

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, 10 June 2008

6 The hearing starts at 3.06 p.m.

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

9 PRESIDING JUDGE KUENYEHIA: Good afternoon, everybody. I believe
10 that Mr. Ngudjolo is not here this afternoon; right? Is he here? He's
11 not here.

12 MR. KILENDA (interpretation): Yes, your Honour. He is not here.
13 He is unwell.

14 PRESIDING JUDGE KUENYEHIA: Can the security now bring
15 Mr. Katanga in. Thank you.

16 Court Officer, can you please call the case.

17 COURT OFFICER (interpretation): Situation in the Democratic
18 Republic of the Congo, in the case of the Prosecutor versus Germain
19 Katanga and Mathieu Ngudjolo Chui, number ICC-01/04-01/07.

20 PRESIDING JUDGE KUENYEHIA: Thank you very much. The hearing is
21 now open.

22 I'd like first of all to welcome Mr. Katanga, who is here this
23 afternoon.

24 As provided for in the decision implementing the Appeals Chamber
25 judgement concerning languages, Mr. Germain Katanga is provided at this

1 hearing in accordance with Regulation 61(1)(d) of the Regulation with
2 liaison terms into Lingala.

3 Now I'd like to welcome the Prosecution; the Defence for
4 Mr. Germain Katanga, Mr. Hooper and his team; the Defence for
5 Mr. Ngudjolo Chui, Mr. Kilenda and his team, the legal representatives of
6 the various victims of the case. I see Ms. Bapita, and I take it that
7 Mr. Gilissen. And I would also like to welcome the representatives of
8 the Registry.

9 Pursuant to the decision on the 97 applications for participation
10 at the pre-trial stage of the case, 52 applicants have been granted the
11 procedural status of victim at the pre-trial stage of the case of the
12 Prosecutor versus Germain Katanga and Mathieu Ngudjolo Chui. They will
13 be represented by four different legal representatives. Ms. Bapita who
14 is present here today, Mr. Keta, Mr. Herve Diakiese, and
15 Mr. Jean-Chrisostome Mulamba Nsokoloni who are not present at this
16 hearing.

17 I now would like the participants to this hearing to introduce
18 themselves starting with the Office of the Prosecutor.

19 MR. MacDONALD: Thank you, Your Honour. The Office of the
20 Prosecutor is represented today by Ms. Florence Darques-Lane, Ms. Sandra
21 Schoeters, Mr. Ian Bulmer, and myself, Eric MacDonald.

22 PRESIDING JUDGE KUENYEHIA: Thank you. I'd now like to turn to
23 Defence teams starting by Mr. Katanga.

24 MR. HOOPER: Is represented today by Mr. Sluiter, myself David
25 Hooper, and Caroline Buisman. Thank you.

1 PRESIDING JUDGE KUENYEHIA: Thank you.

2 Mr. Ngudjolo Chui.

3 MR. KILENDA (interpretation): Thank you, Your Honour. I would
4 like to apologise on behalf of my legal assistant Ms. Maryse Aurelia who
5 is unavoidably absent on business in Brussels and will not be with us
6 this afternoon but she will be here next time. To my left you have
7 Aurelie Roche and I am Jean-Pierre Kilenda, and I am of the Brussels bar.
8 I repeat once more that our client cannot be here. I visited him this
9 morning and he is indeed unwell.

10 PRESIDING JUDGE KUENYEHIA: Thank you very much. I'll now turn
11 to the representatives of the victims. Could you please introduce
12 yourselves.

13 MR. GILISSEN (interpretation): I am Jean Louis Gilissen. I
14 represent victims A03336 and Mr. Keta has given me power of attorney to
15 represent him this afternoon. Thank you.

16 MS. BAPITA (interpretation): I am Carine Bapita. I represent
17 victims 327, 329, 330, 331/07, and 30 more victims who have been admitted
18 to the status of victims and whose numbers I do not have. Thank you.

19 PRESIDING JUDGE KUENYEHIA: Thank you very much. Would the
20 representatives of the Registry please introduce themselves.

21 MR. DUBUISSON (interpretation): Thank you, Your Honour. With me
22 is Jasmine Toumaj who is a legal officer in the Division of Court
23 Services, and I am Marc Dubuisson, division of -- Director of Court
24 Services, representing the Registrar Silvana Arbia.

25 PRESIDING JUDGE KUENYEHIA: Thank you very much.

1 The purpose -- the main purpose of this hearing is to discuss the
2 proposed schedule for the confirmation hearing, which was distributed by
3 the Single Judge on the 4th of June this year. However, I would like to
4 address some issues before we come to the main agenda item.

5 The first issue I'd like to address is the urgent motions by both
6 Defences. First, yesterday the Defence for Mr. Germain Katanga filed an
7 urgent public motion seeking the amendment of the document containing the
8 charges. This morning the Defence for Mr. Mathieu Ngudjolo Chui has also
9 filed an urgent motion requesting the deletion of paragraph 92 of the
10 charging document. The motion filed by Mr. -- the motion filed by the
11 Defence for Mr. Mathieu Ngudjolo Chui is classified as confidential. I
12 note that there is really no reason for this motion to be filed as
13 confidential, and therefore the Single Judge decides to reclassify the
14 document ICC-01/04-01/07-575-Conf as public.

15 In relation to the public motion of Mr. Germain Katanga, the
16 Single Judge decides to give the Prosecution and the legal
17 representatives of the victims of the case until Friday, the 13th of
18 June, at 16 hours to file a response.

19 The Defence of Mr. Mathieu Ngudjolo Chui has just filed document
20 577 in the record of the case in which he makes the additional requests
21 which virtually adopts the requests made by Mr. Germain Katanga
22 yesterday, which can therefore be taken as his observations on
23 Mr. Katanga's urgent motion.

24 In relation to the urgent -- originally confidential motion by
25 Mr. Mathieu Ngudjolo Chui that has already been reclassified as public,

1 the Single Judge decides to give the Defence for Germain Katanga and the
2 legal representatives of the victims of the case until Friday the 13th of
3 June at 16 hours to file a response.

4 The second issue I'd like to deal with is the documents
5 concerning the requests for leave to appeal against the decision of the
6 Single Judge to admit the evidence of Witnesses 132 and 287. The Single
7 Judge notes that two requests for leave to appeal have been filed against
8 the decision on the Prosecution's urgent application for the admission of
9 the evidence of Witnesses 132 and 287. The first one is document number
10 ICC-01/04-01/07-544, which was filed confidential on 3rd June 2008 by the
11 Defence for Mathieu Ngudjolo Chui. The second one, document number
12 ICC-01/04-01/07-545 was filed as a public document on the 3rd of June by
13 the Defence of Mr. Germain Katanga. Yesterday, the Prosecution filed as
14 ex parte, available to the Prosecution and Defence only, the
15 Prosecution's consolidated response to Defence applications for leave to
16 appeal the decision on the admission of the evidence of Witnesses 132 and
17 287, document number ICC-01/04-01/07-569.

18 The Single Judge sees no reason to maintain the classification of
19 any of these documents as confidential. Therefore, these documents
20 ICC-01/04-01/07-544 and 569 are reclassified as public. Moreover, the
21 Single Judge would like to emphasise that now there are several Legal
22 Representatives of Victims participating in the proceedings. Some of
23 them do not have access to confidential documents. Others have access to
24 confidential documents but not to ex parte documents. So from now on the
25 Single Judge would like to emphasise to the parties and the participants

1 that documents should be classified as confidential and/or ex parte only
2 when there is a compelling reason for so doing. The Single Judge would
3 like to ask that the parties do not resort to the unnecessary
4 classification of a document as confidential or ex parte to prevent the
5 Legal Representatives of Victims from having access to them and thus
6 making observations on the relevant matter.

7 The third item I would like to consider before we come to the
8 main agenda item is the procedure for leave to appeal relating to
9 procedural issues to be dealt with from now on till the start of the
10 confirmation hearing.

11 The Single Judge observes that there are a number of procedural
12 issues pending before this Chamber, including the issues raised by the
13 Defences concerning Article 54(3)(e) of the Statute, the application for
14 participation of Witness 166, the requests for anonymity vis-a-vis both
15 Defences of a number of victims, the requests for leave to appeal against
16 the decision on the Prosecution's urgent application for the admission of
17 the evidence of Witnesses 132 and 287, and the two urgent -- or, rather,
18 three urgent motions filed yesterday and today by the Defences of
19 Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui. The Single Judge can
20 foresee that a number of additional procedural issues, including those
21 relating to admissibility and relevance of the evidence on which the
22 Prosecution and the Defences intend to rely at the confirmation hearing,
23 are likely to be raised in the coming days prior to the commencement of
24 the confirmation hearing or will be included in the parties and
25 participants lists of procedural issues to be filed by the 23rd of June,

1 2008.

2 As a result and considering that the confirmation hearing is due
3 to start in two weeks, the Single Judge would like to ask the parties and
4 participants if the following procedure for leave to appeal is agreeable
5 to them in order to avoid spending resources from their limited time on
6 leave to appeal rather than the proper preparation for the evidentiary
7 debate to be held at the confirmation hearing. And I will just list very
8 quickly the proposal and would then like to ask the parties and
9 participants whether they are agreeable, and they simply say yes or no.

10 The first is that the Single Judge will decide on all the
11 procedural issues raised by the parties either prior to the confirmation
12 hearing or immediately after the oral submissions on procedural matters
13 which is scheduled for the morning session of 2nd July. The Chamber will
14 then decide either in written decision or by way of an oral decision.

15 Then within the five-day deadline provided for in Rule 155 of the
16 Rules, the issues for which a request for leave to appeal is intended to
17 be sought shall be identified and enumerated in a short filing.

18 The reasoning supporting the request for leave to appeal the
19 issues previously identified shall be contained in an additional document
20 to be filed within the five-day deadline to the request for leave to
21 appeal the Chamber's decision on the confirmation or not of the charges
22 at the end of the hearing.

23 Only upon the filing of the documents with the reasoning
24 supporting the requests for leave to appeal will then -- will the
25 deadline for the filing of responses to such requests then start running.

1 The Chamber then shall decide on the request for leave to appeal
2 in the same decision in which it decides on any request for leave to
3 appeal the decision on the confirmation or not of the charges.

4 This is the sum total of the proposal being made by the
5 Chamber -- by the Single Judge for the consideration of the parties. If
6 they are able to give us the answer now, we will be happy to receive
7 their answer. And this will proposal is being made in just so as to
8 have -- to make expeditious use of the time at our disposal. Thank you.

9 Is it necessary for me to repeat what I've said already?

10 MR. MacDONALD: Well, I would maybe have a question of
11 clarification, your Honour, just to make sure that we understand
12 correctly, and then maybe we can proceed this way for now.

13 Are we to understand that we have five days to file in -- make a
14 filing indicating our intention to seek leave to appeal and then provide
15 the actual reasons after or at the -- after the confirmation hearing? So
16 basically we're entering a notice indicating that is we intend so that we
17 can preserve our rights and then -- all right.

18 PRESIDING JUDGE KUENYEHIA: I think that's what we mean. So that
19 you do not lose your right.

20 MR. HOOPER: Madam President, there clearly is a logic here, but
21 it's slightly eluding me as to the advantage this system has over the
22 present one. It's not criticism at all it's just that I'm not absorbing
23 it this afternoon. Now, I was wondering in those circumstances as the
24 Court wants basically a yes or a no from us whether the yes or the no can
25 be deferred later on this evening. I can send an e-mail after we've

1 discussed it, but we still have the five-day Rule in terms of the period
2 for submission, but one is -- the first document is merely an indication
3 of a request of an intent, and then the second --

4 PRESIDING JUDGE KUENYEHIA: So as not to lose your right.

5 MR. HOOPER: Yes. All right. Yes. Well, I'm sure once I've
6 understood it it will be eminently workable.

7 PRESIDING JUDGE KUENYEHIA: I think the Chamber is quite well
8 disposed for you to give an answer later on in the evening --

9 MR. HOOPER: Thank you very much.

10 PRESIDING JUDGE KUENYEHIA: -- so that we can move ahead.

11 Mr. Kilenda, is that okay with you?

12 MR. KILENDA (interpretation): Thank you, Your Honour. I think
13 the position taken by my learned colleague Mr. Hooper is logical. We
14 would also like to be afforded reasonable time, perhaps up to this
15 evening, so that we can tell you our position.

16 PRESIDING JUDGE KUENYEHIA: Thank you very much. I take it the
17 legal representatives would also like to take the same position?

18 MR. GILISSEN (interpretation): I think it is wise, Madam
19 President, that we adopt the same position.

20 PRESIDING JUDGE KUENYEHIA: Thank you very much.

21 The next item I'd like to deal with are materials that are
22 potentially exculpatory or otherwise material for Defences preparation
23 for the confirmation hearing covered by Article 54(3)(e).

24 On the 2nd of June, 2008, the Single Judge issued her decision
25 requesting observations concerning Article 54(3)(e) documents identified

1 as potentially exculpatory or otherwise material for the Defences'
2 preparation for the confirmation hearing. In this decision, the Single
3 Judge requested the observation of the Prosecution, both Defences and the
4 legal representatives of the victims on the following question, and I
5 quote: "Whether in the absence of the providers' concept under Article
6 54(3)(e) of the Statute the provision to the Defence of analogous
7 information in materials not subject to the Prosecution's confidentiality
8 obligations adequately safeguards the Defence's right to a fair trial for
9 the purposes of the confirmation hearing."

10 The Prosecution and Ms. Carine Bapita Buyangandu filed their
11 observations last Thursday. Both Defences filed their observations
12 yesterday. Moreover, the Prosecution also filed its latest report on the
13 matter yesterday afternoon.

14 The Single Judge intends to issue a decision on the issues raised
15 by the parties and the participants in the coming days. Nevertheless, at
16 this stage the Single Judge would like to make a number of observations.

17 The first is that the Single Judge is seriously concerned by the
18 fact that the number of potentially exculpatory documents falling under
19 Rule 67(2) of the Statute and covered by Article 54(3)(e) has decreased
20 dramatically from 137 to 72 after the issuance of her decision of 2nd
21 June 2008.

22 The second -- the Single Judge observes that during the previous
23 six months the number of documents identified by the Prosecution as
24 falling under this category has systematically been 140 to 160. Although
25 over time the number came down on about 20 documents, the Single Judge is

1 seriously concerned with the new Prosecution redefinition of the criteria
2 that has brought the number of identified documents suddenly to half of
3 the original.

4 As a result and given the time constraints that we are all
5 facing, the Single Judge will take into consideration the 137 documents
6 identified by the Prosecution in its previous report, that is to say the
7 one filed on the 23rd of May, 2007, in order to determine whether the
8 Prosecution has violated or not its disclosure obligations pursuant to
9 Article 67(2) of the Statute and Rule 77 of the Rules.

10 The Single Judge would like to emphasise that any disclosure of
11 materials pursuant to Article 67(2) and Rule 77 of the Rules must be done
12 sufficiently in advance so that the Defence can make use of it, if it so
13 wishes, at the confirmation hearing. Therefore, for the purpose of this
14 confirmation hearing, the Single Judge decides that the Prosecution shall
15 file on Monday, the 16th of June, at 16 hours its final report on the
16 disclosure of 67(2) and Rule 77 materials in which it will particularly
17 address the status of those documents covered by Article 54(3)(e) of the
18 Statute and the number of documents for which requests have been rejected
19 or are pending and for which analogous information has been disclosed to
20 the Defence through other documents. In this regard, the Single Judge
21 emphasises that this report must explicitly refer to the 137 documents
22 identified as potentially exculpatory in the 23rd May 2008 Prosecution
23 report.

24 I'm sorry, the first report I referred to was 2008 and not 2007.
25 So if the transcript can be corrected.

1 After the filing of this report, both Defences, as well as legal
2 representatives of the victims, will have until Thursday, 19th of June at
3 16 hours to make their observations on whether or not the Prosecution has
4 complied with its obligations under 67(2) and Rule 77 of the Rules for
5 the purposes of the confirmation hearing.

6 For the reasons that will be given in writing in the coming days,
7 the Single Judge does not consider that providing the Chamber with
8 summaries containing the information identified as potentially
9 exculpatory or otherwise material for the Defence's preparation for the
10 confirmation hearing discharges the Prosecution's obligation under
11 Article 67(2) of the Statute and Rule 77 of the Rules. Therefore, the
12 Prosecution must not pursue at this stage this remit or this course of
13 action.

14 Now, I want to look at the modalities for participation of -- for
15 non-anonymous victims.

16 The Single Judge notes that no request for leave to appeal was
17 filed against the decision on limitation for non-anonymous victims. As a
18 result, the Single Judge has been informed by the Registry that an
19 account has been created in ring daily for Ms. Carine Bapita Buyangandu
20 to access the confidential part of the record as well as the transcripts
21 of closed-session hearings as provided for in the decisions -- decisions
22 number 474 and 537.

23 Moreover, in the decision filed before this hearing, 52
24 applicants have been granted the procedural status of victim in the
25 pre-trial stage of the present case. Out of them, out of this 52,

1 applicants 001 -- 0011, 0012, 0013, and 0016 are represented by Mr. Herve
2 Diakiese and have not requested anonymity. Moreover, applicants 0015,
3 0024, 0025, 0027, 0028, 0029, 0032, 0033, 0034, and 0035 represented by
4 Mr. Jean-Chrisostome Mulamba Nsokoloni have not requested anonymity
5 either. Therefore, the Registry shall create as soon as practicable for
6 Mr. Herve Diakiese and for Mr. Jean-Chrisostome Mulamba Nsokoloni an
7 account in Ringtail similar to the one created for Ms. Carine Bapita
8 Buyangandu.

9 The Single Judge has also been informed that when the account has
10 been created, they are only given access once the party or participant
11 introducing the document in Ringtail clicks on the name of the relevant
12 legal representative. The Single Judge expects, therefore, that the
13 Prosecution will do this as soon as practicable and that the proper
14 arrangements for the access of Ms. Carine Bapita Buyangandu, Mr. Herve
15 Diakiese, and Mr. Jean-Chrisostome Mulamba Nsokoloni to the confidential
16 part of the record of the case and to the transcripts of closed-session
17 hearings will be completed as soon as practicable.

18 Moreover, the Single Judge also expects from the Registry the
19 legal representatives of victim 0110 and Mr. Joseph Keta and
20 Mr. Gilissen, legal representatives of victim 0333 are given access to
21 the public part of the record of the case and to the transcripts of
22 public hearing as soon as practicable.

23 With regard to the legal representatives of those granted the
24 procedural status of victim in the decision issued by the Single Judge
25 before this hearing, they will only be given access when the request for

1 anonymity of their clients is been decided upon after receiving Monday
2 the 16th of June the observations of the Prosecution and both Defences.
3 In this regard, the Single Judge takes note that some legal
4 representatives such as Ms. Carine Bapita Buyangandu are representing
5 both non-anonymous victims and victims who are requesting anonymity
6 vis-a-vis the Defence. The Single Judge does not see in principle any
7 problem if a legal representative represents both anonymous and
8 non-anonymous victims as long as the discussions held between the
9 relevant legal representative and each group of their clients is limited
10 to the information that such a client is entitled to have pursuant to the
11 decision on victims' rights, number 474 -- decision number 474, and on
12 limitations of these rights, 537.

13 Finally, in relation with the manner -- in relation to the manner
14 in which the Office of Public Counsel for Victims and the Office of
15 Public Counsel for the Defence shall assist the two Defence teams and the
16 four Legal Representatives of Victims during these hearings, the Single
17 Judge, on the basis of the oral submissions made at the last status
18 conference, decides that, one, the Office of Public Counsel for Defence
19 shall commit a different member of the office to assisting each Defence
20 team for the purpose of the confirmation hearing if the assistance of the
21 office is requested by the respective Defence teams.

22 Two, the Office of Public Counsel for the Victims shall commit
23 different -- a different member of the office to assisting each legal
24 representatives for the purpose of the confirmation hearing if the
25 assistance of the office is requested by the respective legal

1 representative.

2 The members of the Office of Public Counsel for Defence and the
3 members of the Office of Public Counsel for Victims assisting the Defence
4 teams and the Legal Representatives of Victims shall be given the same
5 level of access to the record of the case and the transcripts of the
6 hearing, including realtime transcripts as the Defence teams or the legal
7 representatives that they represent -- they are assisting.

8 The members of the Office of Public Counsel for the Defence and
9 the members of the office of the public counsel for victims shall assist
10 the Defence teams and legal representatives of the victims during
11 hearings from outside the courtroom via access to realtime transcripts
12 and e-mail communication with the relevant groups.

13 This then brings me to the end of the issues that I wanted to
14 deal with before moving to the main item of the agenda. So I would now
15 like to turn to our main agenda item, that is the proposed schedule for
16 the confirmation hearing.

17 I'd like to say that the schedule was drafted keeping in mind
18 various technical limitations of the court and in consideration of the
19 rights of the suspects and the obligations of all the participants in the
20 conduct of the confirmation hearing. I will start by outlining these
21 considerations and limitations before we start discussing the schedule.
22 I will then ask the participants for their observations on the issues and
23 invite them to raise for discussion any of the other issues that relate
24 to the schedule for the confirmation hearing.

25 The schedule is based on the following considerations: One, the

1 Registry informed the Chamber that only four hours of Lingala
2 interpretation can be provided per day. In this regard, the Chamber is
3 requesting the Registry to allow an additional 15 minutes beyond the four
4 hours of Lingala interpretation per day on Thursday, the 3rd of July,
5 possibly Wednesday the 9th of July, and Thursday the 10th of July, and
6 probably other days depending on the final schedule that will be adopted
7 by the Chamber after today's discussion.

8 None of the parties intend to bring a live witness to give
9 evidence during the hearing.

10 The Prosecution intends to present audio-visual evidence during
11 the course of the confirmation hearing. The Chamber has made provision
12 for one 19 minutes and 20 second audio recording as well as one video
13 recording of 15 minutes and 36 seconds and another video recording of 50
14 seconds. The Defence teams have informed the Chamber that they will not
15 rely on any audio-visual material.

16 I would like to draw the attention of the parties and
17 participants to an error on page 5 of the proposed schedule that was
18 distributed. Page 5, under heading 6, Prosecution discussion of the
19 evidence including in the Defences' list of evidence and Defences'
20 additional list. The time allocated to the Prosecution on Thursday 15
21 July should be from 16.30 to 18.30 and not from 14.30 to 18.30. Because
22 if it was that, then the presentation of Defence by the Defence of
23 Mathieu Ngudjolo Chui and that of the Prosecution would have to be done
24 during the same time. I hope none of the participants was misled by this
25 error.

1 The times are allocated on the basis that the Prosecution shall
2 have 14 hours and the Defences for Mr. Germain Katanga and Mr. Mathieu
3 Ngudjolo Chui shall each have a total of 14 hours to make their opening
4 and closing statements, make their observation on procedural matters, and
5 to present their respective cases or evidentiary debates. The Legal
6 Representatives of Victims will also have altogether 14 hours to share
7 among themselves in the following manner: Three out of the 14 hours will
8 be shared between the legal representatives of anonymous and
9 non-anonymous victims for the purpose of opening and closing statements.
10 The legal representatives of non-anonymous victims shall have 11 hours to
11 share among themselves to make observations on procedural matters and for
12 the evidentiary debate.

13 With regard to closed sessions currently none are foreseen, but
14 should a need arise an additional 30 minutes will have to be allocated in
15 the schedule to allow for the technical adjustments required to switch
16 from a public to closed session.

17 I would like to emphasise that any evidence presented in closed
18 session shall also be discussed by any of the parties and participants in
19 closed session. In keeping with their ethical obligations, the parties
20 and participants must ensure that they do not introduce any of the
21 evidence disclosed -- discussed in a closed session during a subsequent
22 public session.

23 Lastly, I would like to say that the schedule has been drafted
24 with a view to avoiding hearings during the Court's recess period.

25 However, should the need arise, the Chamber is prepared to proceed with

1 the confirmation hearing through the recess period or part of the recess
2 period.

3 I trust that all parties and participants present at this hearing
4 have copies of the proposed schedule. The time allocated is broken down
5 in accordance with the steps of the confirmation hearing proceedings.

6 I will now like to hear from the parties and participants
7 regarding this issue of time allocation and specifically whether any of
8 them require more than the allocated time to make their respective
9 presentations. If this is the case, the Chamber will try its utmost to
10 accommodate any such request.

11 I will first turn to the Prosecution, then the Legal
12 Representatives of Victims, and then the Defence of Katanga, and finally
13 the Defence of Mr. Ngudjolo Chui. The assistance of the representatives
14 of the Registry will be required throughout the discussion because they
15 have the technical say in this matter.

16 Thank you very much.

17 MR. MacDONALD: We have two questions, your Honour. The first
18 one deals with the -- I will not discuss the opening and closing, but
19 I'll go straight to the dates of the Prosecution 's presentation of its
20 case, which is mainly on the 3rd and 4th of July in the afternoon where
21 we have a total of eight hours to do so. My question is the following:
22 We understand that the days prior to these two court days we will be
23 submitting the document numbers to which we'll be referring, basically
24 what we call an ERN number which starts by DRC OTP and then seven or
25 eight digits.

1 Now, this list will be provided so that when a lawyer stands up
2 for the Prosecution and refers to documents these documents can be shown
3 on the different screens. What we submit respectfully is that this
4 process, even though we do submit the list ahead of time, and considering
5 the experience of Lubanga, it does take time. So my question is the
6 following: The Prosecution most probably will be quoting from different
7 documents, most probably statements of transcripts. We can refer to the
8 DRC OTP number. We can refer to the statement as page numbers or
9 paragraphs and quote from those statements without necessarily having to
10 have the statements shown on the screen. When we read from a document,
11 of course we refer to the documents that will be in the e-court and as
12 disclosed to the parties and the Chamber too. We would recommend this
13 procedure to save time and to stick to the eight hours as provided for.

14 Of course there are photographs that we may show and refer to and
15 indicate. These things are different. But when we read or quote a
16 statement, what we want to prevent is having an objection all of a
17 sudden, "Well, we don't believe what the Prosecution is reading. We want
18 to have it first-hand in front of us," so that the document then needs to
19 be brought up on computer and basically what we're reading is what the
20 Chamber and participants and parties can see. I think this would
21 accelerate the presentation of the Prosecution's case because we believe
22 that we can do that within eight hours and maybe less. So that's the
23 first question, quoting from documents or statements that are on the
24 Prosecution's list of evidence.

25 The second question that I have for your Honour is this schedule

1 is pretty detailed, and we appreciate that, but my question is the
2 following: Let's say the Prosecution's case or the Defence presentation
3 of its arguments or its case is shorter than the allocated time. Does
4 that mean we move on already to -- if we were to -- let's say we were to
5 take six hours. Do we move immediately to the next agenda on the
6 schedule, meaning the next presentation of the legal representatives, or
7 do we see or do we in brackets lose two hours and then continue according
8 to the schedule the following day?

9 The reason why I'm asking that is that if we do proceed by
10 modifying the schedule because we have saved some time in, let's say, the
11 opening statements or in the Prosecution's presentation of its evidence
12 or Defence presentation of its evidence, that means we have -- the
13 schedule will always change or could change at the end of every day, and
14 we will have to discuss the schedule for the next day and lose each and
15 single day 15 minutes discussing the schedule. This means the Lingala
16 interpreters would have to maybe stay longer, and the parties would have
17 to stay in court longer.

18 So what the Prosecution is actually proposing is even though we
19 may have a shorter presentations and so on, that we stick to the schedule
20 and the days and the hours as set. So if one day we save two hours of
21 court time, well, all right. The parties can go back to their offices
22 and continue to work on their next presentation or the next items on the
23 schedule, and then that way we know exactly when and where we're to be
24 during those three weeks that the confirmation hearing is at this stage
25 scheduled to last.

1 PRESIDING JUDGE KUENYEHIA: So you're proposing your -- but your
2 first question is whether we stick to the ERN numbers that you provide
3 before the confirmation hearing so that whatever you're quoting from
4 would be displayed for everybody to hear -- to see, so that everybody is
5 reading what you are reading.

6 MR. MacDONALD: No, actually, it's the contrary. What I'm
7 recommending is that, yes, we will be providing CMS according to the
8 practice ahead of time the ERN numbers of the documents that we will be
9 referring to during our presentation on the 3rd and 4th, but to save
10 time, when we -- let's say I'm presenting part of the evidence and I --
11 one option is I can refer to Witness X that in his statement at paragraph
12 5 mentions the following. I can read it without having the document
13 showing on the display, read from it, quote from it, or I can paraphrase
14 what the witness is saying and just referring in his statement provided
15 under DRC OTP and give the ERN number.

16 What we want to prevent is to lose time, technical time, of
17 having bring up the statements or the documents each and every time. For
18 some it's inevitable and we'll do it, but for others the Prosecution
19 believes that since we have eight hours and we want to stick to those
20 eight hours, we don't want to spend two hours of the eight hours of
21 having to wait that documents pop up each and single time. When I use
22 the expression "pop up" I mean are basically transferred from the
23 database onto everybody's screen.

24 PRESIDING JUDGE KUENYEHIA: Just a clarification. I think you
25 have seven and a half hours not eight hours to make your case in the two

1 days. And I would like to -- you know, before we conclude this issue, I
2 would really like to hear from both Defence lawyers whether they are
3 agreeable to this proposal from the OTP. In relation to the evidence
4 either coming on the screen or as they're proposing in order to save time
5 reading or quoting or paraphrasing.

6 MR. HOOPER: Well, on behalf of Mr. Katanga, as our session this
7 afternoon progresses, I hope, Madam President, you'll be -- and your
8 fellow Judges will be better assisted, really, by what I hope will be a
9 clear indication of our view of this process. I don't mean the
10 Prosecution opening I mean the process because we have frankly very
11 little to say.

12 Now, in terms of the Prosecution opening, we have the list of
13 their evidence, we have their charges. We understand that essentially
14 the exercise is this evidence served on everybody we say supports these
15 charges, and we're wondering why it's necessary to take such a long time
16 over that when we have the documents.

17 It might be that we would be assisted by -- if my friend wants to
18 open it at such lengths, that we have a written opening with the
19 documents and references within it. If that's given to us in sufficient
20 time, that might speed things up certainly, but we have no problem with
21 references being made to documents and summaries. In fact, we have no
22 objection if the most cursory reference is made to documents as long as
23 those documents are in good and logical order, and as long as we've
24 received them all, which I think by now we should have. Then we can see
25 no reason for a protracted resume of the material. The Judges are

1 essentially, I would have thought, going to go away really looking at the
2 documents themselves and the charges themselves and seeing if there's a
3 sufficient match, and we are going to have, I think perhaps some little
4 to say about that, but probably by written motion rather than anything
5 else, a species you've already seen being served yesterday, so we have
6 very little more to add in respect of that.

7 So we're untroubled as to how the process is done by my friend.
8 I know in fairness to Mr. MacDonald he's been wrestling with this
9 question of presentation of the case for some time. I don't blame him,
10 because there's a very easy way of doing it, and I'm just wondering
11 whether we do need to take up even the amount of time that Mr. MacDonald
12 has suggested is necessary this afternoon.

13 So with that, I hope I can indicate for our part that we are not
14 troubled if there is a summary or passing reference or even a general
15 allusion to the mass of material.

16 Thank you.

17 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Hooper.

18 Can we hear from Mr. Kilenda.

19 MR. KILENDA (interpretation): Thank you, Judge. I don't want to
20 use your time unnecessarily. We've listened to the Prosecutor carefully,
21 and we believe on every occasion the Prosecutor will refer to the
22 documents as the criminal proceedings are bound by time, the references
23 will have to be complete and referral to specific documents they base
24 themselves upon for their charges will enable us to reply in good time
25 and we believe to ensure our client's defence properly.

1 As far as we're concerned, we are not, subject to what you
2 decide, favourable to have summaries, because we believe that the whole
3 documents or the whole elements which the Prosecutor refers to will be
4 necessary for us to take all the measures necessary to defend our
5 interests.

6 Thank you.

7 PRESIDING JUDGE KUENYEHIA: Thank you very much. Anything else
8 from the Prosecutor?

9 MR. MacDONALD: No, just the reminder of the second point, your
10 Honour, about the scheduling and its modification and expansion or
11 contraction.

12 PRESIDING JUDGE KUENYEHIA: I think it's fair that once we agree
13 on a schedule, even if we finish earlier, as was the practice in the
14 Lubanga case, we stopped for people to take their breath and then come
15 back so that people have more time to work on their case or not, unless
16 the Defence teams have some strong objection to that.

17 MR. HOOPER: Well, for our part we thought the confirmation could
18 take a day. That's how distant we are from -- from the schedule, which
19 is based, of course, original the experience in the Lubanga case. But
20 our approach to the confirmation is completely different. At this stage
21 we have no intention of calling witnesses. I have no intention of making
22 an opening address to the Court. The Prosecution are not calling
23 witnesses. So that's our position.

24 MR. KILENDA (interpretation): Thank you, Judge. We analysed
25 very carefully the programme, the schedule for the confirmation of

1 charges hearing, and I can reassure you that our team will not bring any
2 evidence. We have no witnesses that we wish to appear, and this was
3 already stated at a previous status conference hearing.

4 We will make a written submission by the 23rd of June, and we
5 will make an opening statement on the 30th of June, but you can rest
6 assured it will not take 90 minutes as scheduled.

7 The only concern that we have at present is related to the video
8 that the Prosecutor already talked about during the status conference of
9 the 3rd of June. If you look at page 21 of the hearing transcript of the
10 3rd of June, 2008, the Prosecutor explained that in the amended list of
11 evidence there is a 30-second video to identify Mr. Germain Katanga, and
12 he stated clearly that this video would only be used for identification
13 purposes.

14 As regards our client, Mr. Mathieu Ngudjolo, the Prosecutor said,
15 and I quote, "We wish to (No interpretation)."

16 So he wants, if I understood correctly, to use this video for
17 other purposes than identification purposes and our team does not have
18 the power to decide, but subject to what your Chamber may decide, we
19 would like to express the following wish for the video that the
20 Prosecutor is going to use to be limited as regards our client to the
21 identification of our client only. Thank you.

22 PRESIDING JUDGE KUENYEHIA: Thank you very much. The Chamber has
23 taken note of your concern and will respond to it when we distribute --
24 we distribute the final schedule.

25 Are we going -- are we anticipating any closed sessions?

1 MR. MacDONALD: Not at this stage for the Prosecution, your
2 Honour.

3 PRESIDING JUDGE KUENYEHIA: Okay. And I take it that as far as
4 Mr. Hooper is concerned, having regard to your approach to the
5 confirmation hearing, there will be no closed sessions. You will be
6 asking for no closed sessions.

7 MR. HOOPER: Well, it depends what turns up, but at the moment
8 but at the moment I've got no specific request for a closed session.
9 But, for example, my friend just -- Mr. Kilenda just referred to the
10 question of the video, and we have a concern about a video being played.
11 I won't go into the details now, but my understanding is that the video,
12 and I may be wrong about this, that the video was going to be introduced
13 solely for the purpose of identifying Mr. Katanga, and if that's the case
14 there is no issue of identification, because we will admit it. So
15 perhaps this is a matter that best can be discussed between ourselves and
16 Mr. MacDonald and his team to see quite what the relevance is at this
17 stage for confirmation hearing of -- of a video presentation.

18 I could say otherwise that at the moment in terms of the
19 documents that we've seen that there are very few comments in respect of
20 the proposed documents that we would raise with the Court, and again I
21 suspect, indeed undertake, that these would be matters that we could deal
22 with by way of -- in writing perhaps just a day or two before the
23 confirmation, but we can certainly indicate to the Prosecution in the
24 meantime what our concerns are and where. For example, there's a
25 particular interview with Mr. Katanga that we're concerned about as to

1 its basic admissibility, but that's a point that can be expressed in a
2 few sentences.

3 Aside from that, looking -- looking at the schedule, coming back,
4 as it were, to the specifics, as I've said looking at this on the opening
5 statement, if I can just go through the individual parts and treat it in
6 one go as it were. We start with an opening statement, and as I've said,
7 we're not making an opening statement. It then goes to matters related
8 to jurisdiction, admissibility, or other procedural issues, and there are
9 no matters that we at present envisage to raise in that respect because
10 of matters that have been raised on an ex parte basis and which I don't
11 go into and to which we've had no response. We're reserving that matter
12 to a later time.

13 Then there's the presentation by the OTP for which I have no
14 comment, and then there's a discussion or potential discussion by parties
15 of the OTP evidence, and at the moment, unless there are any particular
16 surprises, I don't see us engaging in comment.

17 There's then presentation by the Defence team, I'm talking in the
18 singular, of their evidence. We're not proposing to call evidence.
19 We're reserving our defence and our position for the trial. I make it
20 plain.

21 And then we have a non-discussion on our evidence, so we can step
22 over that, and then we have a closing statement.

23 Now, the only matter that I'd raise in respect to that really is
24 the matter that was submitted yesterday in the motion you saw dated the
25 9th of June dealing with the charges, and at this time being aware that I

1 think the 12th of June is the cut-off date for the Prosecution to change
2 the charges, and so it was in part an invitation to the Prosecution.

3 There's relief sought there expressed as an order, but in
4 practice we're not asking the court to order the Prosecution to amend
5 it's charges. That's a matter for the Prosecution. But in a way, I
6 suppose, at the end of the confirmation hearing it would be for the
7 Judges to determine within the Rules the appropriate charge, and to that
8 extent, those submissions, they might be slightly expanded but not very
9 much and will be our submissions. So really in that document you have
10 our essential submission in respect of those matters.

11 So when I say that I will be taking up very little time of the
12 Court, I think I should rephrase that. I will be taking no time up of
13 the Court.

14 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Hooper.

15 Can we hear from Mr. Kilenda, or if you don't have any
16 observations, that's fine.

17 MR. KILENDA (interpretation): Thank you, Judge. As I said a
18 moment ago, we read the schedule carefully for the confirmation hearing.
19 We will have an opening statement. It will last less than an hour and a
20 half, and then we will make a statement at the end of the confirmation
21 hearing which will also last less than an hour and a half. Other than
22 that, as I said, we will stick to the schedule, and if we believe that
23 there is an issue about the law that needs to be addressed we will raise
24 the issue at that time. We won't wait for the trial to do so. And I
25 confirm what I've just said earlier on and add that we have not any

1 intention to work in closed session unless during the proceedings there
2 are reasons that bring us to require such a session, but otherwise we
3 promise that we will stick to this schedule that you have set out so
4 well.

5 Thank you.

6 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Kilenda.

7 MR. MacDONALD: With your permission, your Honour. My colleague
8 Mr. Kilenda just announced that he will have a preliminary motion for the
9 23rd, and Mr. Hooper mentioned that he would not -- he does not foresee
10 any issues being raised in writing on the 23rd as mentioned in the
11 schedule.

12 Now, what we would appreciate, because the timing and the issues
13 to be covered, be it admissibility or jurisdiction, and the fact that the
14 confirmation starts on the 27th, which is four days later and then these
15 points will be argued orally on the 2nd of July, we would appreciate it
16 if we could have not the actual application now, because I understand the
17 schedule says the 23rd, but if the issue can be explicated orally today
18 in general terms so that we understand what it is ahead of time.

19 PRESIDING JUDGE KUENYEHIA: Mr. MacDonald, much as I appreciate
20 your -- the reason for asking, I think Mr. Kilenda has no hard notice of
21 this, and therefore I don't think it's appropriate to ask him to make
22 this kind of observation now. He has the 23rd to make written
23 observation -- his written submissions, and I think we should stick to
24 that.

25 Having said that, I will now turn to the legal representatives of

1 the victims so we can hear their observations on the proposed schedule.
2 And let me emphasise that it is only a draft. After this, then we will
3 finalise the -- because we want to take everybody's concerns into
4 consideration before we finalise the schedule.

5 MS. BAPITA (interpretation): Thank you, your Honour, for giving
6 me the floor. We have three concerns with regard to the proposed
7 calendar, and our concerns are mainly with regard to time, the time
8 granted to us. We would like to draw the Chamber's attention to the fact
9 that there are 52 victims so far appearing, divided into four groups.
10 Accordingly, we shall not be repeating ourselves during our opening
11 statement. We will harmonise our views in order to ensure that we do not
12 repeat ourselves.

13 Unless I have understood you wrongly, you said three hours of
14 time for opening statement and three hours for closing statements, or do
15 you mean three hours in all for both? If it's three hours for both
16 statements, then there is a problem considering that there are four
17 groups of victims representing 52 victims in all for whom you will then
18 be allocated one and a half hours of opening-statement time.

19 It is the value of the weight that will go to of what they will
20 say that is important. So we consider that one and a half hours is not
21 at all enough, and we refer to this in the Lubanga case where four
22 victims had one and a half hours of opening-statement time.

23 Without having had the time to talk with our other legal
24 representatives, we consider that the time that has been allocated to us
25 is insufficient in light of the legal representatives who are going to

1 take the floor.

2 My second concern is regard to a statement during the examination
3 of the evidence. We were delighted to hear that Mr. Katanga's Defence
4 and Mr. Ngudjolo's Defence will not be presenting any evidence or any
5 witnesses which will help us to save time. We have nothing to say in
6 this regard. The two and a half hours are sufficient for our purposes.
7 However, there is another concern with regard to the closing statement.

8 Our closing statement will take into account not only what will
9 have been discussed during the confirmation hearing but also the evidence
10 that will have been submitted by the Prosecution and possibly the Defence
11 response. Therefore, it is on the basis of these elements that we will
12 prepare our closing statements. So for the number of victims and groups
13 of representatives, one and a half hours will be quite insufficient, so
14 we respectfully request that the Chamber revise the time. Apart from the
15 distribution of time, we have not much to say.

16 PRESIDING JUDGE KUENYEHIA: Thank you very much, Ms. Bapita.
17 What do you think would be a reasonable time for you to make your opening
18 and closing statements? We have allocated three hours. What do you
19 think would be a reasonable time?

20 MS. BAPITA (interpretation): We consider that an average of five
21 hours would be sufficient.

22 PRESIDING JUDGE KUENYEHIA: Thank you, Ms. Bapita. The Chamber
23 will take that into consideration.

24 I now would like to turn to the Registry.

25 MR. DUBUISSON (interpretation): Thank you, your Honour. Thank

1 you. Just three remarks.

2 The first is the technical capacity of the Registry to record
3 sessions of two hours maximum, 120 minutes. So if we work for two hours
4 and 15 minutes we then have a problem with recording the last 15 minutes.
5 This will only arise on the 3rd of July, because for the 9th and the 10th
6 we could choose option one. That's my first remark.

7 The second is with regard to working on Friday afternoon. In
8 order to avoid technical problems such as we experienced at the beginning
9 of the hearing, it would perhaps be desirable to work on Friday morning,
10 which would enable the technicians, if necessary, to carry out
11 maintenance in the afternoon, and we might continue on Saturday and
12 Sunday and perhaps Monday.

13 Lastly, we should be able to have available the interpreters that
14 will be required for the Lingala. This means that we will have a lot
15 more flexibility. We should be confirming the visa soon, so that the
16 person can come to the court at their -- on the expected date.

17 I have no further comments. Thank you.

18 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Dubuisson.
19 And thank you for the flexibility with the Lingala interpreters. It's --
20 the Chamber is really pleased to hear that.

21 Any other observations from anybody? Well, if we don't have any
22 more observations, then I would like to say that the Chamber has taken
23 note of all the points raised by the parties and participants, and we
24 will distribute the final schedule for the confirmation hearing in due
25 course but in sufficient time -- within a reasonable time period before

1 the commencement of the hearing in order to facilitate the proper
2 preparation by the parties.

3 Since there are no final observations, I would like to thank all
4 our participants and parties, the Prosecutor, the Defence teams, Legal
5 Representatives of Victims, Registry, security. I with like to thank our
6 interpreters for, as usual, doing a very good job, and I would like to
7 thank the court reporters for doing a good job.

8 The hearing is now adjourned.

9 COURT USHER: All rise.

10 The hearing ends at 4.25 p.m.

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