

1 International Criminal Court

2 Pre-Trial Chamber I

3 Situation Democratic Republic of Congo, ICC-01/04-02/07

4 Initial Appearance

5 Monday, 11 February 2008 - Open session

6 The hearing commences at 2.19 p.m.

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

9 JUDGE KUENYEHIA: This hearing is open.

10 May I please ask the security officers to bring in the detainee.

11 (The accused enters the courtroom)

12 JUDGE KUENYEHIA: Thank you very much.

13 The Chamber decided that photographers may take pictures for one
14 minute, so could they please come in for one minute only, please.

15 (Photographers enter the courtroom)

16 JUDGE KUENYEHIA: Thank you. On behalf of my colleagues, Judge
17 Anita Usacka on my right and Judge Sylvia Steiner on my left, I would
18 like to welcome everyone to this hearing and to ask all those who are
19 participating to introduce themselves, starting of course with the
20 Office of the Prosecutor.

21 MS. BENSOUA: Thank you, Madam President.

22 The Office of the Prosecutor is represented this afternoon by
23 Eric Macdonald, Trial Lawyer; Florence Darques-Lane, Legal Advisor;
24 Pascal Turlan, International Cooperation Advisor; Paula Mattila,
25 Investigations Team Leader; Pubudu Sachithanandan, Assistant Trial

1 Lawyer; and I am Fatou Bensouda, the Deputy Prosecutor.

2 JUDGE KUENYEHIA: Now I would like to turn to the Defence.

3 THE INTERPRETER: Microphone, please.

4 JUDGE KUENYEHIA: Sorry. I now would like to turn to the
5 Defence. As we are going to ask various questions regarding the
6 identity of Mr. Mathieu Ngudjolo Chui, I would invite counsel for the
7 Defence to present himself first.

8 Counsel, would you like to present yourself first, introduce
9 yourself?

10 MR. KILENDA (interpretation): Thank you, your Honour. My name
11 is Mr. Jean-Pierre Kilenka Kakengi Basila, and I am a barrister before
12 the bar of Brussels.

13 JUDGE KUENYEHIA: As you know, for the time being your status is
14 provisional as a duty counsel. The Chamber was informed of your
15 appointment by the Registrar as duty counsel.

16 I would now like the other counsel --

17 MR. KILENDA (interpretation): Your Honour, with your permission
18 I would like to point out that I have invited Xavier-Jean Keita of the
19 Office of Public Counsel for Defence to assist me in the technical and
20 legal aspects of this trial.

21 JUDGE KUENYEHIA: All right. Thank you.

22 Mr. Keita, would you like to present yourself then.

23 MR. KEITA (interpretation): Thank you, your Honour. The Office
24 of Public Counsel for the Defence is represented here today by
25 Ms. Caroline Baugas, Legal Assistant; Mr. Jean Jacques Mangenda, who

1 is the case manager; and I am the principal counsel, Xavier-Jean
2 Keita. Thank you.

3 JUDGE KUENYEHIA: Thank you very much.

4 I would now like to ask the detainee, Mr. Mathieu Ngudjolo Chui,
5 to stand please and answer a number of questions to ascertain his
6 identity. These are very basic questions. To answer the questions,
7 please use the microphone before you. You may speak in the language
8 which you fully understand and speak. Could you please confirm that
9 you speak French.

10 THE ACCUSED (interpretation): Yes, I speak French.

11 JUDGE KUENYEHIA: Thank you very much. We would like to confirm
12 your name, your date of birth, and your profession.

13 THE ACCUSED (interpretation): I am a colonel in the National
14 Army of the Democratic Republic of Congo, thus I am a military man.

15 JUDGE KUENYEHIA: Date of birth? I asked about your date of
16 birth. Could you confirm your date of birth for the Chamber, please.

17 THE ACCUSED (interpretation): Yes. I was born on the 8th of
18 October, 1970, in Bunia.

19 JUDGE KUENYEHIA: Thank you.

20 My colleagues, would you like to put any questions regarding his
21 identity? Okay.

22 This brings me to another matter provided for under Article 60 of
23 the Statute. Have you been informed of the crimes with which you are
24 charged, yes or no? Is there a difficulty in his hearing -- are there
25 translation problems?

1 I'll repeat my question. Have you been informed of the crimes
2 with which you are charged?

3 THE ACCUSED (interpretation): That's okay now.

4 JUDGE KUENYEHIA: So I will repeat my question. Have you been
5 informed of the crimes with which you are charged?

6 THE ACCUSED (interpretation): Yes, I have been informed that
7 there is an arrest warrant for crimes committed in Ituri.

8 JUDGE KUENYEHIA: I would now like to ask the court officer to
9 read the warrant of arrest to you, Mr. Mathieu Ngudjolo Chui.

10 Court Officer, could you please read the warrant of arrest.

11 THE REGISTRAR: Pre-Trial Chamber I of the International Criminal
12 Court, hereafter "the Court";

13 Noting the decision assigning the situation of the Democratic
14 Republic of Congo, hereafter "the DRC," to the Chamber, rendered by
15 the Presidency on 5 July 2004;

16 Noting the "Notification to Pre-Trial Chamber I and Request for
17 Extension of Page Limit," filed by the Prosecution on 14 June 2007;

18 Noting the Prosecution's Application for a warrant of arrest for
19 Mathieu Ngudjolo Chui, hereafter "Mathieu Ngudjolo," filed in two
20 parts on 25 June 2007, hereafter "the Prosecution Application";

21 Noting the evidence and other information submitted by the
22 Prosecution;

23 Noting the "Decision concerning Supporting Materials in relation
24 with the Prosecution's Application," rendered on 26 June 2007;

25 Noting the Prosecution's response to the Decision concerning

1 supporting materials in relation with the Prosecution's Application,
2 filed on 27 June 2007;

3 Noting articles 19(1) and 58(1) of the Rome Statute, hereafter
4 "the Statute";

5 Considering that the analysis of the evidence and other
6 information submitted by the Prosecution will be set out in a decision
7 to be filed in a separate document;

8 Considering that, on the basis of the evidence and information
9 submitted by the Prosecution and without prejudice to the filing of
10 any challenge to the admissibility of the case under articles 19(2)(a)
11 and (b) of the Statute and without prejudice to any subsequent
12 decision in this regard, the case against Mathieu Ngudjolo falls
13 within the jurisdiction of the Court and is admissible;

14 Considering that there are reasonable grounds to believe that
15 from July 2002 until the end of 2003 there was a protracted armed
16 conflict on the territory of Ituri involving armed groups based
17 thereon and having a hierarchical organisation and the ability to plan
18 and carry out sustained military operations, including the Front des
19 nationalistes et integrationnistes, [National Integrationist Front],
20 hereinafter "the FNI"; the Force de resistance patriotique en Ituri,
21 [Patriotic Resistance Force of Ituri], hereafter "the FRPI"; the Union
22 des patriotes Congolais, [Union of Congolese Patriots], hereafter "the
23 UPC/the Forces patriotiques pour la liberation du Congo, Patriotic
24 Forces for the Liberation of Congo, hereafter "the FPLC"; and the
25 Parti pour l'unite et la sauvegarde de l'integrite du Congo, Party for

1 the Unity and Safeguarding of the Integrity of Congo, hereafter "the
2 PUSIC";

3 Considering that there are reasonable grounds to believe that the
4 Uganda People's Defence Force, hereafter "UPDF," allegedly also
5 participated in the above-mentioned armed conflict;

6 Considering, therefore, that there are reasonable grounds to
7 believe that a protracted armed conflict took place during the said
8 period and that it may be characterised as being of a
9 non-international, or alternatively, as being of an international
10 character;

11 Considering that there are reasonable grounds to believe that in
12 the context of the armed conflict, the FNI and the FRPI, acting with a
13 common purpose, carried out an attack on the village of Bogoro which
14 started on or around 24 February 2003;

15 Considering that there are reasonable grounds to believe that the
16 attack directed against the village of Bogoro was indiscriminate, and
17 that during, and in the aftermath of, the attack, members of the FNI
18 and FRPI committed several criminal acts against civilians primarily
19 of Hema ethnicity; namely, (i) the murder of about 200 civilians; (ii)
20 causing serious bodily harm to civilians; (iii) arresting, threatening
21 with weapons and imprisoning civilians in a room filled with corpses;
22 (iv) pillaging; and (v) the sexual enslavement of several women and
23 girls;

24 Considering also that there are reasonable grounds to believe
25 that members of the FNI and FRPI used children under the age of 15

1 years to participate actively in this attack;

2 Considering, therefore, that there are reasonable grounds to
3 believe that, during, and in the aftermath of, the attack on the
4 village of Bogoro, war crimes within the jurisdiction of the Court
5 pursuant to Articles 8(2)(a)(i), 8(2)(a)(ii), 8(2)(b)(i),
6 8(2)(b)(xvi), 8(2)(b)(xxii), 8(2)(b)(xxvi), 8(2)(c)(i), 8(2)(e)(i),
7 8(2)(e)(v), 8(2)(e)(vi) and 8(2)(e)(vii) of the Statute as described
8 in the Prosecution Application, were committed.

9 Considering that there are reasonable grounds to believe that
10 between January 2003 and at least March 2003 the FNI and FRPI carried
11 out an attack directed against the civilian population of certain
12 parts of the territory of Ituri, primarily of Hema ethnicity; that the
13 attack was of a systematic or widespread nature; and that during such
14 a systematic or widespread attack, on or around 24th February 2003,
15 during, and in the aftermath of, the attack on the village of Bogoro,
16 the following crimes were committed: The murder of about 200
17 civilians, causing serious bodily harm to civilians and the sexual
18 enslavement of women and girls;

19 Considering, therefore, that there are reasonable grounds to
20 believe that during the attack on the village of Bogoro, crimes
21 against humanity within the jurisdiction of the Court pursuant to
22 articles 7(1)(a), 7(1)(g), and 7(1)(k) of the Statute, as described in
23 the Prosecution Application, were committed;

24 Considering that there are reasonable grounds to believe that
25 Mathieu Ngudjolo was the highest ranking FNI commander;

1 Considering that there are reasonable grounds to believe that
2 there was a common plan between Mathieu Ngudjolo and other senior FNI
3 and FRPI military commanders to carry out an indiscriminate attack on
4 the village of Bogoro on or around 24 February 2003; that criminal
5 acts committed during, and in the aftermath of, the attack; namely (i)
6 the murder of about 200 civilians, (ii) causing serious bodily harm to
7 civilians, (iii) arresting, threatening with weapons and imprisoning
8 civilians in a room filled with corpses, (iv) pillaging, (v) the
9 sexual enslavement of several women and girls, and (vi) the active
10 participation of children under the age of 15 years in hostilities,
11 were part of the common plan or were, at the very least, a probable
12 and accepted consequence of the implementation of the said common
13 plan;

14 Considering that there are reasonable grounds to believe that, as
15 the highest ranking FNI commander, and by designing the common plan
16 and ordering his subordinates to execute it, Mathieu Ngudjolo's
17 contribution was essential to its implementation;

18 Considering that for the foregoing reasons, there are reasonable
19 grounds to believe that Mathieu Ngudjolo is criminally responsible
20 under article 25(3)(a) or, in the alternative, under article 25(3)(b)
21 of the Statute for:

22 (i) murder as a crime against humanity, punishable under article
23 7(1)a) of the Statute;

24 (ii) willful killing as a war crime, punishable under article
25 8(2)(a)(i) or article 8(2)(c)(i) of the Statute;

1 (iii) inhumane acts as a crime against humanity, punishable under
2 article 7(1)(k) of the Statute;

3 (iv) inhumane treatment as a war crime, punishable under article
4 8(2)(a)(ii), or cruel treatment as a war crime, punishable under
5 article 8(2)(c)(i) of the Statute;

6 (v) the war crime of using children under the age of 15 years to
7 participate actively in hostilities, punishable under article
8 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Statute;

9 (vi) sexual slavery as a crime against humanity, punishable under
10 article 7(1)(g) of the Statute;

11 (vii) sexual slavery as a war crime, punishable under article
12 8(2)(b)(xxii) or article 8(2)(e)(vi) of the Statute;

13 (viii) the war crime of intentionally directing attacks against
14 the civilian population as such or against individual civilians not
15 taking part in hostilities, punishable under article 8(2)(b)(i) or
16 article 8(2)(e)(i) of the Statute;

17 (ix) pillaging a town or place, even when taken by assault as a
18 war crime, punishable under article 8(2)(b)(xvi) or article 8(2)(e)(v)
19 of the Statute;

20 Considering that there are reasonable grounds to believe that the
21 arrest of Mathieu Ngudjolo appears necessary at this stage within the
22 meaning of articles 58(1)(b)(i) and (ii) of the Statute to ensure his
23 appearance before the Court and that he does not obstruct or endanger
24 the investigation;

25 For these reasons, hereby issues a warrant of arrest for Mathieu

1 Ngudjolo Chui, whose photograph is attached, who is believed to be a
2 national of the Democratic Republic of Congo, born on 8 October 1970
3 in Bunia, Ituri District, whose place of origin is the village of
4 Likoni, in the groupement of Ezekere, within Walendu Tatsi
5 collectivite, in Djugu territory, who is believed to be of Lendu
6 ethnicity, married to Semaka Lemi and father of two children, son of
7 Mawa Likoni and Lasi, and believed to be a former nurse in Bunia,
8 alleged former leader of the FNI, currently a Colonel in the National
9 Army of the Government of the DRC (Forces armees de la RDC [Armed
10 Forces of the Democratic Republic of Congo] "FARDC") since October
11 2006, currently stationed in Bunia and adviser to the Chief of the
12 Operational Sector of the FARDC, and whose name is also written
13 Mathieu Cui Ngudjolo, Cui Ngudjolo.

14 Done in both English and French, the French version being
15 authoritative.

16 JUDGE KUENYEHIA: Thank you very much, Court Officer.

17 The Chamber would like to ensure, Mr. Mathieu Ngudjolo Chui, that
18 as of the time of your arrival on Dutch territory, that is, on
19 Thursday, 7 February 2008, you were indeed informed of all your rights
20 as set out under Article 67 of the Rome Statute. Is that the case?
21 May I know whether you were informed of your rights under the Statute,
22 Mr. Mathieu Ngudjolo Chui?

23 THE ACCUSED (interpretation): I was informed of them.

24 JUDGE KUENYEHIA: Would you like the Chamber to repeat these
25 rights now?

1 THE ACCUSED (interpretation): Yes.

2 JUDGE KUENYEHIA: Okay.

3 Under Article 67(1) of the Statute, you have the right to be
4 informed promptly and in detail of the nature, cause, and content of
5 the charge in a language which you fully understand and speak.

6 You have the right to have adequate time and facilities for the
7 preparation of your defence and to communicate freely with your
8 counsel.

9 You have the right to be tried without undue delay; to be present
10 at the trial; to conduct your defence either in person or through
11 legal assistants of your choosing; to examine -- to have examined the
12 witnesses against you, and to obtain the attendance and participation
13 of witnesses on your own behalf.

14 You have the right to have, free of any cost, the assistance of a
15 competent interpreter and such translations as are necessary to meet
16 the requirement of fairness.

17 You have a right not to be compelled to testify or to confess
18 guilt and to remain silent; to make an unsworn oral or written
19 statement in your defence; and not to have imposed on you any reversal
20 of the burden of proof or any onus of rebuttal.

21 These rights that I have just mentioned relate to trial but also
22 to the confirmation of charges process. Your counsel will be aware of
23 them as well, and it is always something that you can discuss with
24 your counsel.

25 Now I would like to tend to the matter of your counsel.

1 Mr. Jean-Pierre Kilenda Kakengi Basila, on behalf of my
2 colleagues, I would like to welcome you to the Court. I'd like to
3 remind you that now you are a duty counsel and therefore,
4 Mr. Ngudjolo, you don't have to have him as your definitive, permanent
5 counsel. But we note that for the time being Mr. Jean-Pierre Kilenda
6 Kakengi Basila does indeed meet the criteria which are necessary for
7 counsel to be included on the list of counsel administered by the
8 Court and therefore meets the criteria which are necessary to
9 represent you, Mr. Ngudjolo Chui, before this Court. But it is up to
10 you to choose your counsel. It is one of your rights. Therefore, you
11 have the right to choose whoever you want to represent you.

12 Now, on behalf of my colleagues, I would like to have your
13 opinion, Mr. Ngudjolo Chui, regarding the conditions of your surrender
14 to the International Criminal Court, as well as of your conditions of
15 detention at the Detention Centre of the Court. Mr. Ngudjolo Chui, is
16 there anything that you would like to tell us or observations you
17 would like to tell us about the long journey from Kinshasa to the
18 Netherlands?

19 Yes, counsel.

20 MR. KILENDA (interpretation): Thank you, your Honours. I do not
21 wish to speak about the conditions of the trip because he would
22 have -- my client will have the opportunity to answer this question.
23 However, I would like to mention something, with the permission of the
24 Pre-Trial Chamber, with respect to the admissibility of this case
25 before the ICC, and I would like to say that I plan on requesting a

1 provisional release of my client and I have informed Ms. Fatou
2 Bensouda of my intention to do so.

3 JUDGE KUENYEHIA: Thank you, Mr. Basila. Can I refer to you as
4 Mr. Basila or Kilenda, or do you want me to pronounce the full name?

5 MR. KILENDA (interpretation): It doesn't matter, your Honour.

6 JUDGE KUENYEHIA: I have noted -- the Chamber has noted your
7 submission. I'd just like to remind you that issues relating to
8 admissibility can only be raised once, unless the Chamber decides
9 otherwise, and of course as you are aware you will have to put this in
10 writing to the Chamber.

11 May I now ask whether your client, Mr. Mathieu Ngudjolo, has any
12 comments on his journey, on his arrival at -- the conditions of his
13 surrender and the conditions at the Detention Centre of the
14 International Criminal Court. If he has, he can make those
15 observations now.

16 MR. KILENDA (interpretation): I would rather that he answer
17 directly, your Honour.

18 THE ACCUSED (interpretation): Thank you. The journey was long,
19 very long, and when I left Kinshasa I had muscle cramps in my right
20 leg and it was painful and I still have to deal with pain until now.

21 With respect to my conditions of detention, I can say that it's
22 okay, but I would like to say -- say it's okay, but I have a problem
23 with respect to interpretation. I would like to request a Lingala
24 interpreter because I would like to speak in Lingala.

25 And the food, the cooking, Dutch cooking, I must say that it

1 doesn't suit. We're used to African cooking, and I must say that the
2 cooking is not suitable. And I would like this question to be solved.
3 Otherwise, I have no other issues that I wish to raise. If I have any
4 other issues to raise, I have counsel and I will advise him of any
5 other issues that might arise.

6 (The Pre-Trial Chamber confers)

7 JUDGE KUENYEHIA: Thank you, Mr. Mathieu Ngudjolo Chui. We note
8 your concerns about the food, and I hope that the Registry -- the
9 representatives of the Registry are here and I hope that you are
10 taking note and you will try and address that issue for him.

11 In respect to Lingala, I think you have answered here that you
12 speak and understand French. If you have any request in relation to
13 Lingala, we will request that your counsel puts in an application, of
14 course with the necessary legal justifications, and the Chamber will
15 be ready to consider that application.

16 To continue the hearing, in the provisions which govern the ICC,
17 the International Criminal Court, I'd like to remind your counsel that
18 they are Regulations 96 to 106 of the regulations of the Court. These
19 regulations cover the rights of the detained person and conditions of
20 detention, such as contact that you may have with diplomatic and
21 consular authorities of your country.

22 In this regard I just would like to note that the Chamber is
23 aware that we have scheduled a hearing for tomorrow concerning contact
24 between Mr. Mathieu Ngudjolo and Mr. Germain Katanga at the Detention
25 Centre. The hearing is for tomorrow, so that will be taken care of.

1 The next item - I think your counsel has mentioned it but I would
2 still like to highlight it - by virtue of Regulation 60 of the
3 Statute, Mr. Mathieu Ngudjolo Chui, you may during this hearing or
4 after this hearing request interim release pending trial. The Chamber
5 of course will not rule upon it immediately, even if you request it
6 now. Even though your counsel has already made its intentions clear,
7 I would still like to ask whether you would like to make such a
8 request now, at this hearing. Of course once you make it, the
9 Prosecutor will also be asked to present his observations of the
10 matter. Would you like to make a request for interim release now?

11 MR. KILENDA (interpretation): Yes, your Honour, I would hereby
12 confirm that.

13 JUDGE KUENYEHIA: Okay.

14 MR. KILENDA (interpretation): Thank you, your Honour. I heard
15 you say that there is a hearing tomorrow afternoon that is going to
16 deal with the contact between my client and Mr. Germain Katanga. I
17 would like to know what provisions have been made by the ICC, first of
18 all, with respect to counsel attending that hearing, because as far as
19 I am aware I am only duty counsel for today's hearing.

20 And secondly, I would like to know what provisions have been
21 taken by the ICC to ensure that the document pertaining to it, which
22 to my understanding is in English, will be translated into French. I
23 would like to know whether my client has been informed of the
24 proceeding that will take place tomorrow.

25 JUDGE KUENYEHIA: I think that we received a notification from

1 the Registry with regard to your first question of an extension of
2 your mandate to cover tomorrow's hearing.

3 The Registry is here. Can you please confirm that?

4 MR. DUBUISSON (interpretation): That is correct, Madam
5 President, and we can confirm that his mandate will be extended until
6 tomorrow for -- Mr. Kilenda's mandate will be extended to tomorrow.

7 MR. KILENDA (interpretation): Thank you, Madam President.

8 JUDGE KUENYEHIA: On the second issue, the document has already
9 been translated into French. The document pertaining to the hearing
10 has already been translated into French. Again, I am sure that the
11 Registry can confirm this.

12 MR. DUBUISSON (interpretation): Yes, of course, Madam President.
13 And we would also like to say that we have a French language
14 interpreter available if this is necessary.

15 MR. KILENDA (interpretation): Madam President, I would like to
16 know if the document has already been translated or whether we need to
17 request an interpreter to translate the document. And can you please
18 advise about the supporting materials that the prosecutor has filed?

19 JUDGE KUENYEHIA: I think on Friday -- my information -- the
20 Chamber's information is that on Friday this document was translated
21 orally to your client, Mr. Mathieu Ngudjolo Chui, and that all related
22 documents can be translated in this way to him.

23 MR. KILENDA (interpretation): Thank you, Madam President.

24 JUDGE KUENYEHIA: So you have confirmed that you will ask for
25 interim release. I would now like to give you the floor to make your

1 request formally to the Chamber, or if you prefer to file a written
2 document, the Chamber is also happy with that.

3 MR. KILENDA (interpretation): Madam President, your Honours, I
4 would like to make oral submissions with respect to this request for
5 an interim release, but I would also, with the permission of the
6 Pre-Trial Chamber, file a written motion within 24 hours. I had
7 stated earlier that I was going to file a request for release and that
8 it had to deal with the -- I also mentioned that I would like to deal
9 with the fact that I thought this case was not admissible by the
10 Court, and I would like to know whether you would like me to file this
11 at that point.

12 With your permission, what I would like to do is that I would
13 like to deal with a motion for inadmissibility which will then allow
14 me to logically end with the motion for interim release, because the
15 arguments I wish to develop are similar in that they support both
16 arguments.

17 JUDGE KUENYEHIA: I think the Chamber is fine with that, so long
18 as you realise that you can make the -- you can challenge the
19 admissibility only once.

20 Mr. Keita, did you want to speak?

21 MR. KEITA (interpretation): Thank you, Madam President. No, I
22 did not request the floor.

23 MR. KILENDA (interpretation): Thank you, Madam President.

24 In this case, after having followed very closely the developments
25 with respect to the warrant of arrest which was issued against my

1 client, ever since I have arrived in The Hague since last Saturday, I
2 have spent approximately six hours with him and the Defence that I
3 hereby represent believes it has the right to raise this motion on the
4 inadmissibility of the case and we would like to raise this motion for
5 the following reasons:

6 My client has informed me that in view of the case that you are
7 now hearing today he had been initially arrested in the Congo, in
8 Bunia, on the 23rd of October, 2003, and the facts that are being
9 brought to you today and that were mentioned during the arrest warrant
10 go back to the 24th of February, 2003.

11 On the 3rd of March, 2004, when the prosecutor of the Democratic
12 Republic of Congo referred this to -- these events to the ICC with
13 respect to the events that took place in Ituri, then my client was
14 already appearing before a trial chamber in Bunia for the same facts
15 that you have been -- that you have been seized with today.

16 In 2004, that is, in July 2004, when the Office of the Prosecutor
17 opened its investigation, my client was still appearing before a trial
18 chamber in Bunia for the same facts, and this is information that was
19 provided by my client.

20 In June 2004 the tribunal de grande instance of Bunia acquitted
21 my client and they said at that point that he was fully acquitted at
22 the time. And as paradoxical as this may seem, my client was not
23 immediately released.

24 From Bunia, on the 14th of September 2004, he was transferred to
25 the detention facility in Makala, in Kinshasa. This is the former

1 prison of Makala. And he remained detained there until the 24th of
2 September, 2004, when he was released as a result of measures that
3 were undertaken by his counsel in Kinshasa, Counsel Banga. And the
4 truth of the procedures that my client has had to bear in his country
5 is something -- these are facts that have been acknowledged both by
6 the Office of the Prosecutor and by the Pre-Trial Chamber. And you
7 can refer to point number 18 on document ICC-01/04-02/07-3-US. The
8 document is dated 6 July 2007, and I would like to read this document:

9 "The Prosecutor has said in his motion, Mathieu Ngudjolo was
10 arrested by MONUC on the 24th of October, or around that date, and he
11 was handed over to Congolese authorities. As the Prosecutor says in
12 his motion, Mathieu Ngudjolo has appeared before the tribunal de
13 grande instance in Bunia with respect to a murder of a high-ranking
14 person in Bunia and he was released in December 2004. He was
15 acquitted in June 2004 before being released in December 2004."

16 One can wonder that in view of someone -- you can wonder why
17 someone had to remain in prison for six months after being acquitted
18 in June. And if we refer to paragraph 19, the Prosecutor states that:

19 "The Bunia prosecutor opened an investigation against Mathieu
20 Ngudjolo for other murders allegedly committed within an attack
21 brought on the village of Tchomia on the 15th of July, 2003.
22 Moreover, the national military prosecutor issued in September 2005 a
23 warrant of arrest for Mathieu Ngudjolo in relation to charges relating
24 to his role within the Mouvement Revolutionnaire Congolais."

25 But the Prosecution does not tell us what happened with respect

1 to these other proceedings and the Prosecution -- in contact with the
2 Prosecution, it submits that my client has told me that he was
3 acquitted for all of the facts that were brought against him and which
4 are now being reiterated before your Court.

5 When he was arrested last week in Kinshasa, and when he was read
6 the warrant of arrest that had been issued against him, my client made
7 a statement and for -- I would now like to read this statement in
8 extenso for the record.

9 "Statement made by Colonel Ngudjolo Mathieu Chui, registration
10 number 507795/K. I hereby state that the facts that have been brought
11 against me as a commander of the FNI/FRPI, for these same facts I was
12 arrested on the 23rd of October, 2003, and I was tried and judged for
13 these same facts by the tribunal de grande instance of Bunia. The
14 tribunal de grande instance of Bunia acquitted me of these facts.
15 After my acquittal -- despite my acquittal I was transferred to the
16 detention facilities in Makala, and it was as a result of measures
17 taken by my counsel at the Supreme Court of Justice that I was able to
18 be released and that I was reintegrated into the FARDC with the rank
19 of colonel with the following registration number: 507795/K. I do
20 not understand why I am now being arrested again by the International
21 Criminal Court for this same event, the same facts for which I have
22 already been acquitted.

23 "Done in Kinshasa, on the 6th of February, 2008, by Colonel
24 Ngudjolo Chui."

25 Madam President, your Honours, pursuant to Article 17 of the

1 International Criminal Court, item C, "a person may be determined -- a
2 case may be determined inadmissible by a court if a person cannot be
3 judged pursuant to Article 20 ..."

4 THE INTERPRETER: The interpreter begins again.

5 MR. KILENDA (interpretation): "... the person concerned has
6 already been tried for conduct which is the subject of the complaint
7 and the trial by the court is not permitted under Article 20,
8 paragraph 3."

9 Now, with respect to Article 19 that deals with challenges to the
10 jurisdiction of the Court or the admissibility of the case, I would
11 now like to refer to paragraph 2(a), challenges to the admissibility
12 of a case on the grounds referred to in Article 17, or challenges to
13 the jurisdiction of the Court may be made by an accused or a person
14 for whom a warrant of arrest or a summons to appear has been issued
15 under Article 58.

16 Finally, Article 20 of the Statute of the International Criminal
17 Court which deals with the concept of ne bis in idem, states under
18 paragraph number 3:

19 "No person who has been tried by another court for conduct also
20 prescribed under article 6, 7 or 8 shall be tried by the Court with
21 respect to the same conduct unless the proceedings in the other court:
22 (a) were for the purpose of shielding the person concerned from
23 criminal responsibility for crimes within the jurisdiction of the
24 Court; or (b) otherwise were not conducted independently or
25 impartially in accordance with the norms of due process recognized by

1 international law and were conducted in a manner which, in the
2 circumstances, was inconsistent with an intent to bring the person
3 concerned to justice."

4 My client believes that he is in the situation of a person for
5 whom another court -- has already been tried by another court in his
6 country and this -- for the same conduct that he is now appearing
7 before ICC today. So he believes he cannot be tried ne bis in idem
8 for -- with respect to the conduct which form the basis of the crime,
9 and this is a result of the articles of the Rome Statute which I have
10 read to you. Therefore, I am of the view that there is nothing left
11 for you to do but to acknowledge the fact that this case is
12 inadmissible.

13 You will see that this issue of admissibility raises, in our --
14 from our point, a second point, that is, the warrant of arrest which
15 was issued against my client, the warrant of arrest which is dated the
16 6th of July, 2007.

17 In view of what I have just stated, I am of the view that nothing
18 justified the issuance of such an arrest warrant and my client fully
19 agrees with me on this. My client was not in a position to cause
20 problems with respect to the investigation because as a colonel in the
21 Armed Forces of the Democratic Republic of Congo, and in view of the
22 fact that he was an officer, he was living a normal life in his
23 country.

24 Moreover, my client had already heard from the press that the
25 head of state had referred this matter to the ICC with respect to the

1 events of which he is being charged today, and he knew investigations
2 had been done and he never fled. He always remained in the Democratic
3 Republic of Congo.

4 Moreover, the Mouvement Revolutionnaire Congolais signed an
5 agreement with the government in place, and it was as a result of the
6 said agreement that my client became a colonel and his other officers
7 received the rank of lieutenant colonel and major. And he never even
8 conceived or thought of leaving the Democratic Republic of Congo, and
9 he does not -- has neither a bank account nor a house abroad and not
10 one in the Democratic Republic of Congo.

11 On the day he was arrested he was coming back from the staff
12 headquarters of the Democratic Republic of Congo, and when he entered
13 the place where he was going through -- following a course, he was
14 informed by the director that the Ministry of Defence was looking for
15 him. And he could have fled, but he decided to remain in his country.
16 He decided to remain in the training centre until he could be escorted
17 with, I should mention, no attempted brutality. This is what later
18 brought him to The Hague.

19 It's for all of these reasons, Madam President and your Honours,
20 that I would respectfully submit from the International Criminal Court
21 the following:

22 First of all, to declare that this case is inadmissible with
23 respect to my client because of the principle of ne bis in idem
24 because he cannot be tried for the same crimes, and then to order that
25 he be released. However, if it were by some extraordinary

1 circumstance that the International Criminal Court were to decide that
2 it is admissible, then I would like to request that you grant my
3 client an interim release with or without conditions. My client
4 hereby undertakes not to hinder the proceedings before the Court and
5 to appear to any summons before the Court, because to him it is also
6 extremely important that light be shed about the facts that are being
7 mentioned before this Pre-Trial Chamber.

8 Madam President, your Honours, with your permission I would like
9 to submit -- I would like to make submissions in writing to support
10 what I have just said now. Thank you.

11 JUDGE KUENYEHIA: Thank you very much, counsel. In fact, the
12 Chamber was going to ask you to submit everything in writing because
13 we will also need to have the observations of the Prosecutor on these
14 issues. So the Chamber would be grateful for a written submission at
15 your earliest convenience. How early will that be?

16 MR. KILENDA (interpretation): Thank you, your Honour. I shall
17 make my written submissions tomorrow morning, that is to say, I shall
18 file a written application tomorrow morning.

19 JUDGE KUENYEHIA: We will now continue with the hearing.

20 The Chamber would like to observe that the Prosecution initially
21 presented a joint application seeking warrants of arrest for
22 Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui for crimes allegedly
23 committed during and in the aftermath of a joint attack on the village
24 of Bogoro by the FNI and FRPI on the 24th of February, 2003.

25 Moreover, the warrants of arrest issued by the Chamber for both

1 Mr. Germain Katanga and Mr. Ngudjolo Chui as a result of the
2 Prosecution's application in respect of their alleged responsibility
3 for the crimes allegedly committed during the said attacks on the
4 village of Bogoro in Ituri.

5 Under the circumstances the Chamber decides that at the hearing
6 which is scheduled for tomorrow, which is already scheduled and for
7 which you have already been notified, as well as Mr. Germain Katanga,
8 the Chamber will consider the issue of joining the charges against the
9 two people.

10 I would now like to continue going through the statutory
11 provisions. By virtue of Rule 121 of the Rules of Procedure and
12 Evidence, the Chamber shall set a date, and I'm quoting from the rule,
13 "The Chamber shall set a date ..."

14 Sorry.

15 MR. KILENDA (interpretation): Your Honour, is it possible for
16 the Defence to receive the grounds for that order, that is to say, the
17 joinder of the case of Mr. Katanga and that of my client?

18 JUDGE KUENYEHIA: The basis is what the Chamber has already
19 stated, that the warrant of arrest presented by the Office of the
20 Prosecutor -- sorry, the Prosecution had initially presented a joint
21 application for warrants of arrest for the two -- for Mr. Germain
22 Katanga and for Mr. Mathieu Ngudjolo Chui for crimes allegedly
23 committed during and in the aftermath of the joint attack on the
24 village of Bogoro by the FNI and the FRPI on the 24th of February,
25 2003.

1 MR. KILENDA (interpretation): Thank you, your Honour. We shall
2 discuss the matter when the time comes, that is to say, tomorrow.

3 JUDGE KUENYEHIA: Yes. I was saying that under -- by virtue of
4 Rule 121 of the Rules of Procedure and Evidence, the Chamber shall set
5 a date for the confirmation of charges hearing in the case of the
6 Prosecutor against Mr. Mathieu Ngudjolo Chui. To meet the
7 requirements set out by the Statute and the rules, the Chamber has
8 decided to provide Mr. Mathieu Ngudjolo Chui a certain amount of time
9 to prepare for the Confirmation Hearing and therefore sets the date of
10 21 May 2008.

11 I would like the Prosecutor to take note of this date of 21st of
12 May, 2003 -- sorry, 2008. I seem to be going backwards.

13 Of course, as you may know and as is indicated in Rule 121 of the
14 Rules, the hearing may be postponed. However, with the experience of
15 the Chamber, the Judges of the Chamber, the date set will be respected
16 as it gives enough time of the disclosure process, the familiarisation
17 process of the Defence of Mathieu Ngudjolo Chui with the case, the
18 preparation of the defence for the Confirmation Hearing, and the
19 adoption and implementation of necessary measures for witness
20 protection.

21 I would also like to add that as a result of Rule 121(2) of the
22 Rules of Procedure and Evidence, 121(2) stipulates that "The Chamber
23 shall hold Status Conferences to ensure that disclosure takes place
24 and that satisfactory conditions ..." again I'm quoting from the rule,
25 "... and to do so a Judge of the Chamber shall be appointed to

1 organise such Status Conference."

2 Judge Sylvia Steiner is the judge in case of disclosure and the
3 Single Judge in the Prosecutor against Germain Katanga, and she will
4 remain the Single Judge for the case of Mr. -- the Prosecutor against
5 Mr. Mathieu Ngudjolo Chui.

6 I would now like to turn to the Prosecutor and remind her that
7 under Article 67(2) of the Statute you must disclose to the Defence
8 exculpatory evidence and materials regarding Mr. Mathieu Ngudjolo
9 Chui, and I now would like to ask you, Madam Prosecutor, if you would
10 like to make any observations to the Chamber at this time.

11 MS. BENSOUA: I don't have any observations as such. The
12 matters that have been raised by counsel for the Defence, we will
13 respond in writing. Obviously we will be opposing both applications,
14 admissibility as well as interim release, but we will document this in
15 our submissions.

16 JUDGE KUENYEHIA: Thank you, madam.

17 I would now like to turn to the Defence. Is there any other
18 observation you would like to make at this point in time?

19 MR. KILENDA (interpretation): Your Honour, for the time being I
20 have no further observations to make.

21 JUDGE KUENYEHIA: I would also like to ask Mr. -- your client,
22 Mr. Mathieu Ngudjolo Chui, if he has any other observations at this
23 time?

24 THE ACCUSED (interpretation): At this point in time I have no
25 further comments to make.

1 JUDGE KUENYEHIA: Thank you, Mr. Ngudjolo.

2 I would now like to ask my colleagues if they have anything else
3 to add. Judge Usacka? Judge Steiner? Thank you very much.

4 So this ends the first appearance in the case of the Prosecutor
5 against Mr. Mathieu Ngudjolo Chui. I would like to thank our
6 interpreters, recorders, and all the participants on both sides, the
7 Defence, the Prosecution, the Registry, for being here and of course
8 our esteemed audience for being here this afternoon.

9 I would like security to wait for the Judges to exit before
10 escorting Mr. Mathieu Ngudjolo Chui out of the courtroom. Thank you
11 very much. The hearing is now ended.

12 The hearing adjourned at 3.22 p.m.

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