

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, 16 July 2008

6 The hearing starts at 9.04 a.m.

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

9 PRESIDING JUDGE KUENYEHIA: Good morning. Could security please
10 bring in the suspect.

11 Court Officer, could you please call the case.

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

15 PRESIDING JUDGE KUENYEHIA: Thank you. I'd like to say that as
16 provided for in the decision implementing the Appeals Chamber judgement
17 concerning languages, Mr. Germain Katanga, even though he's not here, is
18 still being provided in accordance with Regulation 61(1)(d) of the
19 Regulations of the Registry with liaison interpretation into Lingala.
20 The audio recording shall be made available to him. The interpretation
21 is also available to Mr. Mathieu Ngudjolo Chui if he so wishes to use it.

22 This is a continuation of the confirmation hearing that began on
23 June 27th, 2008. I notice that the same parties and participants are
24 present in court today.

25 Without further ado, I would like to give the floor to the

1 Defence first for Mathieu Ngudjolo Chui and then for Germain Katanga to
2 present their closing statements.

3 THE INTERPRETER: Microphone, please. Microphone, please.

4 MR. KILENDA (interpretation): Members of the Office of the
5 Prosecutor, learned colleagues representing victims, yesterday in making
6 his closing -- or their closing statements, the Prosecutor and the Legal
7 Representatives returned in detail to our critical submissions on the
8 Prosecution's case. We have taken note of the arguments which they have
9 made on the merits of the case.

10 Mathieu Ngudjolo has made critical comments regarding the
11 Prosecution's case. Now is not the time for us to reiterate what we put
12 forward in our arguments the day before yesterday. We feel that it is no
13 need to repeat what has been said before. It adds no value to the
14 submissions which have previously made.

15 In terms of written closing statements, we shall, point by point,
16 enumerate the observations made by the parties at these proceedings.

17 Madam President, your Honours, this morning it will be your task
18 to adjourn this confirmation hearing which was opened on the 27th of June
19 last in the case of the Prosecutor versus Germain Katanga and Mathieu
20 Ngudjolo. Over the course of almost two weeks, we have followed the
21 proceedings before your Chamber, which have enabled each of us, although
22 we are not the Judges, to nonetheless form our own opinion on what took
23 place in Bogoro on the 24th of February, 2003. However, the last word
24 shall be yours, Madam President, Honourable Judges of the Pre-Trial
25 Chamber. You alone have been vested with the task and authority to

1 address in the most appropriate fashion the various issues raised in the
2 course of these proceedings pursuant to Article 61(7)(a), (b), and (c) of
3 the Statute.

4 During this confirmation hearing you have learnt a great deal, as
5 have we. We have heard reports of underaged children forcibly enlisted
6 by political military groups of women who have been raped and abused,
7 reports of people being killed and of property looted. All of this goes
8 to confirm what we ourselves said in our opening statement, that is that
9 it is most certain that much happened in Ituri, and we even added that we
10 sympathise, as we, too, suffer the -- or share the suffering of the
11 people of that corner of the Congo.

12 Our client, who is just as much a son of Ituri as another, has
13 also suffered from these atrocities, losing his first wife and his child
14 to them. Fortunately his other child survived, but to this day she bares
15 the scars of machete blows on her neck and shoulder.

16 All of this suffering must not distract you from your task, that
17 is to make a determination as to whether the evidence placed before you
18 provides substantial grounds to believe that the person committed the
19 crime with which he is charged. Your task is to use your judgement to
20 circumscribe the facts of the case and to make a determination.

21 Mindful of the expectations of the international community and
22 the task awaiting you, you yourselves, from the moment the hearing
23 opened, set the parameters of the exercise by reminding all present of a
24 number of rules which you deemed as essential to safeguard the rights of
25 all comers. We wish to reiterate that these included the right of a

1 person brought before this court to have the benefit of the presumption
2 of his innocence and the fact that the Prosecution bears the burden of
3 proof.

4 After those words from the Bench we made our opening statement
5 and made a plea that these proceedings be hallmarked by respect for the
6 integrity of the law and notably for Mr. Mathieu Ngudjolo's right to due
7 process and to justice. In so doing, we underscored the pressing need
8 for justice felt by our client and his Defence team.

9 Madam President, your Honours, you have listened very attentively
10 to the Prosecution, the Legal Representatives of the Victims, and the
11 Defence teams. Each of these participants in these proceedings will,
12 within the time frame set, file its written closing submissions. The
13 time will then come for you to withdraw alone to the sanctity of your
14 Chambers to review independently whether, based on all that you have
15 heard and read, there is evidence of substantial grounds to believe that
16 Mathieu Ngudjolo committed, together with Germain Katanga, one or more
17 crimes within the jurisdiction of the International Criminal Court.

18 In our submission, nothing that has been said over the last
19 fortnight can irrevocably lead to the confirmation of the charges. This
20 hearing leaves a feeling of half-done work.

21 The Prosecutor has attempted to construct a factual edifice, but
22 it is riddled with cracks. Those cracks are evidence, the credibility of
23 which must be viewed with circumspection.

24 The witnesses reviewed by the Defence and whose identities have
25 been revealed by the Prosecution itself have brought a host of

1 contradictions to light which discredit the Prosecutor's case. This
2 confirmation hearing has, in our submission, failed to provide evidence
3 of substantial grounds to believe that Mathieu Ngudjolo is responsible
4 for the crimes with which he is charged.

5 Madam President, your Honours, committing a man for trial is a
6 grave act. It sometimes opens the door to a man being stigmatised and
7 damaged for life. It is essential that the person has the benefit of due
8 process and understands what is happening to him. And should the person
9 be convicted, as painful as that inevitably is, that they are convicted
10 fairly.

11 The Prosecution told you in its open statement -- opening
12 statement that it was going to prove all the crimes that are attributed
13 to my client. Based on the evidence presented at this confirmation
14 hearing, you will determine whether there are substantial grounds to
15 believe, that is to say, whether there is good cause to commit our client
16 for trial.

17 A dark cloud of doubt continues to hang over the Prosecution's
18 case. As previously said, caution is called for in judging the
19 credibility of the evidence produced by the Prosecutor and utilised by
20 the Legal Representatives of Victims. We wanted to leave you with this
21 thought as you prepare to withdraw.

22 Thank you, Madam President, your Honours. I wish to express my
23 thanks for the manner in which you have conducted the proceedings at this
24 confirmation hearing. You have been truly receptive to all parties and
25 participants and treated them equally, just as we hoped and express that

1 hope in our opening statement.

2 PRESIDING JUDGE KUENYEHIA: Thank you very much.

3 Mr. Hooper.

4 MR. HOOPER: Madam President and learned friends, I have nothing
5 to add this morning to the submissions that have been made. We were
6 aware yesterday that there may have been a number of misunderstandings in
7 respect of our position in respect of Article 25, but revisiting the
8 submissions that were made last week by Ms. Buisman and mindful of the
9 fact that these matters will also be contained in written submissions
10 later this month, I don't propose to further address what Ms. Buisman
11 clearly and plainly laid before the Court by way of her submissions.

12 Germain Katanga, for his part, isn't here today, but we've been
13 seeing him more or less on a daily basis -- in fact, on a daily basis,
14 and he's been following these proceedings with appropriate and keen
15 interest and conveys his thanks through me to you and your fellow Judges,
16 Madam President.

17 It's been a rather strange, in fact sometimes awkward situation
18 sitting here, confronted by -- we're uncertain of the numbers. We think
19 it's either 12 or 13 of our learned colleagues in this confrontationally
20 designed courtroom where we face one another in this way rather than the
21 Bench to whom, of course, we should address. The numbers alone give us
22 gravest doubts as to the essential systemic fairness of this system.

23 Through -- you have made every effort, Madam President,
24 throughout this hearing to -- to remind us and the parties that this is
25 not a trial, nor is it a mini trial, but a procedure which has as its

1 objective the assessment of the evidence with a view to confirming or not
2 confirming charges. We feel that your advice, daily advice, has from
3 time to time perhaps been lost sight of in the course of this hearing,
4 and particularly yesterday by many of the parties, including the
5 Prosecution. This may largely be a product, we feel and reflect, on the
6 public nature of this hearing, but perhaps this is an issue that deserves
7 revisiting by the States Parties.

8 One of the problems, of course, of such a public hearing,
9 particularly when counsel are involved, and we're all vulnerable to this,
10 is that it generates rhetoric, and rhetoric perhaps has no place in this
11 particular procedure. We hope something can be done to address the
12 problem in respect of those who follow us.

13 We refer, for example, to the procedure for grand jury
14 presentation in the United States, or from my own experience in respect
15 of prima facie hearings in the United Kingdom where there's an embargo,
16 for example, on all publicity and very limited information is allowed to
17 be published in respect of such a hearing. In fact, it's really reduced
18 to merely the name of the accused and the charges upon which committal
19 has taken place, because otherwise it is very capable of inflicting an
20 injustice on the accused person. He's not here to be placed in a public
21 pillory and such a system, perhaps, is not the greatest encouragement to
22 participation by the accused person.

23 May I add that these observations in no way reflect on the good
24 governance of you the Judges in this procedure. We acknowledge and thank
25 you for your understanding and unfailing courtesy throughout this

1 procedure, but, rather, these are observations on the systemic problem,
2 perhaps, that lies within the Statute.

3 May I finally thank all my learned friends who sit opposite me
4 and have done so for the last two weeks or so. We acknowledge and
5 respect your undoubted commitment efforts and submissions.

6 Thank you.

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

8 I think this brings us to the end of the confirmation of charges
9 process, and I would like to thank all the parties and participants who
10 have maintained absolute decorum throughout these proceedings.

11 As per the schedule of the confirmation hearing and following the
12 precedents set by the Chamber in the Lubanga case, the Legal
13 Representatives for Anonymous and Non-Anonymous Victims within the limits
14 of their respective modalities of participation, as well as the
15 Prosecution, shall have until the 22nd of July, 2008, and both Defences
16 until the 28th of July, 2008, to file written submissions addressing
17 issues discussed during the confirmation hearing.

18 The Chamber would like to remind the parties and participants
19 that the written submissions must be confined to the issues discussed
20 during the course of the confirmation hearing. No new issues can be
21 taken into account by the Chamber.

22 Pursuant to Regulation 53 of the Regulations of the Court, the
23 Chamber has 60 days from the conclusion of the confirmation hearing to
24 deliberate and issue its decision. Following the precedents of this
25 Chamber in the case versus Thomas Lubanga Dyilo, of giving the parties

1 and participants time to file written statements, the Chamber considers
2 the end of the confirmation hearing to be the submission of the last
3 written observations, and therefore the 60 days will start running from
4 the 29th of July. The Chamber's deadline for issuing the decision or
5 confirming or not the charges is approximately 26th of September, 2008.
6 That is the last possible day. It doesn't mean that that is the day that
7 the Chamber will issue the decision.

8 Lastly, the Chamber would like to express its sincere
9 appreciation and thanks to all those who participated in the proceedings,
10 the Prosecution, the Defence for Mathieu Ngudjolo Chui, the Defence for
11 Mr. Germain Katanga, the Legal Representatives of Anonymous and
12 Non-Anonymous Victims, as well as all those who facilitated the smooth
13 running of this confirmation hearing, including the Registry, IT
14 services, interpreters, court reporters, and the security. We would also
15 like to thank the members of the public who have attended this hearing
16 over the course of the last two weeks or so.

17 The hearing is now closed. Thank you very much.

18 COURT USHER: All rise.

19 The hearing ends at 9 .27 a.m.

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