

1 International Criminal Court

2 Pre-Trial Chamber I

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

4 Hearing - Open Session

5 Tuesday, 22 April 2008

6 The hearing starts at 11.08 a.m.

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

9 PRESIDING JUDGE KUENYEHIA: Please be seated.

10 Good morning everybody. Could the Court Officer please bring in  
11 the suspects.

12 Thank you very much. Court Officer, could you please call the  
13 case.

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

17 PRESIDING JUDGE KUENYEHIA: Thank you. I'd like to welcome  
18 Mr. Katanga and Mr. Ngudjolo and their respective Defence teams, as well  
19 as the Prosecution team and the representatives of the Registry to this  
20 hearing.

21 Could the Prosecution please introduce themselves and members of  
22 their team.

23 MR. MacDONALD: Thank you, Your Honour. The Prosecution this  
24 morning is represented by Ms. Florence Darques-Lane, Mr. Ian Bulmer,  
25 Ms. Sandra Schoeters, Mr. Pubudu Sachithanandan, and myself Eric

1 MacDonald. Thank you.

2 PRESIDING JUDGE KUENYEHIA: Thank you. We understand that the  
3 principal counsel for Mr. Katanga, Mr. David Hooper, was not available to  
4 attend this hearing but that his assistant counsel, Mr. Goran Sluiter,  
5 will be representing Mr. Katanga's interest at this hearing.

6 Could the Defence for Mr. Katanga please introduce themselves and  
7 the members of their team.

8 MS. BUISMAN: Good morning, your Honours. On the side of  
9 Germain Katanga, are present Professor Sluiter and myself, Caroline  
10 Buisman, and Sophie Menegon. Indeed, I apologise on behalf of lead  
11 counsel. He will be with us shortly. Hopefully has arrived at Schiphol  
12 at this moment. Unfortunately, we had late notice of this 11.00 hearing,  
13 so he was under the understanding that we were starting at 2.00. That's  
14 why he couldn't be here earlier. So we do apologise. We are happy to  
15 proceed. We just hope that before we make our submissions, if at all  
16 necessary, in response to the submission of our colleagues that we'll  
17 have an opportunity to speak to the client and with Mr. Hooper. So  
18 that's all we have to say. Thank you.

19 PRESIDING JUDGE KUENYEHIA: Thank you very much, the Chamber  
20 notes the apology and accepts it.

21 Could the Defence for Mr. Ngudjolo Chui also introduce themselves  
22 and the members of their team.

23 MR. KILENDA (interpretation): Thank you, your Honour. On my  
24 right you have Ms. Maryse Alie who is from the Bar in Brussels, and my  
25 legal assistant; and you also have my case manager, Ms. Aurelie Roche;

1 and myself, Mr. Kilenda Kakengi Basila.

2 PRESIDING JUDGE KUENYEHIA: Thank you very much. Could the  
3 representatives of the Registrar -- Registry also introduce themselves.

4 MR. PERALTA LOSILLA: Indeed, your Honour. I have, on my right,  
5 Mr. Anders Backman, who is the Chief Custody Officer; on my left is  
6 Ms. Bibiana Becerra-Suarez, who is the Legal Coordinator in the Division  
7 of Court Services; and myself, Esteban Peralta Losilla, Chief of the  
8 Defence Support Section.

9 PRESIDING JUDGE KUENYEHIA: Thank you very much. Before we begin  
10 the Chamber would like to note for the record that both Mr. Katanga and  
11 Mr. Ngudjolo Chui have access to liaison interpretation in Lingala for  
12 the purposes of this hearing. The purpose of this hearing is to solicit  
13 the views of the respective parties on Mr. Ngudjolo Chui's Defence team's  
14 request on the 7th of April, 2008, ICC-01/04-01/07-410 to postpone the  
15 date of the Confirmation Hearing which is currently scheduled for 21st of  
16 May, 2008.

17 In this regard, the Chamber understands that while the Single  
18 Judge has ensured that the Prosecution has closely observed the calendar  
19 for disclosure to the Defence teams for the Confirmation Hearing which is  
20 scheduled for 21st May, a number of appeals are currently pending before  
21 the Appeals Chamber and that while Mr. Katanga had his first appearance  
22 on the 17th [sic] of October, 2007, Mr. Ngudjolo Chui's first appearance  
23 before the Chamber was on 11th February, 2008. The request of Mr.  
24 Ngudjolo Chui's asks the Chamber to postpone the date of the Confirmation  
25 Hearing for a variety of reasons to at least 60 days after the last

1 judgement issued by the Appeals Chamber on the interlocutory appeals  
2 currently pending in pre-trial phase of the case of the Prosecutor  
3 against Germain Katanga and Mathieu Ngudjolo Chui.

4 I would like to note that this afternoon at 2.00 p.m. there will  
5 be a public Status Conference with the Prosecution, the Defences of  
6 Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui and the representatives  
7 of the Registry in relation to disclosure issues. So this morning, we  
8 will only discuss the request for postponement. I would therefore  
9 request that the parties limit their submissions to the topic of this  
10 morning's hearing, the request for the postponement.

11 Before we proceed, I'd like to know whether the liaison  
12 interpretation in Lingala is okay for both Mr. Katanga and Mr. Ngudjolo  
13 Chui. Okay. Thank you very much.

14 If it is agreeable to the parties, the Chamber will begin by  
15 hearing from the Prosecution on the request of Mr. Ngudjolo Chui for the  
16 postponement of the Confirmation Hearing, and then it will be the turn of  
17 Mr. Germain Katanga. And if Mr. Ngudjolo Chui wishes to make  
18 observations in addition to their written observations, they will also  
19 have the opportunity to do so. Finally, the Chamber will also provide an  
20 opportunity for the representatives of the Registry to make any  
21 observations on these issues.

22 However, before we have the observations of the Prosecutor, the  
23 Chamber has some preliminary questions for Mr. Ngudjolo's Defence team.  
24 These are just -- in the Defence submission it indicated that it had  
25 Ringtail training on the 7th and 10th of April. Is that correct?

1 MR. KILENDA (interpretation): That is correct, your Honour.

2 PRESIDING JUDGE KUENYEHIA: Does the Registry have anything to  
3 say about the implementation of the Registry or its own course?

4 MR. PERALTA LOSILLA: Your Honour, that's -- these are the dates  
5 that were finally agreed. I have the information from the IT section  
6 that in the case of the case manager, a training was planned for 4th  
7 April at 9.30, and she rescheduled it to -- to have it done on the 7th of  
8 April, and the 10th of April was the date which was agreed with the rest  
9 of the Defence team.

10 PRESIDING JUDGE KUENYEHIA: Thank you very much.

11 Again the Defence of Mr. Ngudjolo indicated that the first intern  
12 among the previous selected four would not be available before mid-June.  
13 Could the Defence clarify whether it has since been able to select an  
14 intern? Have you been able to get another intern?

15 MR. KILENDA (interpretation): Excuse me. Since we have come to  
16 this courtroom we still haven't been able to find an intern, not even on  
17 an interim basis or from the team.

18 PRESIDING JUDGE KUENYEHIA: Does the Registry have any regard --  
19 any observations in this regard? Is it able to facilitate the  
20 procurement of an intern?

21 MR. PERALTA LOSILLA: Yes, your Honour. The Registry has done  
22 everything possible to facilitate the recruitment of an intern since the  
23 day where the request was placed by the Defence team in liaison, in  
24 particular, the Defence Support Section and myself in coordination with  
25 the Human Resources Section. We facilitated that in a short term the

1 Defence team received a number of files of persons who would be ready to  
2 accept an internship. The Defence studied those files and proposed a  
3 list of names, and the problem of availability of the particular persons  
4 to be -- to make themselves available to work for the Defence team.  
5 Unfortunately, something that we cannot do anything about.

6 PRESIDING JUDGE KUENYEHIA: Are you saying that it's not possible  
7 at all beyond what you've done to help them procure an intern, just so as  
8 to expedite issues with them? Maybe you can consult with them again and  
9 see whether you can do something.

10 MR. PERALTA LOSILLA: I will do it, your Honour, and we will try  
11 to -- to ask the person selected by the Defence to see if they would be  
12 available to come at an earlier date, and otherwise we will again provide  
13 more files to the Defence for them to try to find the person who is  
14 available at a shorter notice.

15 PRESIDING JUDGE KUENYEHIA: Okay. Thank you very much.

16 I'd just like a confirmation from the Defence of Mr. Ngudjolo's  
17 team that the team has been in place since the 25th of March, 2008. So  
18 for approximately a month now.

19 MR. KILENDA (interpretation): Yes. We have been complete since  
20 the 25th of March this year.

21 PRESIDING JUDGE KUENYEHIA: Thank you very much.

22 Perhaps before we move on we would ask for Mr. Ngudjolo Chui's  
23 Defence team initial observations on its request for a record in the  
24 transcript before we move on to the observations of the Prosecutor.

25 MR. KILENDA (interpretation): Thank you very much, your Honour.

1           As you mentioned yourself, our team has only been complete since  
2   the 25th of March, and as the Defence team, it is our mission to provide  
3   quality services for our client, who has very serious accusations against  
4   him. And considering these concerns, it is quite right that we should be  
5   able to benefit from facilities which make it possible for us to  
6   correctly study his case, to analyse it from the legal standpoint, and to  
7   be able to advise our client on the right path.

8           Given the circumstances with regard to setting up our team and  
9   the decision to join the cases that was taken, according to which the two  
10  cases, that of Mr. Germain Katanga and Mr. Ngudjolo are joined, we  
11  consider as the Defence team that we are not on a -- we do not have an  
12  equality of arms with the team to be able to provide the quality that we  
13  need to before you, and this justifies -- this is the basis for the  
14  application that was made to ask for the Confirmation Hearing to be  
15  postponed, which I know have already been set at the hearing on the 11th  
16  of February, 2008, in the preliminary hearing, pre-trial hearing.

17          We hope that our application which was expressed in fact and in  
18  law will be well-received by the Chamber, and I would like to limit  
19  myself at the moment to initial observation by stressing the fact that  
20  our mission is to ensure quality service for our client. We consider as  
21  things currently stand that we are not currently able to provide this  
22  quality service, and this is the reason why we hope to be able to count  
23  on you, so that you will provide us with reasonable time, which was  
24  stated in our application, to have the necessary facilities to ensure his  
25  defence.

1 I would like to rest for the moment. However, if you have any  
2 questions, I and the members of my team are fully ready to bring you any  
3 clarifications you may require.

4 PRESIDING JUDGE KUENYEHIA: Thank you very much. We will now  
5 take the observations of the Prosecutor on the application to postpone  
6 the Confirmation Hearing.

7 MR. MacDONALD (interpretation): Thank you, your Honour. I shall  
8 be brief. The Prosecution filed the document containing the charges  
9 according to the schedule. The Prosecution list of evidence was also  
10 filed yesterday. This evidence was disclosed to the Defence in both  
11 cases. The Prosecution is ready to continue and we shall leave it to the  
12 discretion of the Chamber to take a decision.

13 Thank you.

14 PRESIDING JUDGE KUENYEHIA: Thank you very much.

15 In the absence of the lead counsel, does the Defence for  
16 Mr. Katanga have any observations at this point in time? We do know that  
17 he is not available for good reason.

18 MS. BUISMAN: Thank you, Madam President. I'm afraid we would  
19 really like to wait for him to be present with us. This is an important  
20 matter. We, obviously, are in a different position from our colleagues  
21 who have very good reasons for asking for a postponement. It's very  
22 fundamental that we have an opportunity to discuss this fully with the  
23 client and with the lead counsel, so I really hope that you accept that.  
24 And even if -- I hope that he's arriving any time soon, but if nothing  
25 else, we could also at the beginning of this afternoon perhaps give our



1 observations.

2 PRESIDING JUDGE KUENYEHIA: Thank you very much.

3 Thank you very much. We do note the fact that it is important,  
4 and therefore we will give opportunity for your observations before a  
5 decision is taken.

6 MS. BUISMAN: Thank you very much, Madam President.

7 PRESIDING JUDGE KUENYEHIA: Would Mr. Ngudjolo Chui have anything  
8 additional to what you have already submitted in writing and said here?

9 MR. KILENDA (interpretation): Your Honour, I think that it is  
10 normal that my colleague, the lead counsel of the other team, is present.  
11 This is a fairly important matter, and there should be an inter partes  
12 debate. I think that it -- another opinion would be welcome to edify the  
13 Court before it takes a decision on the matter. I think the request that  
14 my learned colleagues on the other side have made, that is requesting the  
15 presence of lead counsel, is entirely justified. We would like to  
16 discuss this matter once and for all so that we can spare ourselves  
17 postponements which will only delay the decision on this question but  
18 also delay the confirmation of charges hearing.

19 (The Pre-Trial Chamber confers)

20 PRESIDING JUDGE KUENYEHIA: It is important that we have -- of  
21 course, as I've said the Chamber recognises the importance of having the  
22 input of the Defence team of Mr. Katanga, of course under the leadership  
23 of lead counsel. Would you like us to wait half an hour to see whether  
24 he will come in half an hour, or -- so that we come back at -- we suspend  
25 for half an hour, come back at 12.00 and listen to him?

1 MS. BUISMAN: That might be a good solution. Thank you very  
2 much. I mean, I can -- of course I haven't spoken to him. Maybe -- if  
3 everything is correct, he should have arrived at 11.00, so he should be  
4 here at 12.00. That was the understanding. Of course we don't know if  
5 there was a delay, but I think half an hour, I think maybe that could be  
6 a solution. And if not, then I will contact someone to report that.  
7 Thank you.

8 PRESIDING JUDGE KUENYEHIA: Thank you very much. In any case,  
9 the Chamber is going to give time for you -- for everybody to make  
10 written observations, but because we are here, we would take a half an  
11 hour break and hope that Mr. Hooper is here by 12.00 and give him an  
12 opportunity if he wants to make oral observations before we continue with  
13 the hearing.

14 Is that okay?

15 So we would adjourn for half an hour and resume at 12.00 sharp.  
16 Thank you.

17 COURT USHER: All rise.

18 Recess taken at 11.31 a.m.

19 On resuming at 12.22 p.m.

20 COURT USHER: All rise.

21 PRESIDING JUDGE KUENYEHIA: Please be seated.

22 Could the Court Officers please bring in the suspects.

23 Thank you. The hearing is resumed.

24 Mr. Hooper, I would like to welcome you to this hearing. We know  
25 you have just come from the airport, but we trust that you have -- you

1 received the application for postponement filed by the Defence of  
2 Mr. Ngudjolo Chui last Friday, the 18th of April.

3 Before we move on with the hearing, we'd like to make -- if you  
4 would sit for a minute, please, Mr. Hooper. We would like to make some  
5 corrections to the transcript in the first part of the hearing.

6 The date of the first appearance of Mr. Germain Katanga was the  
7 22nd of October, 2007, not the 17th of October, 2007.

8 Now, in the earlier hearing this morning, Mr. Hooper, the Chamber  
9 heard a brief explanation of the application for postponement made by  
10 Mr. Kilenda, and we heard the observations of the Prosecutor on the  
11 application. The Defence of Mathieu Ngudjolo Chui summarised a  
12 submission made in its application that the principal of equality of arms  
13 is violated as the Defence is not placed in the same position as the  
14 other parties in the case with regard to their ability to properly  
15 analyse documents in the case and provide the quality of legal service to  
16 Mathieu Ngudjolo Chui in the preparation of his defence for reasons such  
17 as the fact that the team was only properly constituted on the 25th of  
18 May -- March, 2008, and they still have not been able to recruit an  
19 intern, and that the Defence team was trained on the Ringtail system only  
20 between the 7th and the 10th of April.

21 The Prosecution has made its observations to the effect that it  
22 has filed a charging document and list of evidence and has disclosed its  
23 evidence in accordance with the calendar on disclosure, and therefore  
24 they are ready to proceed.

25 We know that you just travelled and come here, and since you're

1       here I know you had a very short time to consult with your client. We  
2       would like to know if you have any initial observations on the  
3       application filed by the Defence of Mr. Ngudjolo Chui, Mr. Hooper.

4               MR. HOOPER: Well, first of all, if I was in his position I'd be  
5       making that application and doubtless be optimistic as to the result, but  
6       I don't make that application as I represent another and separate accused  
7       whose -- whose history has been very different as he was brought here  
8       in -- now almost six months ago, indeed six months ago. And it won't be  
9       a surprise to the Chamber that he is upset and concerned at his -- at his  
10      general situation, which is aggravated by these circumstances.

11             It seems to us that -- that the history of the last six months  
12      has been unfortunate. We are puzzled, and we cannot for our part  
13      understand why, for example, it was necessary that he, Mr. Germain  
14      Katanga, was brought here so many months ago while his now co-person, if  
15      that's his title, was arrested so much later. Why there was that time  
16      difference puzzles us, but those are the facts. That's the history. And  
17      it seems to us that because of that unfortunate, frankly, lack of  
18      coordination in arrests that's given rise to this intractable problem,  
19      and it is intractable. I can see that as far as my friend Mr. Kilenda is  
20      concerned.

21             So there we are. I think I've indicated, I hope, what  
22      Mr. Katanga's view of the situation is. I appreciate it poses  
23      considerable difficulties to you, the Judges. I should say that there  
24      will be some other matters that we will be seeking to bring before the  
25      Appeals Chamber which I dare say are in pretty good view you the Judges

1 in any event, two particular matters, relation to detention, possibly  
2 relation to Witness 12, for example, described as a core witness and  
3 remains so in the Prosecution's presentation of its confirmation case,  
4 and those are matters which -- certainly the latter matter requires --  
5 will probably require to be sorted out before the confirmation can take  
6 place but there we are.

7 Can I just raise one matter that's perhaps, I know, very -- a  
8 little away from the matters that I've been addressing you on so far, but  
9 at the same time to some extent very much at the heart of it, and that is  
10 this: We've applied and we've had the generous assistance of the  
11 Registry, may I say, in arranging a visit by Mr. Katanga's family to him.  
12 These things we appreciate take time and not least of all in gaining  
13 perhaps the -- the speedy cooperation of the State where it's necessary  
14 that he be issued with passports or they be issued with passports and the  
15 like.

16 Now, I mention it now while I'm on my feet because it may be that  
17 this Court is sympathetic to that kind of matter being expedited, and we  
18 hope whatever your decision may be that perhaps a few words to encourage  
19 such expedition, not that I suspect it's truly needed with the Registry,  
20 but nevertheless it always helps.

21 Thank you.

22 PRESIDING JUDGE KUENYEHIA: Thank you, Mr. Hooper. The Chamber  
23 would like to inform the parties that they have until 4.00 p.m. tomorrow,  
24 that is Wednesday, 23rd of April, 2008, to make any final written  
25 submissions on the application for postponement if they so desire. It is

1 not mandatory. As well as proposed new dates for the Confirmation  
2 Hearing if the Chamber were to decide on its postponement, but it is not  
3 mandatory that you make written submission, but we are giving you the  
4 opportunity to do so before the Chamber decides on the issue.

5 In this regard, the Chamber will request the parties to bear in  
6 mind that as we have repeatedly emphasised, the Confirmation Hearing has  
7 a limited scope and purpose. It is not a mini-trial, nor is it a trial  
8 before a trial but, rather, a procedural step to ensure that no case goes  
9 to trial unless there is sufficient evidence to establish substantial  
10 grounds to believe that the person or persons committed the crimes with  
11 which they've been charged.

12 The limited scope and purpose of the Confirmation Hearing is  
13 consistent with the requirements of Article 61(3) of the Statute that:

14 "Within a reasonable time after the person's surrender or  
15 voluntary appearance before the court, the Pre-Trial Chamber shall hold a  
16 hearing to confirm the charges on which the Prosecutor intends to seek  
17 trial."

18 And the requirement of Rule 121(3): "A Defence shall have no  
19 later than 30 days before the confirmation hearing the document  
20 containing the charges and the list of evidence."

21 The Chamber would therefore like to reiterate that the  
22 Prosecution has closely observed the calendar for disclosure established  
23 by the Single Judge and that the charging document and the list of  
24 evidence were filed yesterday in accordance with the 21st April, 2008,  
25 deadline for the May Confirmation Hearing.

1           Having said this, this really concludes the agenda for this  
2 morning's hearing. As always, the Chamber will endeavour to answer the  
3 request of Mr. Ngudjolo Chui as expeditiously as possible.

4           I would like to inform Mr. Hooper, in relation to the very last  
5 item that you raised, that there is a Status Conference this afternoon  
6 where you will be present, and I'm sure that will be the appropriate  
7 forum, because you are going to discuss a number of issues to raise your  
8 concern. The Chamber has noted your concern, and I'm sure the registry,  
9 whose representatives are here, have also noted your concern in relation  
10 to the family visit of Mr. Katanga.

11           We have -- we've been informed that because of the liaison  
12 interpretation which is made available during this hearing, we have to  
13 allow one and a half hours break for the interpreters. Therefore, the  
14 hearing that is schedule for 2.00 will take place at 2.30 instead of  
15 2.00.

16           Before adjourning, I'd like to thank on behalf the Chamber all  
17 the parties involved in this hearing today as well as our interpreters  
18 and court reporters. Thank you very much for your patience during the  
19 hearing and for all your services.

20           Thank you, Mr. Hooper, for making the effort to be here this  
21 morning in spite of the difficulties you had. The Chamber appreciates  
22 it.

23           On that note, the hearing is adjourned\* this afternoon.

24           Thank you very much.

25           The hearing ends at 12.35 p.m.

## CORRECTION REPORT

- 1 The Pre-Trial Chamber I has made the following modification in the
- 2 transcript:

\*p 15 line 23 "...the hearing is adjourned until 2.30 this afternoon." is  
replaced by "...the hearing is adjourned this afternoon."