

1 International Criminal Court

2 Pre-Trial Chamber I

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

4 First Appearance Hearing - Open Session

5 Transcript ICC-01-04-01-07-T-5-ENG

6 Monday, 22 October 2007 - The hearing starts at 2.39 p.m.

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

9 PRESIDING JUDGE KUENYEHIA: The hearing is now opened. Court
10 Officer, may I ask the security to bring the detainee in. Thank you.

11 The Chamber took a decision that photographers may take photos
12 for one minute, no longer, so that can go ahead if the court officers
13 can organise it.

14 Court Officer, I think our one minute is up.

15 I'd like to call on the Court Officer to call the case now.

16 COURT OFFICER: Thank you. Situation in the Democratic Republic
17 of the Congo, the case of The Prosecutor versus Mr. Germain Katanga,
18 ICC-01/04-01/07.

19 PRESIDING JUDGE KUENYEHIA: Thank you.

20 On behalf of my colleagues Judge Anita Usacka on my right and
21 Judge Sylvia Steiner on my left, I would like to welcome all of you to
22 this hearing and to ask those of you who are participating to
23 introduce themselves starting with the Office of the Prosecutor.

24 MS. BENSOUDA: Thank you, Madam President, Honourable Judges.

25 Appearing for the Office of the Prosecutor this afternoon is Trial

1 Lawyer Eric MacDonald, Legal Advisor Florence Darques-lane,
2 International Cooperation Advisor Pascal Turlan, Associate Trial
3 Lawyer Ibrahim Yillah, Acting Team Leader Paula Mattila. I am Fatou
4 Bensouda, Deputy Prosecutor, Office of the Prosecutor. Thank you.

5 PRESIDING JUDGE KUENYEHIA: Thank you. I'll now turn to the
6 Defence. As we are going to request various details regarding the
7 identity of Mr. Germain Katanga, I would invite counsel for the
8 Defence to present himself and his team first.

9 MR. KEITA (interpretation): Thank you, Madam President. I would
10 first like to introduce Ms. Melinda Taylor, who is Deputy Counsel --
11 Associate Counsel; and Ms. Caroline Baugas, who is an Associate Legal
12 Officer and Assistant. I regret to say that two of my colleagues are
13 not present, because for security reasons no one can be placed behind
14 Mr. Katanga. I am Xavier-Jean Keita. I am Principal Counsel, and it
15 is in this capacity as Principal Counsel of the Office of Public
16 Counsel for the Defence that the office was selected as Duty Counsel
17 to assist Mr. Katanga. Thank you.

18 PRESIDING JUDGE KUENYEHIA: Thank you. I think you yourself know
19 that for the time being you are Duty Counsel, and the we received,
20 Chamber received, notification of the fact that you are Duty Counsel.

21 I would like to now ask the Registry to introduce their team.

22 MR. DUBUISSON (interpretation): Thank you, your Honour, your --
23 Madam President, your Honours. For the Registry there is Bibiana
24 Becerra-Suarez, who is a Legal Coordinator; and I am Marc Dubuisson,
25 Director of the Division of Court Services representing the Registrar.

1 Thank you.

2 PRESIDING JUDGE KUENYEHIA: Thank you.

3 I would now ask Mr. Germain Katanga to stand and to answer a
4 number of questions in order for us to ascertain his identity. Please
5 remember to use the microphone, and you can speak the in language in
6 which you're very conversant with and comfortable with. May I confirm
7 whether you speak French or any other language, Mr. Katanga?

8 MR. KATANGA (interpretation): I speak Lingala best.

9 PRESIDING JUDGE KUENYEHIA: But do I understand, Mr. Katanga,
10 that you speak French also?

11 MR. KATANGA (interpretation): Not really.

12 PRESIDING JUDGE KUENYEHIA: I'd like -- please sit down for the
13 time being while we sort out something.

14 [Trial Chamber and Court Officer confer]

15 PRESIDING JUDGE KUENYEHIA: Mr. Katanga, the -- could you please
16 stand. The Court is obliged, under Article 67, to have you speak the
17 language which you fully understand. Does the Chamber understand that
18 you do not speak and understand French?

19 MR. KATANGA (interpretation): I hope -- I do not speak French
20 fluently, and sometimes it is difficult for me to understand and
21 how -- difficult for me to express myself.

22 PRESIDING JUDGE KUENYEHIA: Thank you.

23 Court Officer, do I understand that as of now we do not have
24 interpretation in Lingala?

25 COURT OFFICER: Not at this very moment.

1 PRESIDING JUDGE KUENYEHIA: Mr. Katanga, do you understand and
2 speak Swahili?

3 MR. KATANGA (interpretation): In Congo there is no Swahili
4 speaking -- spoken normally. The language spoken is Kingwana.

5 PRESIDING JUDGE KUENYEHIA: Thank you, Mr. Katanga. You may sit
6 down for the time being.

7 Madam Prosecutor, I notice you are on your feet.

8 MS. BENSOUDA: Madam President, we do understand that Mr. Katanga
9 does speak Swahili. In fact, on his way during transfer to this court
10 he did speak Swahili and fluently. I understand that he spoke Swahili
11 with the -- his personal guard, who is Tanzanian, from Tanzania. He
12 spoke in fluent Swahili. This is just information I thought the Court
13 should know. Thank you.

14 PRESIDING JUDGE KUENYEHIA: Thank you very much.

15 Mr. Keita.

16 MR. KEITA (interpretation): Yes, Madam President. I would like
17 to say that according to the Statute, Mr. Katanga must be heard in a
18 language that he speaks perfectly. I take it from his answer that
19 although he understands French, he has -- speaks Lingala and
20 understands Lingala fluently. The fact that he was able to
21 communicate with people around him in Swahili does not mean that this
22 is a language in which he is completely fluent. Furthermore, I wish
23 to add that there are several versions of Swahili in the DRC with
24 various nuances.

25 So in keeping with the Statute, I would like Mr. Katanga to be

1 assisted, in addition to the French he understands, with an
2 interpreter in Lingala, which he understands fluently. Thank you.

3 [Trial Chamber and Court Officer confer]

4 PRESIDING JUDGE KUENYEHIA: The hearing will be adjourned for 10
5 minutes while we sort out this problem of language. Thank you very
6 much.

7 The hearing is adjourned for 10 minutes.

8 Recess taken at 2.58 p.m.

9 On resuming at 3.30 p.m.

10 COURT USHER: All rise.

11 PRESIDING JUDGE KUENYEHIA: The Chamber apologises for the delay.
12 The hearing is reconvened.

13 Mr. Germain Katanga, could you please be up standing.

14 Mr. Katanga, from documents that have been filed before the
15 Chamber by the Registry, the Chamber assumed that you spoke and
16 understood French fluently and that you also spoke and understood
17 Swahili fluently. The Registry filed detailed documents before the
18 Chamber, and on the basis of those documents the Chamber made that
19 assumption. However, you have told the Chamber today that you do not
20 speak or understand French fluently, neither do you speak or
21 understand Swahili fluently and that you speak only Lingala.

22 In order for the Chamber to proceed with this First Appearance,
23 having regard to the fact that the questions that the Chamber will ask
24 you this afternoon are very simple questions, the Chamber has decided
25 that for this afternoon there will be Lingala-speaking interpreters to

1 help you, because we are going to ask you very simple questions.

2 The Chamber will therefore ask the Court Officer to bring in the
3 Lingala interpreters.

4 Thank you, Court Officer.

5 May I ask the Registry to -- the Registrar to introduce the
6 interpreters that you've just brought in.

7 MR. DUBUISSON (interpretation): Madam President, excuse me for
8 that slight hesitation. The two interpreters who shall assist us
9 today are Richard Muhungu, and Daniel Ntakirutiti-Mana. One of the
10 interpreters will be providing a whispering interpretation and,
11 therefore, Mr. Katanga no longer needs his headset.

12 PRESIDING JUDGE KUENYEHIA: Thank you very much. I must
13 emphasise that this arrangement is only for this afternoon for this
14 First Appearance, for the avoidance of doubt.

15 Mr. Katanga, I'm going to ask you a few questions. We would like
16 you to confirm to us your name. Please confirm your name to us. What
17 is your name?

18 MR. KATANGA (interpretation): My name is Germain Katanga.

19 PRESIDING JUDGE KUENYEHIA: Your date of birth?

20 MR. KATANGA (interpretation): 28th of April, 1978.

21 PRESIDING JUDGE KUENYEHIA: Your profession?

22 MR. KATANGA (interpretation): I am Congolese.

23 PRESIDING JUDGE KUENYEHIA: Your profession.

24 MR. KATANGA (interpretation): I was a student. A school child,
25 a student.

1 PRESIDING JUDGE KUENYEHIA: And do I understand that you are a
2 student?

3 MR. KATANGA (interpretation): I recently was awarded my diploma.
4 That was in 2004.

5 PRESIDING JUDGE KUENYEHIA: Can you tell us what the diploma is
6 about?

7 MR. KATANGA (interpretation): General pedagogy.

8 PRESIDING JUDGE KUENYEHIA: Can you tell the Chamber what
9 university you attended?

10 MR. KATANGA (interpretation): I have not attended university.

11 PRESIDING JUDGE KUENYEHIA: Thank you very much. Is there
12 anything you would like to say at this time, Mr. Katanga?

13 MR. KATANGA (interpretation): I have nothing to say. I await
14 your instructions.

15 PRESIDING JUDGE KUENYEHIA: Would my colleagues like to put any
16 questions to Mr. Katanga at this time?

17 Thank you, Mr. Katanga. You can sit down.

18 This brings me to the provisions of Article 60 of the Statute.
19 Again, Mr. Katanga, have you been informed of the crimes with which
20 you are charged, and would you like the Arrest Warrant read to you?

21 MR. KATANGA (interpretation): I would request that the charges
22 against me be read.

23 PRESIDING JUDGE KUENYEHIA: May I ask the Court Officer at this
24 point to read the Arrest Warrant in full. I think that, Court
25 Officer, you have to read slowly so that they will be able to

1 interpret to Mr. Katanga.

2 COURT OFFICER (interpretation): Warrant of arrest for Germain
3 Katanga.

4 "Pre-Trial Chamber I of the International Criminal Court;

5 "Noting the decision assigning the situation in the Democratic
6 Republic of the Congo, the DRC, to Pre-Trial Chamber I, rendered by
7 the Presidency on the 5th of July, 2004;

8 "Noting the notification to Pre-Trial Chamber I and request for
9 extension of page limit filed by the Prosecution on the 14th of June,
10 2007;

11 "Noting the Prosecutor's Application for a warrant of arrest for
12 Germain Katanga, filed in two parts on the 25th of June, 2007;

13 "Noting the evidence and other information submitted by the
14 Prosecution;

15 "Noting the decision concerning supporting materials in relation
16 with the Prosecution's Application, rendered on the 26th of June,
17 2007;

18 "Noting the Prosecution's response to the decision concerning
19 supporting materials, filed by the Prosecution on the 27th of June,
20 2007;

21 "Noting Articles 19(1) and 58(1) of the Rome Statute;

22 "Considering that the analysis of the evidence and other
23 information submitted by the Prosecution will be set out in a decision
24 to be filed subsequently;

25 "Considering that on the basis of the evidence and information

1 submitted by the Prosecution and without prejudice to the filing of
2 any challenge to the admissibility of the case under Articles 19(2) (a)
3 and (b) of the Statute and without prejudice to any subsequent
4 decision in this regard, the case against Germain Katanga falls within
5 the jurisdiction of the court and is admissible;

6 "Considering that there are reasonable grounds to believe that
7 from July 2002 until the end of 2003, there was an armed conflict on
8 the territory of Ituri involving armed groups in a protracted fashion,
9 armed groups based thereon, and having a hierarchical organisation and
10 the ability to plan and carry out sustained military operations,
11 including the Front des nationalistes et integrationnistes, the FNI;
12 and the Force de resistance patriotique en Ituri, the FRPI; and the
13 Union des patriotes Congolais, the UPC; and the Forces patriotiques
14 pour la liberation du Congo, the FPLC; and the Parti pour l'unite et
15 la sauvegarde de l'integrite du Congo, the PUSIC;

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

19 "Considering, therefore, that there are reasonable grounds to
20 believe that a protracted armed conflict took place during the said
21 period and that it may be characterised as being of a
22 non-international, or alternatively, as being of an international
23 character;

24 "Considering that there are reasonable grounds to believe that in
25 the context of this armed conflict, the FNI and the FRPI, acting with

1 a common purpose, carried out an attack on the village of Bogoro,
2 which started on or around the 24th of February, 2003.

3 Considering that there are reasonable grounds to believe that the
4 attack directed against the village of Bogoro was indiscriminate and
5 that during, and in the aftermath of, the attack members of the FNI
6 and FRPI committed several criminal acts against civilians primarily
7 of Hema ethnicity, namely the murder of about 200 civilians; causing
8 serious bodily harm to civilians; arresting, threatening with weapons
9 and imprisoning civilians in a room filled with corpses; pillaging;
10 and the sexual enslavement of several women and girls;

11 "Considering also that there are reasonable grounds to believe
12 that members of the FNI and FRPI used children under the age of 15
13 years to participate actively in this attack;

14 "Considering, therefore, that there are reasonable grounds to
15 believe that during, and in the aftermath of, the attack on the
16 village of Bogoro, war crimes within the jurisdiction of the court
17 pursuant to Articles 8(2)(a)(i), 8(2)(1)(ii), 8(2)(b)(i),
18 8(2)(b)(xvi), 8(2)(b)(xxii), 8(2)(b)(xxvi), 8(2)(c)(i), 8(2)(e)(i),
19 8(2)(e)(v), 8(2)(e)(vi), and 8(2)(e)(vii) of the Statute, as described
20 in the Prosecution Application, were committed;

21 "Considering that there are reasonable grounds to believe that
22 between January 2003 and at least March 2003, the FNI and FRPI carried
23 out an attack directed against the civilian population of certain
24 parts of the territory of Ituri, primarily of Hema ethnicity; that the
25 attack was of a systematic or widespread nature; and that during such

1 a systematic or widespread attack, on or around the 24th of February,
2 2003, during, and in the aftermath of, the attack on the village of
3 Bogoro the following crimes were committed: The murder of about 200
4 civilians, causing serious bodily harm to civilians, and the sexual
5 enslavement of several women and girls;

6 "Considering, therefore, that there are reasonable grounds to
7 believe that during the attack on the village of Bogoro crimes against
8 humanity within the jurisdiction of the court pursuant to
9 Articles 7(1)(a), 7(1)(g), and 7(1)(k) of the Statute, as described in
10 the Prosecution Application, were committed;

11 "Considering that there are reasonable grounds to believe that
12 Germain Katanga was the highest ranking FRPI commander;

13 "Considering that there are reasonable grounds to believe that
14 there was a common plan between Germain Katanga and other senior FNI
15 and FRPI military commanders to carry out an indiscriminate attack on
16 the village of Bogoro on or around the 24th of February, 2003; that
17 criminal acts committed during, and in the aftermath of, the attack,
18 namely the murder of about 200 civilians; causing serious bodily harm
19 to civilians; arresting, threatening with weapons, and imprisoning
20 civilians in a room filled with corpses; pillaging; the sexual
21 enslavement of several women and girls; and the active participation
22 of children under the age of 15 years in hostilities, were part of the
23 common plan, or were, at the very least, a probable and accepted
24 consequence of the implementation of the said common plan;

25 "Considering that there are reasonable grounds to believe that,

1 as the highest-ranking FRPI commander, and by designing the common
2 plan and ordering his subordinates to execute it, Germain Katanga's
3 contribution was essential to its implementation;

4 "Considering that for the foregoing reasons, there are reasonable
5 grounds to believe that Germain Katanga is criminally responsible
6 under Article 25(3) (a) or, in the alternative, under Article 25(3) (b)
7 of the Statute, for:

8 "i) murder as a crime against humanity, punishable under
9 Article 7(1) (a) of the Statute;

10 "ii) wilful killing as a war crime, punishable under
11 Article 8(2) (a) (i) or Article 8(2) (c) (i) of the Statute;

12 "iii) inhuman acts as a crime against humanity, punishable under
13 Article 7(1) (k) of the Statute;

14 "iv) inhuman treatment as a war crime, punishable under
15 Article 8(2) (a) (ii) or cruel treatment as a war crime, punishable
16 under Article 8(2) (c) (i) of the Statute;

17 "iv) the war crime of using children under the age of 15 years
18 to participate actively in hostilities, punishable under
19 Article 8(2) (b) (xxvi) or Article 8(2) (e) (vii) of the Statute;

20 "vi) sexual slavery as a crime against humanity, punishable
21 under Article 7(1) (g) of the Statute;

22 "vii) sexual slavery as a war crime, punishable under
23 Article 8(2) (b) (xxii) or Article 8(2) (e) (vi) of the Statute;

24 "vii) the war crime of intentionally directing attacks against
25 the civilian population as such or against individual civilians not

1 taking part in hostilities, punishable under Article 8(2)(b)(i) or
2 Article 8(2)(e)(i) of the Statute;

3 "ix) pillaging a town or place, even one -- even when taken by
4 assault as a war crime, punishable under Article 8(2)(b)(xvi) or
5 Article 8(2)(e)(v) of the Statute;

6 "Considering that there are reasonable grounds to believe that
7 the arrest of Germain Katanga appears necessary at this stage to
8 ensure his appearance before the Court within the meanings of
9 Articles 58(1)(b)(i) and (ii) of the Statute;

10 "Hereby issues an Arrest Warrant for Germain Katanga, who is
11 believed to be a national of the Democratic Republic of the Congo,
12 born on the 28th of April, 1978, in Mambasa, Mambasa Territory, Ituri
13 District, who is believed to be of Ngiti ethnicity, married to Denise
14 Katanga and father of two children, son of Jacob Nduru and Elizabeth
15 Regine, alleged leader of the FRPI, who, according to available
16 information, is detained at the Centre Penitenciaire et de Reeducation
17 de Kinshasa and is also known as 'Simba.'

18 "Done on Monday, the 2nd of July, 2007, in The Hague, the French
19 version of this Arrest Warrant being authoritative."

20 PRESIDING JUDGE KUENYEHIA: Thank you very much. We continue.

21 Mr. Katanga, the Chamber and the Court would like to ensure that
22 as of your arrival on Dutch territory, that is on Thursday, the 18th
23 of October, 2007, you were informed of all your rights as set out in
24 Article 67 of the Statute.

25 MR. KATANGA (interpretation): Yes, I was informed.

1 PRESIDING JUDGE KUENYEHIA: Thank you. I would like to know
2 whether you would want me to re-emphasise these rights to you now as
3 part of this process.

4 MR. KATANGA (interpretation): It's not worth it. It is not
5 worth the trouble.

6 PRESIDING JUDGE KUENYEHIA: Thank you very much.

7 These rights that have been read have been -- you have been
8 informed of relate to the trial and also to the confirmation of
9 charges. Your counsel is, of course, aware of them, and it is always
10 something that you can discuss with him or her.

11 I would now like to turn to Mr. Keita and to formally welcome you
12 as part of this process. As you yourself have said, and I would like
13 to inform Mr. Katanga, Mr. Keita is a Duty Counsel, and because he is
14 the head of the Office of Public Counsel for Defence of the ICC, he
15 cannot be your permanent counsel. However, you do have the right to
16 choose your own counsel, and I'm sure that this will happen at a later
17 stage. It is your right to choose your counsel and to map up your own
18 strategy for defence.

19 Now, Mr. Katanga, on behalf of my colleagues, I would like your
20 opinion regarding the conditions of your surrender to the
21 International Criminal Court, as well as the conditions under which
22 you have been detained.

23 Mr. Keita?

24 MR. KEITA (interpretation): Madam President, thank you for your
25 words of welcome once more.

1 I would like to say that at this stage in the proceedings,
2 Mr. Katanga asked the Office of Public Counsel for the Defence to make
3 some submissions when we will be granted authorisation to do so, that
4 is, regarding his transfer process. I would like the Chamber to note
5 that I shall make submissions subsequently if the Chamber invites me
6 to do so.

7 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Keita. I
8 would like to hear Mr. Katanga, and then we would grant you the
9 opportunity to make your submissions. Or do I take it that
10 Mr. Katanga does not want to make the submissions and that he wants
11 you, Mr. Keita, to make those submissions?

12 MR. KEITA (interpretation): I am going to make the submissions,
13 Madam President, with your leave, later on when you will ask me to do
14 so.

15 PRESIDING JUDGE KUENYEHIA: So may I turn to Mr. Katanga one more
16 time to have his opinion on the conditions of his surrender to the
17 International Criminal Court, as well as the conditions of his
18 detention at the detention centre of the court.

19 MR. KATANGA (interpretation): Detention remains detention.
20 Nobody can be satisfied with their conditions of detention whatever
21 they are.

22 PRESIDING JUDGE KUENYEHIA: Thank you very much.
23 Mr. Keita, can you make your submissions now.

24 MR. KEITA (interpretation): Yes. Thank you, Madam President.
25 Mr. Katanga asked me to make a few submissions, not only his

1 transfer to -- surrender to the authorities of the court, but also on
2 the conditions of his detention very briefly in the DRC.

3 He was deprived of his liberty, or arrested, in February 2005.
4 He was placed under an order to reside in a limited area and report to
5 the police up till March, and then on the 9th of March he was
6 transferred to Kinshasa, and he was placed in gaol, according to his
7 own terms. He distinguished this gaol from any -- a lock-up or a cell
8 from the prison. It is the next day -- on the next day that he was
9 taken out of the lock-up and placed in detention in prison.

10 He informed me that he was in a cell with nine co-detainees. The
11 cell measured 18 -- between 18 to 20 square metres. He did not have
12 medicine. Everybody lived in the same place. He was lucky to find a
13 bed, and that this was not the case for some of his other
14 co-detainees.

15 When he was taken into custody, his wife was expecting their
16 second child. He knows that his child has been born, but his child
17 cannot recognise him or know him. This child is two and a half years
18 old, and he has never seen this child. He has had no contact with his
19 family from that time to this day, and he would like to add that the
20 right to his family life -- his right to family life has been violated
21 and that this is against Congolese law as well.

22 He was, therefore, not in a position to meet with his family in
23 prison, and according to Congolese law, within 12 months of his being
24 taken into custody he should have been taken before a judge.
25 According to Congolese law, he should have had the reasons for his

1 detention or taking into custody explained to him. He was also to be
2 afforded the opportunity to apply for release.

3 It is well beyond 12 months. It was only after 14 months that he
4 was brought the first -- before a judge for the first time. This was
5 a military judge. This was a military court. Four military officers
6 heard him, and the purpose was, if necessary, to extend his detention.
7 He was able to be represented by a lawyer who challenged the
8 irregularity of this detention, and after a brief hearing a decision
9 was taken to extend by 60 days, that is two months, his detention.
10 And the only reason for this that was given to Mr. Katanga was that in
11 Kinshasa he had no fixed abode.

12 I would like to emphasise for the benefit of the Court that
13 Mr. Katanga is not a native of Kinshasa.

14 The first hearing was the 1st of May, 2006, 14 months after he
15 was taken into custody. The two months granted in extension were
16 extended significantly, because it is only on the 30th of November,
17 2006, that is well beyond the time limit that he was brought before
18 the military court. On that date, another extension of 60 days was
19 granted for the same reason; that is, Mr. Katanga did not have fixed
20 abode in Kinshasa, which is not his town of origin.

21 Still with regard to procedural matters, he had to wait six other
22 months -- more than six months, up till the 10th of April, 2007, when
23 he was once more taken before four senior military judges - generals,
24 to be precise - and he was told that his detention would be extended
25 for two months, and still because he did not have a fixed abode in the

1 town of Kinshasa.

2 In the meantime, he was heard just the once by one Colonel Tsino,
3 T-s-i-n-o, but on the 20th of January, 2006. Why do I mention this
4 name Colonel Tsino? It is the only time that Mr. Katanga heard
5 anything about matters that would be of concern to him; that is, he
6 was asked whether he knew of the village of Bogoro. I mention this
7 because this village is mentioned in the Warrant of Arrest.

8 Another salient point which is a source of surprise that occurred
9 during this hearing by the colonel, his counsel, Mr. Bertin Boki, was
10 not present.

11 I should also like to inform the Court - and the consequences of
12 this would be appreciated in due course - that Mr. Katanga informed me
13 that he was visited at the beginning of 2007, and he says it was in
14 January, January or February. It was a lady called Anneke Woudenberg,
15 who is member -- allegedly a member of Human Rights Watch.

16 When he was in playing basketball with his co-detainees, he was
17 called by the director of the prison who said to him, "You have a
18 visitor. This woman will interview you, and it is in your interest to
19 cooperate. Otherwise, your punishment would be to be placed in a
20 disciplinary cell." So it was not a private visit, because from what
21 Mr. Katanga states, this woman who interviewed him said much more
22 precisely than the previous allusions made by Colonel Tsino that he
23 was accused of looting, crimes against humanity, war crimes, mentioned
24 by this lady. These crimes are mentioned in the Warrant of Arrest
25 that has just been read out to him.

1 Since it was not a personal visit, at least he should have been
2 assisted by his counsel.

3 The proceedings -- regarding the proceedings that concern us,
4 that is before today, on the 17th of October at 10.00 in the morning,
5 Mr. Katanga tells me he received the visit -- or he was visited by a
6 senior military officer, a general, who said to him, "Come with me."
7 He asked to use the toilet. He was prevented from doing so. He tried
8 to take some personal effects, particularly a notebook, but he was not
9 allowed to do so.

10 He was taken to the Court of Justice with no explanation. I
11 should like to add that up until that date, he had no knowledge of the
12 reasons why he had been taken into custody.

13 From 10.00 in the morning till 7.00 in the evening he was
14 detained in a cell. At 7.00 he was visited by his lawyer, Mr. Mr.
15 Bertin Boki, with whom he was able to talk for a few minutes. And
16 when he came out of his cell, two cameramen were present and so were
17 photographers, and the senior military officer, the general, read out
18 in French the Warrant of Arrest that the Court has just caused to be
19 read out. Mr. Katanga informs me that a copy of this Warrant of
20 Arrest which was read out to him in French was not handed to him or to
21 his counsel, and he was not asked to sign any report whatsoever.

22 Subsequently, he returned to the cell, and he was taken to the
23 airport. He tells me that at that point, before leaving that
24 establishment, that is the court, he was not asked to challenge the
25 Warrant of Arrest that was read out to him or to rely on Congolese

1 law, which gives him the right to request his release, even interim
2 release, and he was not asked to challenge the Warrant of Arrest
3 because he did not receive it physically.

4 He stated that during that time - it was already after 8.00 - he
5 was not able to go to the toilet in order to relieve himself in spite
6 of his requests. He was not able to slake his thirst, and he was not
7 able to eat or be asked to eat.

8 The next stage was the airport, where he met with authorities who
9 told him that he needed to change. He was given new clothes. He was
10 blocked, he was given a bullet-proof jacket, and he was placed in a --
11 on an aircraft. He says, and he emphasises this, that it was only
12 after the aircraft took off that he was able to slake his thirst and
13 eat something.

14 Following the conference, the press conference of the Registrar,
15 it appears that the plane took after at 2.00 in the morning. So
16 please imagine, from 2.00 in the morning -- from 10.00 in the morning
17 to 2.00 in the morning the next day, he had not been able to eat or to
18 drink.

19 In the aircraft, he understood that he was going to The Hague.
20 He was received by the Dutch authorities at the airport, and these
21 authorities transferred him to the Scheveningen detention centre.
22 When he got there, he says the first contact he had was with a doctor.
23 The doctor examined him for 10 minutes or so.

24 He is sorry that he doesn't have his personal effects. He is
25 sorry that both in the Democratic Republic of the Congo and at the

1 time of his surrender he did not -- was not able to exercise any of
2 the rights of which he has been informed by the employees of the
3 court. These are the rights that the Office of Public Counsel for the
4 Defence has explained to him at length because, of course, while he
5 understands French, he is not a master of it, and considering the
6 technical nature of our judicial language, there are things that can
7 escape anyone.

8 This is also why, after spending four hours with my colleagues on
9 Saturday afternoon, and me, we had to return to see him this morning
10 for another two hours.

11 At this point, Madam President, should the Defence continue to
12 make submissions regarding the consequences of all these facts? I
13 wished, in particular, to make some representations pertaining to the
14 possible release. Will the Court grant me authorisation to continue
15 on this subject? I should like to point out that I do not want to
16 submit or give the reasons for such an application for release. I
17 would like to explain the reasons why I am forced to seek an extension
18 so that I can file these subsequently.

19 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Keita. I
20 think that if you would be a little patient, we will come to the
21 question of interim release in two seconds, and then you can -- the
22 Court -- the Chamber has taken note of everything you have said. Of
23 course, I'd like to remind you and Mr. Katanga that the conditions
24 that I was asking about were the conditions of surrender and the
25 detention here at the detention centre of the court, but of course the

1 Chamber has taken note of everything you have said and will analyse
2 it, and it will be in both our interests, in your interest and our
3 interest, when these submissions are put in writing at a later stage.
4 But if you'll be patient, in two minutes we'll get to the issue of
5 interim release as required by the Statute.

6 In the provisions that govern the International Criminal Court,
7 of course your counsel -- Mr. Katanga's counsel, Mr. Keita, is aware
8 that there are Regulations 97 to 106. These are quite a lot of
9 Regulations, and these cover the rights of the detained person, as you
10 know, conditions of detention, contact with family, and also contact
11 that he may have with the diplomatic and consular authorities of his
12 country. Counsel for Defence is aware of all these under the
13 Regulations.

14 Now, by virtue of Article 60 of the Statute, Mr. Germain Katanga,
15 you may, during this hearing or after this hearing, request interim
16 release pending trial. Of course, if you request it, the Chamber will
17 not rule upon it immediately, but you may make such a request. So if
18 you wish to make such a request, of course the Prosecutor will be
19 asked to make observations on such a request.

20 At this point in time I would like to ask Mr. Katanga whether he
21 would want to make a request for interim release pending trial.

22 MR. KATANGA (interpretation): Yes.

23 PRESIDING JUDGE KUENYEHIA: Mr. Katanga -- sorry. Mr. Keita.
24 Forgive me.

25 MR. KEITA (interpretation): Thank you, Madam President. At this

1 point, I am representing Mr. Katanga.

2 Regarding the request for release, you will have gathered, Madam
3 President, that this detention was long and it was extended. It is
4 now two and a half years in total. He is not -- does not have any
5 knowledge why he was taken into custody. He does not know why his
6 right to a family life has been violated.

7 In light of the Statute and as you have recalled, he may make an
8 oral request for interim release. This is why this hearing is
9 organised.

10 At this point, he does not wish to make one. At this point,
11 Mr. Katanga does not have complete information regarding the
12 justification of the Warrant of Arrest. Since I asked him this
13 morning, I know -- since I asked the Director of Court Services this
14 morning for a complete report of the conditions for his surrender, and
15 this is right, he has not received this information. Therefore, all
16 the information he has been -- he has received for the Warrant of
17 Arrest is that there are reasonable -- reasonable grounds to believe
18 that the arrest of Germain Katanga appears necessary at this stage to
19 ensure his appearance before the Court.

20 On page 3 of the Warrant of Arrest, it is stated, and I quote:
21 "Considering that the analysis of the evidence and other information
22 submitted by the Prosecution will be set out in a decision to be filed
23 subsequently." To date, this decision which are -- explain the
24 Warrant of Arrest and which may provide the justification for this
25 Warrant of Arrest and the reason why this Warrant of Arrest was

1 preferred by the Prosecution or the Chamber to a summons, this
2 decision and the reasons, therefore, have not yet been brought to the
3 knowledge of Mr. Katanga. Therefore, we have no facts at our disposal
4 today that can support the Warrant of Arrest, which sets out in detail
5 the crimes charged and the legal basis, but does not justify the
6 reason for the process of a Warrant of Arrest.

7 However, the application for release can only be supported if we
8 have facts that will allow the Court to judge whether these reasons
9 would support the maintenance of the Warrant of Arrest and its
10 consequences, that is, the denial of liberty. So when we will have
11 the facts or elements we require, we shall submit a reasoned
12 application which will be notified to the other party, and the Court
13 will be able to judge or make a determination on the application for
14 release.

15 I should also like to point -- point out that an application for
16 release in the alternative -- or in the main, and we ask in this
17 regard that the Chamber and the court provide us with all the help
18 that it can so that we can receive the cooperation agreement of the
19 States Parties or any other State that can welcome Mr. Katanga. If
20 for some reason you accepted the application for interim release,
21 neither Mr. Katanga, who has been in custody for more than two and a
22 half years, nor the counsel who was assigned and whom he chose
23 temporarily, have been, since Friday afternoon at 3.00 when I went to
24 the Registry to notify my acceptance of the mission, during this brief
25 period of time we have not been availed of the opportunity to approach

1 any diplomatic representation or any embassy of any State Party to
2 consider the possibility of safe haven which would fulfil the
3 legitimate conditions that may be set by a Chamber, that is, after the
4 first appearance to answer that the person who has been detained will
5 respond to all summons to follow the proceedings.

6 So the benefit of all these submissions, I would like to repeat,
7 that an application will be filed and a copy sent to the other party.
8 Thank you.

9 PRESIDING JUDGE KUENYEHIA: Thank you very much, Mr. Keita.

10 I have to notice that we have been operating for two hours, and
11 our interpreters need a break.

12 Would you like us to take a short break now?

13 They would appreciate a break now. So the process would -- we're
14 going to take a break for half an hour, and we will reconvene at 5.00.

15 Recess taken at 4.31 p.m.

16 On resuming at 5.02 p.m.

17 COURT USHER: All rise.

18 PRESIDING JUDGE KUENYEHIA: The hearing is resumed. Please be
19 seated.

20 Court Officer, could you ensure that the prisoner -- that the
21 detainee is brought in, please.

22 MR. KEITA (interpretation): Your Honour, if I might, I would
23 like to make two clarifications in connection with the application of
24 Mr. Katanga and in connection with the statements I made earlier.

25 The first clarification is that when I said that he had been

1 deprived of his right to family life, he told me that he had been
2 deprived of physical contact with his family. He has, however,
3 received a number of telephone calls under the control of the security
4 services of the penitentiary in Kinshasa. He has received some
5 telephone calls from Mrs. Katanga.

6 Secondly, regarding the Arrest Warrant, the Arrest Warrant which
7 was read to him by the -- the Superior Court of Justice, was not read
8 to him by a general, as I said, but by a colonel.

9 These are the two clarifications which Mr. Katanga wanted me to
10 make to you. Thank you.

11 PRESIDING JUDGE KUENYEHIA: Thank you very much.

12 I would like, at this moment, to ask the Registry, in view of the
13 submissions that the Duty Counsel has made in relation to the
14 execution of the Warrant of Arrest, if they have brief comments. I'm
15 emphasising "brief," because of time, because I'm sure that these will
16 be filed, and there will be an opportunity for extensive response.

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

18 At 2.30 this afternoon, a document was filed with us setting out
19 information from the Congolese authorities regarding the surrender of
20 Mr. Katanga.

21 Regarding his personal effects, I wish to stipulate that we do
22 not take with us personal effects during the transfer. The Prosecutor
23 told us, the Belgian -- or, sorry, no. The Congolese Prosecutor told
24 us that a list of personal effects had been made with Mr. Katanga.
25 The process was that a co-detainee was to gather up his personal

1 effects and that those effects would be sent to us at the detention
2 centre in due course.

3 Another point which I would like to make is that when the -- when
4 Mr. Katanga arrived at the airport in Kinshasa, our obligation, before
5 taking on the -- or when -- our obligation to Mr. Katanga was to
6 ensure that he was seen by a doctor. So he was seen by a doctor as
7 soon as he arrived at the airport.

8 Another piece of information which I can share with you, which
9 was provided by the Congolese authorities, is that the latter offered
10 Mr. Katanga the opportunity to eat and to drink during the day. This
11 is the information which we have received from the Congolese
12 authorities. We also know that Mr. Katanga did indeed refuse the meal
13 which was offered to him.

14 This is what I have to state in relation to what Mr. Keita has
15 said.

16 PRESIDING JUDGE KUENYEHIA: Thank you very much.

17 I'd like to ask the Prosecutor if she has any observations at
18 this point.

19 MS. BENSOUDA: Yes. Thank you, Madam President, for this
20 opportunity. We -- we don't have much to say, but only to emphasise
21 that it is unfortunate that counsel has chosen this moment to raise
22 issues which don't belong to this trial now -- to this proceedings
23 now, and that if counsel is going to make submissions, written
24 submissions, the Office of the Prosecutor will have the opportunity to
25 respond to those, those written submissions that he -- he intends to

1 make. And for -- for a person -- or two people who do not understand
2 each other by virtue of the language that so much could be said to
3 each other for the submissions that have been made. This is just a
4 commentary in -- in passing.

5 But I also want to say, Madam President, that the issues that
6 have been raised, which is the detention by the DRC authorities in the
7 Congo, does not relate to these proceedings, except counsel is able to
8 show or able to say that this -- the detention was at the occasion of
9 the International Criminal Court. This, I think, the counsel has not
10 been able to show and, therefore, this is not the occasion to raise
11 these issues. Unfortunately, he has had the opportunity to raise
12 them, and once a written submission has been made of these issues, the
13 Office of the Prosecutor will respond to those submissions in detail
14 as well.

15 PRESIDING JUDGE KUENYEHIA: Thank you very much.

16 At this point -- and I hope that the rest of the process will not
17 take too long, because the Registry informs me that they have
18 technical reasons why we cannot go beyond 5.30.

19 I think, Mr. Katanga, it would be in your interest to appoint
20 your permanent counsel as soon as possible. And to this end, I would
21 ask the Registry to ensure that Mr. Katanga has every facility that he
22 needs to enable him to appoint his counsel at the earliest
23 opportunity. I think this is an imperative that we cannot ignore.
24 It's very important for him, because there are many things, challenges
25 that can be done only once without leave of the Chamber. For example,

1 Article 19(4). And it is important that he has permanent counsel to
2 take care of his interests as soon as possible.

3 What -- I think Mr. Keita has indicated that he would file
4 submissions at the appropriate time, and therefore the Chamber will
5 not need to rule on anything.

6 I will continue to go through the provisions of the Statute. By
7 virtue of Rule 121 of the Rules of Procedure and Evidence, the Chamber
8 is obliged to set a date for the confirmation of charges hearing, and
9 to meet this formality that is set out by the text, the Chamber, of
10 course, has to give enough time for the Defence to prepare to be able
11 to participate effectively in the confirmation hearing. Therefore,
12 the Chamber sets the date of Thursday, the 28th of February, 2008, as
13 the date for the confirmation of charges hearing.

14 I would kindly ask the Prosecution to take note of this date.

15 I think, as you know from the texts, this date is not set in
16 stone. It may be postponed. However, the experience of the Chamber
17 shows that this is enough time to -- for disclosure of evidence,
18 documents, materials, and for the Defence to familiarise themselves
19 with the case and to put in place all the necessary measures for the
20 protection of witnesses. Therefore, we -- the Chamber thinks that
21 this is enough time for us to be able to go ahead with the hearing on
22 the 28th of February, 2008.

23 I would also like to state that Rule 121(2)(b) of the Rules of
24 Procedure and Evidence stipulates that the Chamber shall hold Status
25 Conferences to ensure that disclosure takes place under satisfactory

1 conditions, and to do this, a Judge of the Chamber shall be appointed
2 by the -- to organise such Status Conferences.

3 The Chamber will now take -- the Chamber now decides that
4 Judge Sylvia Steiner will be the Judge in charge of the disclosure in
5 the case of the Prosecutor against Germain Katanga. The Chamber,
6 secondly, decides that Judge Sylvia Steiner is the Single Judge in the
7 case of the Prosecutor against Germain Katanga from today onwards.

8 I would now like to turn to the Prosecutor and ask if you would
9 like to make any observations at this point to the Chamber.

10 MS. BENSOUDA: Thank you, Madam President. The Office of the
11 Prosecutor does not have anything further to add at this point.

12 PRESIDING JUDGE KUENYEHIA: Thank you very much.

13 Are there any observations on the Defence side at this point in
14 time?

15 MR. KEITA (interpretation): The Defence does not have further
16 observations at this stage, Madam President.

17 PRESIDING JUDGE KUENYEHIA: Does the Registry have anything it
18 would like to say at this time?

19 MR. DUBUISSON (interpretation): No, Madam President.

20 PRESIDING JUDGE KUENYEHIA: I'd like to now turn to my colleagues
21 and ask if they have anything else to say at this point.

22 I would like to remind the Prosecutor that under Article 67(2) of
23 the Statute, you must disclose to the Defence exculpatory evidence and
24 material relating to Germain Katanga as soon as possible.

25 So this ends the -- Mr. Keita, were you going to say something?

1 No. Thank you.

2 This ends the initial appearance of -- in the case of the
3 Prosecutor against Germain Katanga.

4 I would like to take this opportunity to thank our interpreters
5 and recorders and all the participants for being here this afternoon.

6 I'd like the security to wait for the Judges to exit before you
7 escort Mr. Katanga out of the courtroom.

8 Thank you. The hearing is ended.

9 THE USHER: All rise.

10 The First Appearance Hearing adjourned at 5.15 p.m.

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