

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 Monday, 30 June 2008

6 The hearing starts at 9.09 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, case of the Prosecutor versus Germain Katanga and
13 Mathieu Ngudjolo Chui, ICC-01/04-01/07.

14 PRESIDING JUDGE KUENYEHIA: Thank you. This is a continuation of
15 the Confirmation Hearing that began on the 27th of June, and the same
16 parties and participants are present except that I think I see a new face
17 on the bench of the legal representatives of the victims.

18 MR. KETA (interpretation): I am Mr. Keta. I represent victims
19 a/0333/07, and a/0110/08.

20 PRESIDING JUDGE KUENYEHIA: Thank you very much. Welcome to the
21 court.

22 I would like to say briefly that as provided for in the decision
23 implementing the Appeals Chamber judgement concerning languages,
24 Mr. Germain Katanga is being provided with -- provided at this hearing in
25 accordance with Regulation 61(1)(d) of the Regulations of the Registry

1 with liaison interpretation into Lingala. The Lingala interpretation is
2 also available to Mr. Mathieu Ngudjolo Chui if he wishes to use it.

3 Mr. Keta, could you please repeat the numbers of your -- the
4 victims that you are representing. We just want to make sure you have
5 the right numbers.

6 MR. KETA (interpretation): I represent victim a/0337/07, and the
7 second one is a/0110/08.

8 PRESIDING JUDGE KUENYEHIA: This morning we continue with opening
9 statements. We will start with the representation of the opening
10 statement by the two Defence teams as scheduled. We will begin with the
11 Defence of Mr. Mathieu Ngudjolo Chui and then with the Defence of
12 Mr. Germain Katanga, but before we start I'd like to inform both
13 Mr. Hooper and Mr. Kilenda that we have contacted the Registry on the
14 issue of the suspects using the consultation room during the break, and
15 we're expecting an answer, and therefore the issue is under
16 consideration.

17 MR. HOOPER: Thank you very much.

18 PRESIDING JUDGE KUENYEHIA: We will start with Mr. Kilenda.

19 MR. KILENDA (interpretation): Thank you very much.

20 PRESIDING JUDGE KUENYEHIA: Opening statement, please.

21 MR. KILENDA (interpretation): Thank you, your Honour, for giving
22 me the floor. Madam President, your Honours, ladies and gentlemen, are
23 there substantial grounds to believe that in criminal co-action with
24 Mr. Germain Katanga, Mr. Mathieu Ngudjolo committed crimes falling within
25 the material jurisdiction of the court that would justify his committal

1 for trial? It is the answer to this question, which is the backdrop of
2 the Confirmation Hearing, which commenced on the 27th of June, 2008. Our
3 team welcomes the opportunity you have afforded it to make this opening
4 statement. We will use this opportunity to set out, first and foremost,
5 what we consider to be fundamental. This opening statement does not
6 intend to be a legal discussion on the underlying facts of the case or an
7 analysis of the document containing the charges.

8 Madam President, you recall at the beginning of this hearing that
9 the burden of proof is on the Prosecutor. The Defence does not need to
10 challenge the Prosecution in this context.

11 In a bid to fight the impunity of crimes that shock humanity or
12 human conscience, the international community opted for the creation of a
13 permanent International Criminal Court which would be complementary to
14 national courts. The legal framework thus referred by the Rome Statute
15 and all other relevant instruments governing proceedings of the court
16 contain on closer analysis criminal law in the best liberal tradition
17 designed both to sanction violations of the fundamental values of society
18 and to protect individual freedoms. This is why to take just the one
19 example, the presumption of innocence is enshrined in the Rome Statute as
20 you recalled, Madam President, during your opening remarks to guide this
21 Confirmation Hearing.

22 Mr. Ngudjolo, who is appearing before you, harbours the hope that
23 these criminal proceedings will respect the integrity of law. We will
24 dwell on four points. There is a brief background of the case, which
25 will be the first part. The second part will deal with a brief biography

1 of Mr. Mathieu Ngudjolo. The expectations of Mr. Ngudjolo and his team
2 will be dealt with in the third part. The fourth and last part will be
3 devoted to the need for justice, and then we shall conclude with a few
4 closing remarks.

5 So contextual overview. Ituri is a district of the Orientale
6 province of the Democratic Republic of the Congo bounded to the east by
7 Uganda and Sudan to the north with 3 to 3.5 million souls and its
8 district capital is Bunia. The population is distributed amongst 20 or
9 so ethnic groups of which the largest are the Hemas, the Lendus, the
10 Ngiti, the Alur, and the Bira.

11 As the Prosecution has already noted, and the legal
12 representative of the victims and even by the Pre-Trial Chamber's
13 decision on the confirmation of charges in the Lubanga case, Ituri is
14 rich in natural resources such as gold, oil, timber, coltan, and
15 diamonds. For example, the Mongwalu mine, which is located about 45
16 kilometres north-west of Bunia, is the most important gold mine in the
17 Democratic Republic of the Congo and one of the most important in central
18 Africa.

19 The majority of Ituri makes its living from agriculture and the
20 rest from trade, animal husbandry, and fishing. Agriculture is the
21 principal economic activity of the Lendus while the Hemas are more active
22 in livestock farming.

23 In the summer of 1999, tensions developed as a result of disputes
24 over the location of land in Ituri and the appropriation of natural
25 resources. During the second half of 2002, there was renewed violence in

1 various parts of the district of Ituri. All this explains that the
2 struggle to control towns that were richly endowed in natural resources
3 was a key factor in the perpetuation of the crisis because these natural
4 resources provide considerable profit to those who control their
5 production and export.

6 Economic reasons are not the only reason for the tension between
7 the Hemas and the Lendus. The United Nations Secretary-General's report
8 to the Security Council mentions the fact that the Belgian colonial
9 powers had favoured the Hemas and portrayed them as superior. The
10 Catholic church in Bunia itself was not uninvolved. It contributed to
11 portray the Hemas as superior, thus generating untold frustration in the
12 minds of members of other ethnic groups who are also entitled to all
13 rights or all human rights.

14 As a member of the Lendu tribe, Mathieu Ngudjolo still suffers
15 from the prejudice against his tribe. From his childhood he has been --
16 he has grown up with deeply rooted and ignoble ideas, for example, to
17 honour the mortal remains of a Hema you must throw a Lendu in his grave.
18 In this regard the Defence agrees with the opening statement of one of
19 the Legal Representatives of the Victims who said there is only one tribe
20 in Ituri. There is only one tribe in Ituri, that of the victims.

21 Your Chamber must remain aware of the psychosociological aspects
22 of this case, because the simplified version of the context, as presented
23 by the Prosecution, does not reflect the complexity of the situation that
24 the people in Ituri have experienced and still experience to some degree.

25 Mathieu Ngudjolo is accused of trying to wipe out Bogoro from the

1 map by causing the massacre in the view of the Prosecution 200 civilians
2 and 330 according to other sources. He is accused of having participated
3 in a common plan whose details we are unaware of. The identity of the
4 victims we do not know and we do not know the co-perpetrators. As you
5 can see, Madam President, your Honours, the vagueness of the detailed
6 document containing the charges shines in all its splendor here.

7 Madam President, your Honours, during your opening remarks you
8 emphasised the scope of the Confirmation Hearing, that is, that it does
9 not lead to sentencing or acquittal. You're right to emphasise this, but
10 the Defence considers that the Confirmation Hearing cannot be considered
11 to have a subsidiary status. Regardless of the procedural stage at which
12 the person concerned is found, this objective is the truth. Mr. Mathieu
13 Ngudjolo is here before you in the flesh. He is calm and respectful. He
14 expects that the arsenal of legality be put to the best possible use in
15 order to elucidate the truth on this case about Bogoro.

16 Who is Mathieu Ngudjolo? He was born in Bunia on the 8th of
17 October, 1970. He is from the Orientale province and from Likoni
18 locality, Njotsi clan, Ezekere groupement, Walendu-Tatsi collectivite in
19 Djugu territory. Mr. Mathieu Ngudjolo is married and has six children.

20 He undertook medical studies. Most of his professional career
21 was in the area of medicine. After his studies, he carried out an
22 impressive number of missions as a nurse and a lab nurse still working
23 for his fellow citizens with no discrimination whatsoever. In particular
24 he worked in the Digeni health unit in Banyari-Kilo collectivite in the
25 ALTI health centre which is specialised in providing care to lepers and

1 sufferers of tuberculosis. He also worked in the papa Aoki Dispensary
2 and the Bunia reference hospital.

3 He then changed tack to begin a military career. On the 6th of
4 February, 2008 when he was arrested, Mr. Mathieu Ngudjolo was in fact a
5 member of the army of the Democratic Republic of the Congo. Having never
6 sought to abscond from national or international authorities, since his
7 arrest and transfer to The Hague Mr. Ngudjolo has been cooperative with
8 the court. For example, he has been an attentive student during the IT
9 courses that have been provided for him so that he can study the huge
10 case file that has been prepared against him. Mr. Ngudjolo challenges
11 the facts and wishes to be closely involved in establishing the judicial
12 truth.

13 What dose expect from you, Madam President, your Honours? Having
14 assumed the attitude we have just described, Mr. Ngudjolo would like to
15 know the facts so that the law can be properly applied. Of course the
16 objective of the confirmation of the charges is limited to establishment
17 of substantial grounds to believe, but at this point I would like to
18 share some considerations regarding the search for the truth that
19 Mr. Ngudjolo aspires to, and I would like to situate this within the
20 context of a criminal trial.

21 Following the scientific model which raises the truth to the
22 level of a virtue, the criminal trial is a method, a dialectical method
23 for the discovery of the truth. As Walter Van Gerven says, this is a
24 dialectical debate. The Judge who must decide on the case submitted to
25 him, even where the case where a person fails to appear must search for

1 the truth thanks to the various resources supported by formal logic based
2 on nature, science, and technology. He must distil the exact sequence of
3 events for which a legal solution is sought. This explains, for example,
4 why although confessions once reigned supreme as proof, they are viewed
5 with skepticism today.

6 Working in rem, the Judge must not accept wholesale the facts as
7 the Prosecution submits them, because as the American legalists say
8 neither the facts nor the rules are data ready for use. The facts as
9 presented by the parties are not immutable truths stamped with the
10 theological element of infallibility. Today dogmas have a lifespan. The
11 immortal principles of law are a chimera. Not even criminal law escapes
12 this law of perpetual change. Horomtallah rightly considers criminal
13 cases as imbroglio that the Judge or investigating magistrate must --
14 must unravel. As he says, confrontations, warrants, detentions on
15 remand, requests for assistance, and experts' opinions enable the Judge
16 to disentangle the imbroglios that criminal cases are.

17 This explains the importance of a trial of fact, the
18 conceptualisation of fact. Francois Rigaux presents the facts as an
19 informed mass of existential events that lends itself to understanding
20 through the abstracts concepts of judicial rules and that it is more of a
21 construct than a given which is situated in the entire dialectic of facts
22 that plays a key role in the art of trial.

23 During this Confirmation Hearing, your Chamber will have the
24 mission to determine whether the facts submitted by the Prosecution and
25 freely established by it are in the case in point clear and unambiguous

1 enough to justify the committal for trial by the Trial Chamber of our
2 client. You are not a Court of Cassation as we have in most national
3 courts of States Parties who cannot be involved in the facts. On the
4 contrary. You must go beyond the facts. You must analyse them and
5 consider their material accuracy for the proper application of the rules
6 that govern committal. As Theodore Ivainer said, trial is to make based
7 on the power that one is vested with a judgement on the sequence of past
8 reality which involved subjects of law. The reconstruction of facts as
9 events often happens in the absence of a Judge, of a lawyer, and a
10 prosecutor, except of course in the case of disturbance of judicial
11 proceedings and this is an unavoidable step in the legal process because
12 the facts of the case are fundamental to the syllogistic construction of
13 judicial reasoning for the realisation of one or more subjective rights.

14 Mr. Ivainer writes that the Judge must discern what is contained
15 in the visible that would lead him most surely to the invisible.

16 The metaphor of breaking new ground used by Walter Van Gerven to
17 characterise the work of a Judge is quite well chosen, because the first
18 duty of a judge is to note that the facts alluded to are established.
19 The Judge must then determine the rules of law applicable to the dispute.
20 He says that the judicial function is to apply the law and to settle
21 disputes. The essential task of the judge is to apply the law to the
22 facts. This is the essential objective of the Judge's functions which
23 require justice.

24 Your Honours, ladies and gentlemen, members of the Bench, this
25 reflections on the search for the truth leads me on to the need for

1 justice. The Defence wishes to make reference here to the infamous
2 Dutroux case. In October 1996, the Court of Cassation in Belgium had to
3 recuse the examining magistrate, Mr. Jean-Marc Connerotte, because he had
4 shared a meal with the parents of the missing children. This judgement,
5 which was referred to as a spaghetti judgement, caused a fury amongst the
6 Belgians. Ms. Eliane Likendael, who was the attorney general at the
7 Court of Cassation, emphasised that even if she felt bad in recusing
8 Judge Connerotte she had to apply the law. She said that feelings should
9 never cross the threshold of a courtroom.

10 It's important for the Defence that the law and fairness govern
11 these consideration of this record -- case record. We want justice to be
12 done, but justice cannot be done without the law, to the detriment of the
13 law, and Mr. Ngudjolo wants a confirmation of charges that respects the
14 rules of a fair trial. Actually, this is what motivated the Trial
15 Chamber to suspend the proceedings in the Lubanga case, because of the
16 evidence submitted which was not disclosed due to a confidentiality
17 clause.

18 We do not deny that terrible events happened in Ituri. We do not
19 deny that there was bloodshed in Ituri. My learned colleague who was
20 referring to the events in 1960 and the independence of the Congo
21 recalled that at the time the King asked those who were calling for
22 independence not to forget their brothers in Ituri.

23 Your Honours, today is the 30th of June, 2008. We are
24 celebrating 48 years of independence in the Congo, and the Defence would
25 like to share here thoughts -- its thoughts with the population of Ituri.

1 Because Mr. Ngudjolo's spouse died and one of his children still
2 bears the marks of battering, despite all this suffering, despite the
3 ethnic fighting, it is the law and the rules of procedure that must guide
4 you in making your decision. Your task in this confirmation hearing is
5 very sensitive. You have to listen to both parties and give them equal
6 arms.

7 Some claim that they have suffered great harm, and the others
8 deny the facts that they are suspected of. It is now that your -- you
9 are called to respect a balancing act. You need to analyse the fact,
10 apply the law to the facts, and only the law. And the law does not go
11 down well with sensitivities, and you must make sure that you -- your
12 sensitive side cannot be affected as it happened recently in the Lubanga
13 case when one of the representatives of the victims tried to affect your
14 sensitive cord when talking about what had affected the victims in the
15 Congo. You should only look at the law and not emotions. Emotions are
16 not part of the rules of law. We must respect the principles and not
17 expect -- we are not looking for revisionism of what happened in Ituri
18 and what shocked the conscience of humanity.

19 Please allow me, your Honours, to conclude by saying that our
20 Defence team wants -- or owes you an explanation. You asked us on
21 several whether we wanted to present evidence. You asked us on several
22 occasions whether we had planified to carry out investigations in the
23 field. You had asked us for a case to challenge the facts presented by
24 the Prosecution. At this stage the Defence in its present constitution
25 would like to say that the resources -- in view of the resources we have

1 to our defence we are not able to present exonerating material as under
2 Rule 61(6) of the Rome Statute. Although the Pre-Trial Chamber cannot
3 solve entirely -- cannot solve the problems we have encountered entirely
4 on its own, but we want to do away with the barriers to Mr. Ngudjolo's
5 defence. We want a fair trial and equality of arms, because the
6 pre-trial phase of the trial -- of the case affords the same rights to
7 the accused.

8 The Prosecutor has been investigating for several years in the
9 Ituri region, and the Defence has only had a couple of months to prepare
10 the confirmation of charges. Of course the ICC might not be at the same
11 stage as the ICTY, because the confirmation of charges, contrary to the
12 international tribunals, the -- is a new phase in the proceedings, a new
13 concept. However, there are some things that were not thought of by
14 those who drafted the Statute, and here the Defence would like to refer
15 to what Madam La Rosa was saying, because Mr. Ngudjolo's Defence team
16 shares this opinion.

17 Madam La Rosa underlined and I quote: "That despite the fact
18 that it is desirable for the person who is accused to be present at this
19 stage in the proceedings, this does not ensure that the accused's rights
20 are fully respected in terms -- in particular with regard to the equality
21 of arms or the effective application of the presumption of innocence."

22 And she added, I quote: "That the proceedings as provided for
23 under the Rome Statute still leave a number of interrogation marks that
24 in some circumstances can lead one to doubt about whether or not the
25 trial is fair. One has to wonder about whether or not the accused has

1 sufficient means to challenge the charges pressed against him, and at
2 this stage he will only be informed of the evidence that the Prosecutor
3 wants to use against him to support the accusations but will not have the
4 results of their own investigations, and the -- it will be difficult if
5 not impossible to challenge the accusations if the Prosecution doesn't
6 furnish summaries that show the evidence that he is using to support his
7 points of view."

8 So the shortcomings in the Defence's right have not been remedied
9 yet, and so if -- it cannot challenge the evidence presented by the
10 Prosecutor yet, it does not mean that this evidence cannot be challenged.
11 And the fact that evidence is not presented cannot be interpreted by the
12 Pre-Trial Chamber as meaning that the Defence accepts the evidence
13 submitted by the Prosecutor. The burden of proof lies with the
14 Prosecutor, and the Defence would like to recall that will the Prosecutor
15 is under the obligation to investigate both incriminating and exonerating
16 evidence equally. This is a cumulative and not an optional duty.

17 Mr. Mathieu Ngudjolo is convinced since the preliminary phase and
18 the preliminary hearing on the 11th of February, 2008, that the Chambers
19 of this court ensure and guarantee rights as provided under Article 67 of
20 the Statute. You have always treated him in a humane way, and he hopes
21 that he will be able to count on your heightened sense for the rule of
22 law to in turn be afforded the right for the truth to be told and justice
23 done.

24 Thank you.

25 PRESIDING JUDGE KUENYEHIA: Thank you very much. Now I'd like to

1 hear Mr. Hooper, if he so wishes.

2 MR. HOOPER: Thank you, Madam President. I think as I've
3 indicated earlier we are not making an opening submission in respect of
4 the confirmation, but it is appropriate, perhaps, that I make or clarify
5 our position to avoid, perhaps, any potential misunderstanding.

6 As you said, and we've been reminded again already this morning,
7 as you said on Friday, Madam President, this is not a court that is here
8 to determine guilt or innocence. This is not a trial. And those
9 committed from here to the Trial Chamber for trial will still necessarily
10 have to leave here clothed in the presumption of innocence. That can
11 only be done, can only be done in a way so that it is not a fiction
12 through the efforts of you, the Judges, in -- in ensuring the integrity
13 of the process and of these proceedings and, in particular, the position
14 of the accused.

15 Finally, it may surprise some to learn that Mr. Katanga brought
16 here before this high international court, as only the second person to
17 be brought before this high international court, was only 24 years of age
18 at the time that these offences are said to have been committed, 24 years
19 of age. He is no monster but, rather, we assert from our experience of
20 him, a pleasant and courteous young man, a married man with two children,
21 as we've already heard the Prosecution in their brief biography relate.
22 But what wasn't related was that he also has in that family adopted three
23 children who were orphaned by the troubles that befell his people.

24 He's been in prison now since February of 2005. Three and a half
25 years already.

1 He is proud of having helped his people. They were sorely
2 oppressed.

3 War is dreadful. We do not need really to be reminded of that
4 fact, and few places are more aware of that fact than the Congo, but
5 sometimes war is both necessary, as well as lawful. Mr. Katanga denies
6 he did grave wrong or was guilty of excess. Whether he did grave wrong,
7 whether he was guilty of excess, is not for this particular Chamber, as
8 we know, to determine but to be determined at another time and at another
9 place, and we reserve our position until we have that opportunity.

10 Thank you.

11 PRESIDING JUDGE KUENYEHIA: Thank you, Mr. Hooper.

12 This morning -- well, today we had scheduled the opening
13 statements only. Unfortunately, tomorrow is a holiday for the court, and
14 therefore there will be no hearing, and on Wednesday we will consider all
15 the procedural issues that need to be considered. So we have reserved
16 Wednesday for the consideration of procedural issues by all parties and
17 participants. So at this point I would adjourn the hearing until
18 Wednesday, 9.00, when we will deal with procedural issues, unless
19 somebody has something to say.

20 MR. HOOPER: We were wondering whether this really represents an
21 effective use of judicial economy, and I know that you, Madam President,
22 and your brother Judges -- sister Judges, I should say, doubtless may
23 very well share some concerns about that. We've tried to indicate our
24 own position, and I think we've done so accurately, both in -- in respect
25 of both of the men accused here, but I'm wondering whether in future when

1 there are these shortfalls, perhaps, I appreciate not always common in
2 courts for things to go shorter rather than longer, but that seems to be
3 the probability in this case perhaps whether in those circumstances there
4 can't be perhaps a follow on, and the parties cannot in fact be prepared
5 to follow on having, as we do, a very clear itinerary set before us so we
6 know exactly what's to follow what more or less, and we'd certainly
7 encourage the Chamber to consider that that would be appropriate,
8 perhaps, particularly given the short hours that we're sitting.
9 Relatively short hours, I should say.

10 MR. MacDONALD: If I may, your Honour, Madam President. These
11 questions were addressed specifically in a hearing that was scheduled to
12 discuss the schedule, and you may remember that I brought up the specific
13 point, Mr. Hooper was present, and the -- as a consequence of,
14 Madam President, you ordered and the schedule was changed and again
15 you've mentioned clearly that the only thing would depend on if Defence
16 makes -- presents any evidence or any arguments on the scheduled dates
17 that they have. If not, well, then the closing arguments would be
18 brought forward.

19 Now, in the meantime I understand that today, unfortunately, the
20 schedule may be shorter, but I understand that we have a full day
21 Wednesday, Thursday, and Friday. I can assure you that the Prosecution
22 will most likely take its seven and half hours it has to present its
23 case.

24 It's unfortunate today that the Defence has not taken the
25 allocated time that they have, but I think we should stick to the

1 schedule because it is quite helpful to understand that on a given day
2 we'll be discussing certain specific points.

3 PRESIDING JUDGE KUENYEHIA: Thank you very much. Mr. Hooper,
4 your point is taken. We have actually -- with the exception of today, we
5 have actually said that in the next days when some time is not taken up
6 we move on, and Wednesday is more or less a very special day where we are
7 considering a very specific -- specific issues, that is the procedural
8 issues, and therefore we think as a Chamber if there's a little more time
9 for people to prepare that is appropriate, but we have said clearly in
10 the schedule that we circulated to everybody that if in subsequent times,
11 if time is not taken up we move ahead so that we do not waste time, if I
12 may use that expression.

13 So we will adjourn the hearing today until Wednesday morning at
14 9.00. Unfortunately, because tomorrow is a holiday the Chamber cannot
15 sit. It's holiday for the court marking the 10th anniversary of the Rome
16 Statute, and therefore the Chamber, even if it wished to sit, cannot do
17 so.

18 MR. HOOPER: Can I just indicate I understood there may be a
19 matter that's going to be raised but if it is going raised in it would be
20 raised in Chambers, but I don't want to force the issue because it's not
21 for me really, but can I just indicate that may be a matter once you've
22 adjourned and perhaps when we've discussed it amongst ourselves within a
23 few minutes, we may be in a position to indicate.

24 MS. ALIE (interpretation): Yes. Our Defence team has an issue
25 it would like to raise with you, but we'd like to discuss it with our

1 assistant first to know whether or not it is appropriate to raise it here
2 or whether we could do so in a more informal way. If not, we might
3 require an ex parte hearing to put the issue to you and see what solution
4 we can find to it.

5 PRESIDING JUDGE KUENYEHIA: How long do you think your
6 consultation will take, because since the Chamber is around, it is better
7 if we can take these matters up rather than for everybody to disperse and
8 then to come back.

9 MS. ALIE: Only five minutes -- (interpretation) only --

10 PRESIDING JUDGE KUENYEHIA: Do I understand that this has to be a
11 confidential hearing, I mean in closed session?

12 MS. ALIE: Yes, please.

13 PRESIDING JUDGE KUENYEHIA: In that case, to switch from a public
14 session to a confidential we need half an hour, and therefore we will
15 adjourn for half an hour and come back.

16 MS. ALIE: Yes, but depending on the consultation we have with
17 your assistant.

18 PRESIDING JUDGE KUENYEHIA: Okay. So the hearing is adjourned
19 and could resume in half an hour. This is to enable the systems to be
20 switched from the public to the confidential on an ex parte basis. So it
21 will not be a public hearing when we come. It will be an ex parte
22 hearing. It could be an ex parte hearing.

23 COURT USHER: All rise.

24 Recess taken at at 9.54 a.m.

25

1 On resuming at 10.45 a.m.

2 COURT USHER: All rise. Please be seated.

3 PRESIDING JUDGE KUENYEHIA: After Defence team consulted our
4 legal assistants, we decided to come and have a hearing, but we didn't
5 see any reason why it had to be a closed-session hearing, and we thought
6 that it's better if the other participants are here so that we can hear
7 everybody on the issue.

8 I will therefore give the floor to -- could the security officer
9 bring the ...

10 Just to remind everybody that Lingala interpretation is available
11 to Mr. Katanga and Mr. Ngudjolo Chui if he so desires.

12 I will now call on Mr. Kilenda.

13 MR. KILENDA (interpretation): Thank you, Judge. We would have
14 liked this to be in closed session, but as you decided otherwise, we will
15 go along with your decision.

16 We have a concern related to the fact that last Saturday my
17 client spoke to one of our team members about a concern he has. It
18 appears that when he went before the Tribunal de Grande Instance in Bunia
19 his file was in Kisangani and that at the time he would have consulted
20 Maitre Jean Chrysostome Mulamba, who to date -- up until today is a
21 representative of victims, for him to be his counsel, and this morning I
22 came here and this weekend was unable to speak to my client, but I did
23 speak to him this morning, and he confirmed the same, that he had not
24 seen my colleague personally but that he had spoken to him on the phone
25 about the case he was involved in at the time, the murder of Mr. Kulena

1 (phoen).

2 This morning before coming to the hearing, I called Ms. Sifa
3 (phoen), who is our resource person on the team and who at the time had
4 been Mathieu Ngudjolo's counsel in Bunia, and I would like to know
5 whether before her another colleague was involved, but she said that she
6 was unaware of anybody else being involved. And as counsel, I thought it
7 was best to remain silent about this, and I spoke to my colleague
8 Mr. Jean Chrysostome Mulamba this morning, and he told me that during his
9 career in Kisangani he received a lot of phone calls but that he could
10 not remember Mr. Mathieu Ngudjolo ever contacting him by phone.

11 I would like to add that I am not here to play down any
12 colleague, but I thought it was important to flag this because I believe
13 it's a very important procedural matter, and if my colleague is believed
14 to have actually acted as my client's counsel, that I believe that for
15 the fairness of the trial we will have to take measures, and that's why I
16 wanted to flag this.

17 We are currently verifying this, because apparently a payment was
18 made By Western Union for the fees, and we just wanted to flag this
19 issue, because we do not want to be accused of not having said anything
20 later on as counsel.

21 Now, I don't know what measures your Chamber could take, but
22 perhaps something could be done to shed light on this matter.

23 Thank you very much.

24 PRESIDING JUDGE KUENYEHIA: Thank you very much. I think
25 Mr. Mulamba is here himself, and there is nothing better than asking him

1 to respond to the observations that counsel for Mr. Ngudjolo has made.
2 So the Chamber would like to hear from Mr. Mulamba on the issue.

3 MR. MULAMBA (Interpretation): Thank you very much,
4 Madam President. Your Honours, learned colleagues, Prosecutor, as I
5 mentioned earlier to my learned colleague, I worked in Kisangani for 20
6 years. I have defended a number of cases in the area and received a lot
7 of phone calls, and I even told my colleagues that it's the first time
8 that I meet Mr. Mathieu Ngudjolo here. I have had telephone
9 conversations, but I have never assisted Mr. Ngudjolo in the case he is
10 mentioning today to his counsel. I have never helped Mr. Ngudjolo or
11 defended him before the Tribunal de Grande Instance in Bunia.

12 I have said previously already that I travelled a lot during
13 the -- at the time of the events in Bunia, Gbaolite and Kindu in my
14 capacity as counsel, but in this case I never assured any defence for
15 Mr. Ngudjolo, unless there was a judgement for which I did provide
16 assistance and pleaded for him. I have never, however, taken the floor
17 for him or insured his defence before any tribunal de grand instance
18 either in Kisangani or in Bunia. There's -- the only way to settle this
19 question is through a judgement for reasons of -- or through a ruling for
20 reasons of professional conduct. Thank you -- deontology. Thank you.

21 MR. KILENDA (interpretation): Thank you, your Honours.
22 Mr. Ngudjolo never said that my colleague, my learned colleague, learned
23 colleague, provided him with assistance before a criminal tribunal. He
24 just said that he helped my colleague. And I repeat, my client has said,
25 "I never met him physically. We were in contact by telephone." That's

1 what he said. Now, I wasn't present. I can't say whether this is right
2 or wrong, but this is what my client has told me, and I believe that to
3 defend his interest that it is important for me to draw your attention to
4 this. And it's not true that only a ruling can settle this matter.

5 If it is demonstrated that a consultation took place that for
6 reasons of deontology this matter must be settle. Now out of respect for
7 colleague I wasn't there, but my client* had said that this contact
8 took place and that a fee was paid and that traces of this payment can be
9 found, but I support that there was never any judgement and that my
10 colleague, learned colleague, was never in a hearing to assist
11 Mr. Ngudjolo. They phoned. Thank you.

12 MS. ALIE (interpretation): I would just like to clarify
13 something. Initially Mr. Ngudjolo's file was in Kisangani. That's why
14 he called a colleague who might be able to ensure his defence in
15 Kisangani. Then the file was transferred to Bunia, and that's when
16 Mr. Ngudjolo called counsel in Bunia. So a telephone conversation took
17 place, and as we told your assistants, we haven't been able to
18 cross-check this information. However, a fee would apparently have been
19 paid, and Mr. Ngudjolo explained his case by phone, and if my colleague
20 did carry out the work in Kisangani, well, he would have had access to
21 the files that were Mr. Kisangani. But as Mr. Kilenda underlined, we're
22 not saying that our learned colleague defended him in the Tribunal de
23 Grande Instance in Bunia but just that he might have had access to the
24 file in Kisangani following the fee, the fact that the fee was paid by
25 Mr. Ngudjolo's wife.

1 (The Pre-Trial Chamber confers)

2 PRESIDING JUDGE KUENYEHIA: Sorry about that. We did have to do
3 some consultation on this issue.

4 Well, we will be considering procedural issues on Wednesday
5 morning, as I have already said. If by Wednesday morning you have
6 anything you want to add to this issue, please feel free to discuss both
7 the -- no, Wednesday morning, both the Defence and Mr. Mulamba, because
8 we'll take a decision on the procedural issues on Thursday afternoon and
9 then we will include this on the matter.

10 I think that is the best way we can handle it now. We are not in
11 a position to take any decision now as a Chamber on the issue. And if
12 the Prosecution wants to make an input on this, they are free to do so.
13 That is why we brought everybody back, so we all know where we are.

14 Is that acceptable to all parties? Okay. Then I think now we
15 can adjourn the hearing until Wednesday morning. Thank you very much.

16 COURT USHER: All rise.

17 The hearing ends at 11.00 a.m.

18

19

20

21

22

23

24

25

1 CORRECTION REPORT

2

3 After verification, the Court Interpretation and Translation Section
4 have made the following modification in the transcript :

5

6 *p 22 line 7 “my colleague” is replaced by “my client”.

7

8

9

10

11

12

13

14

15

16

17

18