

Confirmation of Charges Hearing – Open Session
Procedural Matters

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1 International Criminal Court

2 Pre-Trial Chamber I

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

4 Confirmation of Charges Hearing - Open Session

5 Wednesday, 2 July 2008

6 The hearing starts at 9.06 a.m.

7 COURT USHER: All rise. Please be seated.

8 PRESIDING JUDGE KUENYEHIA: Good morning. Could the security
9 officers please bring in the suspects.

10 Thank you. Could the Court Officer please call the case.

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

14 PRESIDING JUDGE KUENYEHIA: Thank you. Thank you. Let me first
15 welcome everybody to this meeting, the Prosecution, the Defence teams,
16 Mr. Katanga and Mr. Ngudjolo Chui.

17 I'd like to repeat that as provided for in the decision
18 implementing the Appeals Chamber judgement concerning languages,
19 Mr. Katanga is being provided at this hearing, in accordance with
20 Regulation 61(1)(d) of the Regulations of the Registry, with liaison
21 interpretation into Lingala. The interpretation is also available to
22 Mr. Mathieu Ngudjolo Chui should he wish to use it.

23 This is a continuation of the confirmation hearing that began on
24 the 27th of June, 2008, and I believe that the same parties are here
25 present today. If there are any new participants, I'd like them to

1 introduce themselves, but I don't seem to see any new participants.

2 This morning's consideration in accordance with Rule 122(2) and
3 (3) of matters related to jurisdiction and admissibility and other
4 procedural issues is scheduled. The issues to be dealt with at this
5 session were announced on the 27th and the 30th of June hearings, and
6 they are as follows: The late notification of the 3rd April 2008
7 decision on summary evidence of Witness 243 and 267; the Prosecution's
8 late disclosure to the Defence of a CD-ROM concerning certain Rule 77
9 materials on the 24th of June, 2008; objections of the Defence for
10 Mr. Germain Katanga relating to the admissibility and probative value of,
11 one, the proces-verbal d'audition under item (a) of document number 641;
12 the interview of Witness 252 under item (b) of the same document; a video
13 under item (c) of the same document; and all incriminating evidence
14 related to Witness 167 under item (d) of that document.

15 Now, before moving ahead with the agenda for today's session, the
16 Chamber would like to make two announcements and address a preliminary
17 matter.

18 First as the Chamber stated during the public session on Monday
19 the 30th of June, the concerns raised by Mr. Katanga on Friday regarding
20 the conditions of the detention facilities inside the courtroom are
21 presently being addressed by the Registrar on an urgent basis, and we
22 await a report of the Registrar on this matter.

23 The second issue relates to the presentation of evidence by the
24 Prosecution. According to the explanations given to the Chamber, if
25 the -- a confidential evidence to be tendered by the Prosecution is

1 published on the computer screens inside the courtroom, it becomes
2 automatically accessible to all who only have access to public evidence
3 in Ringtail. Accordingly, such evidence cannot be published on the
4 computer screens inside the courtroom. Under these circumstances, the
5 Chamber proposes that the Prosecution provides to the Chamber, to the
6 Defence teams, and to the Legal Representatives of Non-Anonymous Victims,
7 a list specifically indicating the confidential evidence that the
8 Prosecution intends to present during its presentation of evidence
9 scheduled for Thursday 3rd July and Friday 4th July by today at 4.00 p.m.

10 I hope that is agreeable to all the participants. This is to
11 avoid confidential information being published to the public since it's a
12 public hearing. Not hearing any dissent on the matter, I take it that
13 body's agreeable to it.

14 Finally, the Defence for Mr. Mathieu Ngudjolo Chui raised last
15 Monday a matter concerning the alleged consultation that Mr. Ngudjolo had
16 had with Mr. Mulamba in relation to some proceedings held in the DRC.
17 The Defence for Mathieu Ngudjolo Chui was given until today to gather
18 additional information on the matter and to make clear to the Chamber
19 whether it is simply flagging the issue at this stage so that in the
20 events the charges are confirmed they can -- it can be solved before the
21 commencement of trial or whether it's making a specific request to the
22 Chamber to be dealt with for the purposes of this Confirmation Hearing.

23 Could the Defence for Mr. Mathieu Ngudjolo Chui explain where we
24 are in this regard, please.

25 MR. KILENDA (interpretation): Thank you, Your Honours. Indeed

1 in the wake of the hearing, the day before yesterday, I was able to place
2 a telephone call to Bunia, and I had Mr. Mateso who is the clerk at the
3 regional clerk of Bunia on the phone. I explained the situation to him,
4 and he will told me that he was totally aware of the matter. He said
5 that indeed Mr. Mathieu Ngudjolo had consulted my colleague, Mr. Mulamba.
6 He added that Mr. Mathieu Ngudjolo's spouse had indeed paid \$100. He
7 further added that if I could make a small sum of money available to him,
8 he could contact other people who would also be in a position to throw
9 light on the matter. He added that in Kisangani there is only one
10 Mr. Mulamba who appears before the Court of Appeal in Kisangani. He said
11 that he is a large gentleman, and his name is Mr. Mulamba
12 Jean-Chrysostome.

13 My client has -- we do not yet have a firm, tangible evidence
14 that a payment was made. And he has a document that he would like to
15 scan and make available to us, but I would call upon this Chamber to make
16 it available, to permit measures to be taken to elucidate this issue
17 perhaps with the assistance of the Office of the Prosecutor and MONUC who
18 is on site.

19 I'd just like to say that I am not alleging anything about my
20 learned colleague, but simply this is information which has become
21 available to us and we would not like it to remain silent of it. I have
22 not sent any sum of money to that clerk. I certainly wouldn't like to
23 corrupt in any way an officer of the state. I think it would be
24 preferable that your Chamber were to take steps in this connection.

25 PRESIDING JUDGE KUENYEHIA: Thank you, Mr. Kilenda. What the

1 Chamber would like to know is whether you're asking the Chamber to take a
2 specific action to enable the Chamber to do what is right by you.

3 MR. KILENDA (interpretation): Yes. There are specific measures
4 which could be taken. For instance, an inquiry as I am suggesting, and
5 also to make a contact with the clerk, Mr. Mateso. He's the Registrar at
6 the regional court of Bunia. And also interviewing the spouse of my
7 client by services in the field.

8 I'm certainly not asking you to take a sanction vis-a-vis a
9 learned colleague, not at all. We have no proof either that he was paid
10 the sum of \$100. However, this is the information which I have received,
11 including from my client. I would say my client is not lying. What he
12 says has been confirmed by other persons, including this Registrar, in
13 Bunia. I'm not suggesting at all that Mr. Mulamba be suspended or that
14 any other action be taken against him. I think that that would be
15 unreasonable and not at all fair of me. Rather, I submit this
16 information to the Chamber. This is a -- these proceedings are
17 sensitive. The crimes which are alleged against my client are indeed
18 very serious ones, and he must defend himself. If he has consulted a
19 lawyer in connection with related charges, then I think that this should
20 be taken note of by the Chamber and action taken.

21 (The Pre-Trial Chamber confers)

22 PRESIDING JUDGE KUENYEHIA: Thank you, Mr. Kilenda. I would like
23 to ask Mr. Mulamba if he has any submissions, and I see him standing
24 already, so ...

25 MR. MULAMBA (interpretation): Thank you, President. Good

1 morning, your Honours. I believe that my name has been included in the
2 list since 2006. I was just saying that I have listened to the concerns
3 raised by the Defence in connection with this matter and the information
4 which has been received from Bunia, from Registrar Mateso. But as you
5 know, Madam President, even if he does not say it directly, I feel that
6 he wants to -- he is saying that I have -- I am guilty of misconduct.
7 Article 34 and 37 allow me to respond, respond to all of these
8 allegations.

9 Last time it was said that I received fees or requested fees, but
10 no sum was stated. Today reference is being made to Mr. Mateso. I feel
11 that all of this information should be set out in writing and provided to
12 us so that we can respond. The texts stipulate a period of time to be
13 allowed to counsel against whom allegations are made. We're not talking
14 here about disqualification.

15 I believe that Mr. Mateso has not provided the number of the file
16 or the case in Kisangani, the case in which Mr. Mulamba, it is said, was
17 involved. Now, this case number has not been provided. Rather, the
18 names of individuals in Bunia are being mentioned.

19 As I said last time, I have never acted for Mr. Ngudjolo in
20 Bunia. I have never attended Mr. Ngudjolo in my chambers. I have never
21 heard from him or his wife or anyone else.

22 Now, if this matter is to be taken any further, I would suggest
23 that it is dealt with under Articles 31, 34, and 37 of the Code of
24 Conduct in order that I might respond efficiently, that is to say if they
25 have evidence of what they allege.

1 MR. MacDONALD: With the Court's permission, I'd like to
2 intervene at this stage because I think issues are being mixed up. It's
3 a question of conflict of interest. Is there an appearance --
4 (interpretation) appearance of conflict of interest or not. (In English)
5 I don't think Mr. Kilenda has been invoking a professional misconduct of
6 any kind. He's just flagging the issue to the Chamber.

7 Now, what I would -- the Prosecution's position is that
8 Mr. Kilenda should formally make a request for Mr. Mulamba being excused
9 or not, but at this stage -- and he should be -- if he's requesting or
10 making such request, he should provide the evidence in support of such
11 request and then the Chamber could deal with the issue.

12 Now, the difficulty is that as the proceedings go on, this -- and
13 if there is such conflict, well, at this stage Mr. Mulamba should maybe
14 step aside until there is such a decision if he's in conflict or not, I
15 don't know, because of course retroactively we cannot go back and undo
16 the past.

17 PRESIDING JUDGE KUENYEHIA: Thank you very much.

18 MR. MacDONALD: Yes, and just -- sorry, just one last point
19 because Mr. Kilenda mentioned this, and it is quite important. I mean,
20 we should not be involved in investigation of a retainer of services from
21 the defendant. I mean, it's not the Prosecution's role to do that.

22 PRESIDING JUDGE KUENYEHIA: Thank you very much. I think we will
23 suspend the hearing for ten minutes for the Chamber to consult, to be
24 able to do some proper consultations. So the hearing is suspended for
25 just ten minutes.

1 Break taken at 9.26 a.m.

2 On resuming at 10.22 a.m.

3 COURT USHER: All rise. Please be seated.

4 PRESIDING JUDGE KUENYEHIA: Can the security please bring the
5 suspects in. Thank you.

6 This is a resumption of the hearing that has already started. I
7 apologise on behalf of the Chamber. We asked for ten minutes and we took
8 almost -- I don't know. We took much longer than we had anticipated, but
9 that is because we want to find a solution that would allow us to move
10 ahead as well as resolve various issues that have come up unexpectedly.

11 The Chamber is of the view that the Defence of Mr. Mathieu
12 Ngudjolo has raised an issue of an apparent, and I emphasise the word
13 "apparent," conflict of interest, and this issue has to be resolved one
14 way or the other for us to be able to move forward.

15 The Chamber proposes that in order to resolve this issue of an
16 apparent conflict of interest, Mr. Mulamba would provisionally be
17 separated from his functions as legal representative of the victims, only
18 a provisional separation, and the victims represented by Mr. Mulamba will
19 exceptionally and for this provisional period will be represented by the
20 Office of the Public Counsel for Victims until the victims are -- well,
21 appoint a new legal representative or the issue is resolved.

22 The Registry is directed to take all necessary measures in order
23 to evaluate the existence and consequences of the apparent conflict of
24 interest and that Mr. Mulamba should cooperate with the Registry in the
25 clarification of this apparent conflict of interest. And the Chamber

1 orders the Registry to inform it not later than Monday, 7th of July,
2 about the -- all the information on this issue. The Chamber would issue
3 the reasons for the decision on this by the end of the day hopefully.

4 Since we need to change Legal Representatives, the Chamber would
5 propose that we take a break now of half an hour and come back at 11.00
6 in order to resume the business of the day. The hearing is therefore
7 suspended for half an hour.

8 COURT USHER: All rise.

9 The hearing ends at 10.26 a.m.

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