asked what decision to be taken -- is to be taken today then we
4 would say that the OPCV would assist us during the hearing and somebody
5 else will be preparing e-mails and we also -- will have to be here for
6 the hearing and we will not have time to do all these things and we would
7 be quite distracted. So if we do not have this issue of the assistant
8 resolved, we cannot make any practical and objective -- may take any
9 practical and objective measures.

10 SINGLE JUDGE STEINER: Ms. Massidda.

11 MS. MASSIDDA: Thank you, your Honour. I will try and give an
12 overview on the way in which we are working at the moment. Maybe it's
13 useful to understand the way in which we are supporting the Katanga
14 Ngudjolo Chui case. We are aware at the moment in our assessment that
15 probably two more legal representatives will be allowed to participate at
16 the confirmation of the charges hearing. It's our own assessment in
17 accordance with the information we have from different legal
18 representatives. We are also aware of the fact that the Single Judge
19 ruled different modalities of participations. We have estimated, in
20 consultation with the legal representative, that the office can create
21 two different teams for anonymous victims and non-anonymous victims. The
22 team is at the moment composed of two persons per Maitre Bapita and two
23 persons per Maitre Kita and Gillissen.

24 One person will assist in the courtroom. Another person will
25 assist outside the courtroom for one very simple reason. During the

1 hearing there is a need to assist the legal representative with checking
2 e-mails, checking transcripts, make a notation in notes to LiveNote, et
3 cetera, et cetera. This is not possible for the legal representatives at
4 the moment because they are alone. They have no case manager. They have
5 no assistants. So in principle, the members of the office are also
6 acting at this moment in time as part of the legal representative team.
7 Pending any decision in accordance with the legal assistants paid by the
8 court on the issue of the team to be effected to each legal
9 representative who has requested it. And in my knowledge, at least two
10 teams for this case have already request legal assistance paid by the
11 court including the assistance of a team. This is the information that I
12 have from the legal representatives.

13 We will be ready, of course, to work outside the courtroom, but I
14 repeat at the moment this seems not feasible for the simple reason that
15 there is no other assistants courtroom for the legal representative.
16 There is one counsel and that's it. This is the only reason why the
17 office is continuing at the express request of the legal representative
18 to appear.

19 The agreement we have at the moment with the legal representative
20 is that the office will assist them until the issue of their team is
21 solved by the Registry and a team is effectively composed. After this
22 the office will provide each team of legal representative with normal
23 standard job providing legal researches and legal advices and maybe
24 appearing before a Chamber if the legal representative will request the
25 principal counsel or other counsel of the office to appear in respect of

1 very specific legal issues en verbiov [phoen], or if they will request
2 members of the office to appear following power of attorney if they are
3 not able to attend a certain hearing.

4 Finally, I would like also to inform the Single Judge that at
5 present all the information is secured within the office, meaning that
6 also for access to the transcript, to Ringtail, to LiveNote, to all the
7 different systems there is a specific access for each member of the
8 office in accordance with the task this person is performing for one team
9 or for the other, from one case or for the other, from one situation or
10 another situation, because we need to avoid conflict of interest, but I
11 also need to manage the human resources that I have. That's the reason
12 why the office is as tried, and at the moment I think it's working, maybe
13 we need to ask Maitre Bapita and have legal representatives -- but this
14 is the way in which we are working at the moment.

15 Of course we will conform with any order or decision by the
16 Single Judge and/or the Chamber, but I think there are practical
17 impossibility at the moment for following the hearing only outside the
18 courtroom. Thank you.

19 SINGLE JUDGE STEINER: Thank you very much. I would like to ask
20 Mr. Dubuisson in relation to the request for legal assistance paid by the
21 court, if the Registry can foresee a deadline for the answer to be given
22 to the legal representatives because the Confirmation Hearing is really
23 close.

24 MR. DUBUISSON (interpretation): With your leave, I shall give
25 the floor to Ms. Fiona Mckay.

1 MS. MCKAY: Thank you, your Honour. The Registry is anticipating
2 that the number of legal teams that will be -- that will be participating
3 representing victims and the composition of those teams will be
4 considered after the Chamber makes its decision on the pending
5 applications for participation.

6 SINGLE JUDGE STEINER: Then the Registry will have to work
7 really, really fast.

8 Please.

9 MS. ALIE (interpretation): Thank you. Mr. Ngudjolo's Defence
10 team would like to say something with regard to access to LiveNote
11 outside the courtroom. We are opposed to the fact that OPCV should have
12 access to all non-public information, because the OPCV can have access to
13 what is public already. So what the OPCD can provide as assistance is
14 limited to public sessions and not at all anything that is common covered
15 by the confidential or ex parte description. Thank you.

16 SINGLE JUDGE STEINER: The OPCD access to -- to the courtroom and
17 the hearings and LiveNote was granted by the Single Judge according to
18 the request made by Maitre Kilenda.

19 MS. ALIE (interpretation): Yes, your Honour. I would like to
20 clarify this. In light of further development and the request that has
21 been made today, since you've asked us to give you our opinion. Thank
22 you.

23 SINGLE JUDGE STEINER: Thank you very much. The Single Judge
24 will take care of this comment made by Maitre Kilenda's team.

25 So now I think we can finally get into the specific issues of the

1 agenda, and first just some remarks on the compliancy with the calendar
2 of the proceedings leading to the Confirmation Hearing.

3 So first mentioning Prosecution deadlines. The Single Judge
4 notes that yesterday the Prosecution filed its request for redactions
5 concerning those documents to be included in the Prosecution additional
6 list of evidence. The Single Judge observes that the request for
7 redactions referred to interview notes, interview transcripts, statements
8 and documents relating to Witnesses 132 and 238, which are subject of the
9 decision number 523 issued on 28th May, 2008, and Witness 243, also an
10 alleged victim of sexual violence offences for which the Single Judge had
11 already granted anonymity and authorised the Prosecution to rely in a
12 summary of her statement in its decision 362 issued on 3rd April 2008.

13 The Prosecution request will be decided upon by Monday at the
14 latest, so that the relevant interview notes, interview transcripts,
15 statements and related documents can be disclosed to both Defence with
16 the redactions authorised by the Single Judge, if any, by 12 June 2008 at
17 the latest. Moreover, by this date the Prosecution will have also to
18 file with the Registry the originals of such evidence as well as
19 electronic copies with the redactions authorised by the Single Judge and
20 with the details required by the e-Court Protocol.

21 The Single Judge also reminds the Prosecution that the
22 Prosecution has until 12 June 2008 to file the Prosecution amended
23 charging document and Prosecution additional list of evidence.

24 The Single Judge will not accept any Prosecution's delay at this
25 stage. Thus if the Prosecution does not comply with these deadlines, the

1 additional charges and evidence that Prosecution may bring at this stage
2 will be rejected in limine. Moreover, any other Prosecution request for
3 redactions will be rejected in limine as the time limit for the filing
4 has already expired.

5 In relation to Defence deadlines, the Single Judge would like to
6 observe that no request for redactions were filed by any of the Defence
7 teams. As a result, both Defences will have to disclose to the
8 Prosecution the evidence included in their respective list of evidence to
9 be filed on 12 June 2008 without any redaction.

10 Moreover, such evidence will have -- the Defence will have to
11 file the originals of such evidence as well as electronic copies without
12 any redaction and with the details required by the e-Court Protocol by
13 23rd of June, 2008.

14 In relation to the evidence to be included, if any, in the
15 Defence additional list of evidence, the Defence has until 16 June 2008
16 to file requests for redactions. Upon making -- the making of those
17 requests, the Single Judge will decide on an expeditious basis so that
18 the evidence can be disclosed to the Prosecution with the authorised
19 redactions, if any, by no later than 20 June 2008.

20 Single Judge would like to remind Defence that 20 June 2008 is
21 also the deadline for the filing by the Defence of their respective
22 additional list of evidence, if any, and then the originals of the
23 evidence included in this additional list, as well as the electronic
24 copies, and with the details required by the e-Court Protocol are to be
25 filed by 23 June 2008.

1 In relation to victims' deadlines, in principle the decision on
2 the set of procedural rights for non-anonymous victims shall be given
3 full effect next Monday, 9 June, unless there is a request for suspensive
4 effect in any request for leave to appeal against the decision on
5 limitations issued last Friday.

6 Moreover, early next week a decision on the pending victims'
7 application will be issue.

8 Afterwards on Tuesday, the 10th of June, a hearing will be held
9 before the Presiding Judge to discuss the specific schedule of the
10 Confirmation Hearing. A proposal prepared by the Chamber will be handed
11 over to the parties and participants this Friday at the latest. However,
12 the Single Judge would like to know now if the Prosecution or the
13 Defence, if they intend, this is an important point in order to allow the
14 Chamber to prepare the proposal, whether the Defence intend to -- and the
15 Prosecution intend to rely on audio or visual evidence at the
16 Confirmation Hearing because this has an impact on the schedule given the
17 need to provide for Lingala interpretation throughout the whole
18 Confirmation Hearing.

19 So in relation to the calendar leading to the Confirmation
20 Hearing, I will give the floor first for the Prosecution, then both
21 Defence teams for any comments on these -- these issues, and more
22 specifically in relation to the possible use of audio or video evidence
23 at the Confirmation Hearing.

24 Prosecution, please.

25 MR. MacDONALD: We have on our list of evidence, your Honour

1 videos, or at least on our amended list the video that we want one -- or
2 two videos. One video is 30 seconds long. It's Mr. Katanga
3 identifying himself. Unless the Defence is willing to admit that there
4 is no identity problems, coming from a common law system and the fact
5 that we don't have witnesses for confirmation, the Prosecution does not
6 have a witness that can say the person over there is Mr. Germain Katanga,
7 so the best way of doing that is to present a video which -- where -- by
8 which Mr. Katanga at times identifies himself as Mr. Germain Katanga.

9 The same thing for Mr. Mathieu Ngudjolo. Now, for -- in the case
10 of Mr. Ngudjolo, the video has additional qualities that we would like to
11 present. Obviously there's a transcript of that, and this transcript
12 will also be disclosed or is being disclosed and will be made available,
13 but the purpose is not to watch the video in its entirety, the entire
14 video is being provided, but it's only an excerpt that could be a few
15 minutes, and we can fast forward to the relevant excerpts.

16 Now, this touches upon a point, your Honour, and I take this
17 opportunity because I understand it's not a point that was addressed
18 before going into the calendar decision, but if goes to the overlap
19 between the two cases of Thomas Lubanga Dyilo and this -- and our case.

20 As you are well aware, the trial in Mr. Lubanga's case is
21 supposed to start on the 23rd of June, and we are supposed to start on
22 the 27th. It is my understanding that, first of all, following your
23 decision of yesterday, it is clear that Lingala interpreters are to
24 provide for the liaison interpretation throughout the proceedings. Now,
25 it is my understanding also that in the Lubanga trial they will need the

1 same two interpreters, our only available interpreters, to translate in
2 court testimony of witnesses.

3 Now, if the Trial Chamber has been informed of the Prosecution's
4 position, not via public filing but I understand via e-mail and also in
5 consultation with Registry's section called STIC, that provides the
6 in-court translation, the translation unit of the Registry, so we're
7 flagging this issue, your Honour, that there are only two Lingala
8 interpreters for both cases that will be proceeding simultaneously. So
9 this is a problem that I think the Chamber -- this Chamber needs to
10 address to -- to -- and resolve with Registry, your Honour.

11 SINGLE JUDGE STEINER: Thank you, Mr. MacDonald. The problem has
12 been already addressed by the Presiding Judge with the Registry. It's
13 been discussed for avoiding the overlapping and the problem with
14 interpreters' availability. So the Prosecution -- the Chamber is already
15 taking care of this -- these issues.

16 In relation to the video that the Prosecution intends to present
17 during the hearing, has the Prosecution any -- any idea on when the
18 Prosecution mentioned few minutes, how many would be these few minutes,
19 because this is important in terms of the preparation of the schedule to
20 be proposed to the parties.

21 MR. MacDONALD: I think, your Honour, we can safely say 45
22 minutes to 30 minutes in total, at the most. It's not a question of
23 watching a video for two, three hours. It's -- like I said, the one
24 excerpt is 30 seconds or 45 seconds, and the other excerpt would be at
25 the most, because I have not calculated it, but from memory it should not

1 be more than 30 minutes, and most probably less.

2 SINGLE JUDGE STEINER: Thank you very much.

3 MR. MacDONALD: And sorry to -- and I want to obviously add that
4 the language of this video is either in -- in French, Swahili, or
5 Lingala, depending. So -- but those are the languages used on that
6 video.

7 SINGLE JUDGE STEINER: Thank you. Now I would like to listen
8 from Mr. Katanga's Defence team general views on the proceedings leading
9 to the Confirmation Hearing and on this very specific issue of
10 presentation of video or audio evidence during the Confirmation Hearing.

11 MR. SLUITER: Yes, your Honour. In relation to the schedule for
12 the Confirmation Hearing, it's only proper to inform you that we have one
13 application for leave to appeal that concerns your decision of 20 May --
14 28 May, and that will be filed today.

15 As regards the evidence, we are not relying on audio/video
16 evidence, and that is our position on that.

17 I hope you are sufficiently informed.

18 SINGLE JUDGE STEINER: Thank you very much. Mr. Kilenda.

19 MR. KILENDA (interpretation): Thank you, your Honour. Our
20 position on the use of audio or video evidence is the same as that of the
21 Katanga team.

22 SINGLE JUDGE STEINER: Thank you very much.

23 So in closing this item off the agenda, I would like also to
24 remind that Prosecution and Victims' Legal Representatives, they have a
25 deadline of 5th of June to make observations on decision filed yesterday

1 related to confidential documents under Article 54, and Defence have --
2 both Defence have until Monday, the 9th, to file their observations on
3 this issue.

4 The final item of our agenda is disclosure obligations, and I
5 would like to focus our attention on disclosure of Article 67(2) and Rule
6 77 materials. So I would like first the Prosecution to give an overview
7 on how the process of disclosure has taken place since the last Status
8 Conference. In particular, I would like to know first how much progress
9 has been made in relation to the disclosure to the Defence of the
10 documents on which the Prosecution does not intend to rely at the
11 Confirmation Hearing but that contain Article 67(2) or Rule 77 materials,
12 and again, the efforts made by the Prosecution to obtain consent of
13 providers on the documents which the Prosecution does not intend to rely
14 at the Confirmation Hearing that also contain potentially exculpatory or
15 otherwise material for the Defence preparation of the Confirmation
16 Hearing.

17 I would like to know from the Prosecution exactly how many
18 documents identified as falling within Article 67(2) or Rule 77 are still
19 covered by Articles 54, 72, and 93 of the Statute. How many requests for
20 the consent of the providers have been made, the reasons for any delay in
21 such requests and the status of the requests already sent by the
22 Prosecution.

23 So the Prosecution has the floor.

24 MR. MacDONALD: With your permission if I could just have one
25 minute, your Honour.

1 SINGLE JUDGE STEINER: Of course.

2 (Prosecution counsel confer)

3 MR. MacDONALD: Thank you, Your Honour. From our last report we
4 had in relation to potentially exonerating documents, we had identified
5 140 documents. Now, again three duplicates were identified within these
6 140, but these three duplicate documents had already been disclosed to
7 the Defence either as incriminatory, potentially exonerating, or Rule 77.
8 One document, your Honour, was lifted, which contained both incriminating
9 and potentially exonerating but we had put it -- it was on our list as
10 potentially exonerating, and this document will be actually added to our
11 list of evidence, your Honour.

12 Again the numbers, it's either 140, 141 that brought down the
13 number now to 137 without four duplicates. But it's -- anyway. The
14 number right now of potentially exonerating documents is 137, as we
15 speak. The ones that were identified as duplicates have already been
16 disclosed. This is the important thing for the Chamber to know.

17 Now, in terms of Rule 77, we are at the moment -- the total
18 number was 146: 23 have been rejected, 16 lifted or with redactions, and
19 pending responses are for 107 of those.

20 Now, also it is important to note that out of the 137, your
21 Honour, potentially exonerating documents identified, 8 have been lifted
22 and disclosed. And also what I'd like to mention, your Honour, and this
23 is the important thing but I understand that we'll be providing
24 observations as requested Thursday, but I take this opportunity to inform
25 the Chamber. To the Prosecution's knowledge, no 54(3)(e) documents were

1 collected when the Prosecution's office started investigating the Bogoro
2 attack, meaning the first collection as disclosed to the Defence took
3 place in early October 2006, and at that time all the material was in the
4 evidence database called Ringtail collected previously.

5 Now, we're verifying if we ever collected documents under
6 54(3)(e) after October 2006, but according to my recollection and also
7 from discussions with analysts within the office, at this moment the
8 answer would be no.

9 So what we did, your Honour, in preparation of the disclosure
10 exercise in this case, we went back to all the documents that had been
11 collected in the situation, the DRC situation, with broad search words to
12 make sure that no documents would be left out that could be of relevance
13 to the Defence. Now, obviously this generated a large number of
14 documents, over 3.000, half of which are -- were collected under Article
15 54(3)(e). Obviously not those 1.632 were relevant to this case. A
16 secondary, a third, a fourth review took place, and the numbers were
17 brought down, and this is why in our initial reports you had around
18 approximately 160 potentially exonerating documents identified. But
19 within those 160 potentially exonerating documents, again the criteria
20 for identifying potentially exonerating was also broad as we filed our
21 criterias to identify these potentially exonerating, and I will give you
22 just one example: A peace agreement. Take any peace agreement in 2003,
23 meaning after March -- or starting March 2003 and onwards, is that a
24 document that can be identified as potentially exonerating, or does it
25 have also at the same time the other side of the coin, incriminating

1 value? If you sign a peace agreement, that means you're recognising that
2 there was a conflict before. But still, we've identified those in a
3 broad term to include them as potentially exonerating. So this is why
4 when we say 160 and then after careful additional review they can be
5 viewed as incriminating, that's what we mean, and there are a lot of
6 those so-called peace documents.

7 Also, for Rule 77 -- sorry, for potentially exonerating documents
8 we have looked at all of the 160 that were identified, even though in our
9 last report we didn't say so, to look if there were alternative evidence
10 that was disclosed, and the answer is for a large majority of them, the
11 answer is yes. The information is available. The category under which
12 the information falls is available. In some cases it is not, and we've
13 said so.

14 Now, unfortunately the problem is that the Prosecution at this
15 stage cannot provide, even in an ex parte forum, these documents for the
16 Single Judge to appreciate the pexo value of these documents because the
17 providers are not granting this request, but I can tell you the
18 following: As we speak today, the Prosecutor is to meet with Mr.
19 Nicholas Michel legal advisor at the UN to try to find alternative
20 solutions to the problem of these 54(3)(e) documents. And the
21 Prosecution, for the -- especially the documents that have been rejected
22 and for which there may not be an alternative evidence, we're looking at
23 those documents and we'll provide alternatives depending on the outcome
24 of the discussions with the UN legal advisor, or may come with other
25 solution that I do not want to put forward here today because I need to

1 discuss further obviously with the Prosecutor. But one thing I want to
2 make sure, your Honour, and this I'm saying before everyone, and it's a
3 public hearing, there is no smoking gun document that goes to the
4 innocence at stake of either of the accused for the crimes as charged in
5 the document containing the charges.

6 Now, of course it's maybe easy for me to say this because -- and
7 we have the documents and the Defence does not. Like I would say if I
8 was before courts in Canada, in my own province, I would say
9 (Interpretation) I would say it under oath, (In English) And I think at
10 some point in time there has to be also trust into the comments made by
11 the Prosecution, especially when they're made in this setting, in this
12 courtroom, before and during a public hearing.

13 Now, we would provide -- we will provide on Thursday, your
14 Honour, the information as requested in your observations, and if we can
15 go beyond, we will do so, and provide alternatives or solutions that
16 obviously will be in line to, number one, the purpose of the Confirmation
17 Hearing, its objective, and respecting obviously the rights of the
18 Defence under Article 67 and Rule 77.

19 SINGLE JUDGE STEINER: Thank you very much.

20 Now I would like to turn to the Defence of Mr. Germain Katanga on
21 this issue.

22 MR. SLUITER: Your Honour, we have no observations. Thank you.

23 SINGLE JUDGE STEINER (interpretation): Mr. Kilenda.

24 MR. KILENDA (interpretation): Your Honour, we have no
25 observations to make.

1 SINGLE JUDGE STEINER: So the Defence -- both Defences don't have
2 any comments on these issues raised by the Prosecution, so I just, before
3 concluding our Status Conference, I would like to remind or to recall
4 both Defences that they have till Friday, the 6th now, to request the
5 lifting of those redactions that they consider necessary for the purpose
6 of the -- the preparation of the Confirmation Hearing since they received
7 the redacted documents from the Prosecution.

8 Is there any question in relation to this procedure?

9 MR. SLUITER: No thank you.

10 SINGLE JUDGE STEINER (interpretation): Mr. Kilenda?

11 MR. KILENDA (interpretation): No observations, your Honour.

12 SINGLE JUDGE STEINER: So I don't have any other issues in my
13 agenda to be dealt with, so I would like to ask the Prosecution, both
14 Defence teams, the Legal Representatives of Victims, and finally the
15 Registry, whether they have any further comments or any other matters to
16 be discussed during this Status Conference. So starting with the
17 Prosecution.

18 MR. MacDONALD: No, your Honour. The only issue I brought up
19 earlier on the conflicts -- the conflicting schedules in relation to
20 interpreters.

21 SINGLE JUDGE STEINER: Thank you. Mr. Sluiter.

22 MR. SLUITER: We have no other points, your Honour, thank you.

23 SINGLE JUDGE STEINER: Maitre Kilenda?

24 MR. KILENDA (interpretation): Thank you, your Honour. Our team
25 has taken note of your decision rejecting our request for automatic

1 translation of documents or the most important documents regarding the
2 case. This is a court decision. We shall comply with it and bow to it.
3 We simply would like to take this opportunity to say that we intend to
4 use all legal recourse remaining open to us to obtain the services of a
5 translator within our team. Perhaps when the time comes you could
6 approach the Registry on our behalf to ensure that things go better.

7 We recognise the decision of the Court. We shall comply with it.

8 SINGLE JUDGE STEINER: Thank you, Mr. Kilenda. I'm sure that the
9 Prosecution -- sorry, the Registry, is always available to listen from
10 the Defence about their needs, and the Registry has shown that it is
11 always available to discuss with Defence teams the possible solutions or
12 anything that is necessary in order to facilitate Defence work. So I'm
13 sure that you have opportunity, and unless there is a serious problem on
14 communication between Defence team and the Registry, then the Chamber
15 will interfere. For the time being, the Single Judge prefers to wait for
16 the dialogue between Defence team and the Registry in order to find a
17 proper solution in helping to assist -- Registry helping to assist
18 Defence in its role.

19 I would like the legal representatives of victims, Ms. Bapita.

20 MS. BAPITA (interpretation): Thank you, your Honour. For the
21 time being there is not much to be said aside from the fact that we can
22 inform you that we will not be appealing your decision of the 30th of
23 May. As a consequence we would like the Registry to take practical steps
24 to ensure that we have access to Ringtail in the Katanga case. It is
25 important that we begin to inspect the file and to do so we will need

1 access to Ringtail.

2 SINGLE JUDGE STEINER: If I understood, Mr. Katanga's Defence
3 team is filing today a leave to appeal. Is on this issue, on ...

4 MR. SLUITER: Your Honour, the leave to appeal concerns the
5 decision on Prosecution's urgent application for the admission of
6 evidence of Witnesses 132 and 287, decision of 28 May.

7 SINGLE JUDGE STEINER: Thank you very much.

8 Madam Massidda, do you have something to add?

9 MS. MASSIDDA: I have only one more information for the Single
10 Judge. For the moment, all members of the OPCV will -- as per agreement
11 with the legal representative, will have access only to the public
12 documents. This is the agreement that we have at the moment with all the
13 legal teams we are assisting. Thank you.

14 SINGLE JUDGE STEINER: Thank you. I would like to listen from
15 the representative of the Registry if there are any other -- if
16 Mr. Dubuisson wants to clarify any of the points raised by the parties
17 and participants to this hearing.

18 MR. DUBUISSON (interpretation): No, we have no comments to add
19 to what has been said.

20 SINGLE JUDGE STEINER: If there are no other issues to be
21 discussed during this Status Conference, I am concluding, and once again
22 welcoming Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui to this
23 courtroom, to this hearing, both Defence teams, Mr. Sluiter, Mr. Kilenda;
24 the Representatives of the Office of the Prosecution; Maitre Bapita,
25 Legal Representative of Victims; Maitre Paolina Massidda, representing

1 OPCV and representing Mr. Keita during this hearing; the representatives
2 of the Registrar, of course; and, as always, to thank very much to our
3 interpreters for their efforts in interpreting everything that has been
4 said during this hearing. Thank you very much, and the hearing is
5 adjourned.

6 The hearing ends at 3.25 p.m.

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