

Ex Parte - Defence (Closed Session)
Reclassified as Public

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1 International Criminal Court

2 Pre-Trial Chamber III

3 Situation Central African Republic, Case ICC-01/05-01/08

4 Ex Parte - Defence - Closed Session - Status conference - Reclassified as
5 Public - Wednesday, 8 October 2008

6 The hearing starts at 12.00 p.m.

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

9 JUDGE DIARRA (interpretation): Please bring in Jean-Pierre
10 Bemba.

11 (Mr. Bemba entered the courtroom)

12 JUDGE DIARRA (interpretation): Good morning. Mr. Jean-Pierre
13 Bemba, how are you? Are the conditions of your detention satisfactory?

14 THE INTERPRETER: Microphone, please.

15 JUDGE DIARRA (interpretation): I'm wondering about your physical
16 and material conditions.

17 MR. BEMBA (interpretation): As regards my psychological
18 situation, I would say it's psychological torture. Regarding the
19 physical conditions, there could be some improvements, but one must be
20 patient.

21 JUDGE DIARRA (interpretation): Thank you.

22 Could I ask the Defence to introduce its team.

23 MR. NKWEBE (interpretation): I am Mr. Nkwebe Liriss and I am a
24 barrister at the Kinshasa bar, included as counsel before the ICC for
25 some six years now. I am assisting the accused pro bono. Mr. Tjarda Van

1 der Spoel and Mr. Kilolo, if he could rise to his feet, are both
2 permanent counsel, at least permanent counsel through to the Confirmation
3 Hearing. And Jean-Jacques Mangenda, who is also a barrister at the
4 Kinshasa bar, is our case manager at the Defence section and we have been
5 able to recruit him to the team. Thank you.

6 JUDGE DIARRA (interpretation): Very good.

7 To focus now on the purpose why we are meeting here today, I'd
8 like to remind you that this hearing is taking place as part of our
9 endeavours to ensure that the Confirmation Hearing takes place in the
10 best possible conditions. We have a number of questions which we would
11 like to put to you. I believe that these questions will help you to
12 participate constructively in this hearing and they will also make it
13 possible for our Chamber to take additional measures.

14 In our Chamber, our key concern is to ensure that the rights of
15 the Defence are respected, the rights -- all of the rights of the
16 accused, the interests of fair proceedings and also the interests of
17 victims and witnesses. We cannot reconcile these two aspects of justice
18 without the assistance of the two parties - the Defence and the
19 Prosecution.

20 Now, I would like to put some questions to you. First of all,
21 have you already had contact with the Prosecutor to arrange the
22 inspection of the tangible objects? I know that you have already
23 received the documents, but have you already been able to make
24 arrangements to inspect the tangible objects included in the 1.979 items
25 disclosed and which fall under Rule 77 of the rules?

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1 Mr. Nkwebe, could you rise to your feet, please.

2 MR. NKWEBE (interpretation): Excuse me, your Honour.

3 As I was saying, we have had no contact with the Prosecutor. I
4 would like to inform you that of all of the items which have supposedly
5 been disclosed to us, we have not yet had access to those items because
6 we have not had access to the computer system. We have not had access
7 until this morning, if I'm not mistaken. Am I right, Jean-Jacques?

8 JUDGE DIARRA (interpretation): I'm sorry, could I please stop
9 you there. Could you tell us what are the reasons behind this?

10 MR. NKWEBE (interpretation): I'm afraid I do not know what the
11 reasons are. We have brought pressure to bear since we arrived to make
12 sure that the computer system would be made available to us. Evidence
13 has been provided to us at the deadline dates, the 3rd, that was, and I
14 believe that corrections were being sent in on the 4th and again on the
15 6th, but we have not yet read what is contained in those disclosures
16 because the computer system has only become available this morning. Why?
17 I do not know. I imagine it's the court management people who could give
18 you an answer there rather than our Defence team.

19 JUDGE DIARRA (interpretation): Thank you. Have you had
20 difficulty, then, in accessing evidence disclosed to date, particularly
21 in relation to the Ringtail software. I think you've responded to that.
22 Have the Defence team received the required training to use the Ringtail
23 software?

24 MR. NKWEBE (interpretation): No, your Honour.

25 JUDGE DIARRA (interpretation): Have you encountered any

1 difficulty with the system whereby evidence is transmitted through the
2 Registry?

3 MR. NKWEBE (interpretation): Given that the computer system has
4 only become available to us this morning and we are here present in a
5 hearing, we have not been able to ascertain any difficulties which may or
6 may not arise.

7 JUDGE DIARRA (interpretation): The Chamber would like to know
8 whether the Defence intends to call witnesses at the Confirmation of
9 Charges Hearing.

10 MR. NKWEBE (interpretation): Your Honour, that decision depends
11 on the reading which we will have of the materials which have been
12 disclosed to us. But, as I've said, we have not been able to access the
13 disclosed material.

14 JUDGE DIARRA (interpretation): We would like to remind you of
15 the tenure of the decision of the 31st of July, 2008, on the system for
16 disclosure of evidence.

17 All evidence produced for the purposes of the Confirmation
18 Hearing must be disclosed to the Prosecutor and be associated with the
19 required analysis of the evidence. This means that for each item of
20 evidence a table must be provided setting out the nexus between that
21 piece of evidence and the specific element of crime invoked against the
22 person concerned. This is just a reminder.

23 Now, finally, I would like to ask you whether you have questions
24 or concerns regarding the holding of the upcoming Confirmation of Charges
25 Hearing. As you know, the date set is the 4th of November.

1 MR. NKWEBE (interpretation): Yes, your Honour, we have a number
2 of concerns we would like to submit to the Court.

3 As I said a few moments ago, my two colleagues, their remit will
4 end at the end of the Confirmation of Charges Hearing. Now, Mr. Bemba
5 has not had access to the legal aid which he has requested. At the same
6 time, all of the accounts which could assist him in organising his
7 defence and feeding his family have been seized, thus I find myself alone
8 facing the Confirmation of Charges Hearing as a pro bono counsel.

9 JUDGE DIARRA (interpretation): Mr. Nkwebe, I'd like to focus on
10 my question, which was whether you have questions or concerns regarding
11 the holding of the Confirmation of Charges Hearing, whereas the concerns
12 which you are referring to are looking beyond the Confirmation of Charges
13 Hearing. I'd like to be sure that you've understood my question.

14 MR. NKWEBE (interpretation): The only concern which we have is
15 the one which I have just described, that is to say, the difficulties
16 which we have encountered hitherto in consulting the evidence, and also
17 there will be certain consequences regarding evidence which has been
18 disclosed after the deadline set out in your decision. Unless my
19 colleagues correct me, these are our only concerns.

20 MR. KILOLO: If I might add something to what my colleague
21 Mr. Nkwebe has said.

22 I would like to answer your question by recalling the principles
23 which you have just mentioned, that is to say, a fair and equitable
24 trial. We have received documents, evidence, from the Prosecutor, but we
25 would like to draw your attention to the fact that some of this evidence

1 arrived after the set deadline. You set a deadline of the 3rd of October
2 in your decision. That was the deadline by which the Prosecutor was to
3 disclose his evidence.

4 So already we have a considerable concern. We know that you are
5 attentive to these matters. At the same time we note that in your
6 decision you state that there should be rolling disclosure with the first
7 batches of evidence arriving in our hands a number of weeks before the
8 deadline, but I would like to inform you that only as of the last date,
9 the end date, the 3rd of October, have we begun to receive evidence. I
10 believe that the first evidence arrived on the 1st of October, the second
11 batch arrived on the 3rd of October, and then the following Monday, out
12 of time, there was another disclosure. We would like to refer to the
13 consequences in law which must be drawn from these difficulties,
14 violations, as regards disclosure.

15 Now, you also put the question to Mr. Bemba as to difficulties
16 which he has encountered. I think it is important to note that to date
17 he has not been provided with the facilities to access evidence through a
18 computer system, for instance, at the Detention Centre.

19 JUDGE DIARRA (interpretation): I'd like to stop you there for a
20 moment. I'd like to be clear on this. Does he have a computer available
21 to him; yes or no?

22 MR. KILOLO: There is a computer there, as there are computers in
23 the office of the counsel. However, at this point in time the Ringtail
24 system is not operational at all in our offices. Through our case
25 manager we have raised the issue, and we note that only as of yesterday

1 evening and this morning have the technical services begun to do all that
2 they can to make the system operational. But at the point in time when
3 we left our offices, that is to say, a quarter of an hour before this
4 hearing began, the Ringtail system at our office was not yet operational.
5 This is a source of considerable concern to us.

6 I'd like to conclude with two other points.

7 JUDGE DIARRA (interpretation): Could your colleague please
8 switch off his microphone while you have the floor.

9 MR. KILOLO: I'd like to finish off with two other points.

10 The first is the work of the Defence. You put the question
11 whether the team could work effectively and whether we had the necessary
12 -- that which was necessary to carry out our work in the run-up to the
13 Confirmation of Charges Hearing.

14 Well, I'd like to tell you that we have a substantial concern, a
15 financial concern, because aside from Mr. Nkwebe is acting pro bono, who
16 alone cannot constitute or be a team for the Confirmation of Charges
17 Hearing, the other members of the team - the two associate counsel, the
18 legal assistant and the case manager - are supposed to be remunerated for
19 their work. But how can they be remunerated now at this point in time
20 prior to the Confirmation of Charges Hearing if the assets have been
21 seized and at the same time legal aid has been refused?

22 We have submitted an application vis-a-vis the seizure of assets
23 and we make a plea to you to have that application acted upon. The view
24 of the Prosecutor regarding our application is that he does not object to
25 a system being put in place which would make it possible for expenses to

1 be dispersed on a monthly basis to the team in the period running up to
2 the Confirmation Hearing. However, we could have a catastrophic
3 situation if certain members of the team were no longer able to continue
4 to assist Mr. Bemba and Mr. Bemba found himself with a single counsel.

5 Also, in response to one of your questions, I would like to say
6 that we are in the process of preparing and studying the dossier in order
7 to be ready for the 4th of November. We do not intend to request a
8 postponement of the hearing for various reasons, notably because we do
9 not want -- we want to avoid extending the period of detention of
10 Mr. Bemba for any reason which would be the responsibility of the
11 Defence.

12 JUDGE DIARRA (interpretation): Thank you.

13 Would anybody else like to take the floor?

14 MR. VAN DER SPOEL: Madam President, please, I would like to
15 explain that the Defence team, in answer to your questions, is
16 struggling. We really are. I understand the system is doing its utmost
17 best to facilitate us, but it's not going the way we would like to have
18 it to go.

19 Also, the Prosecutor did not meet the obligations of ongoing
20 disclosure, so we received all the CD-ROMs the end of last week and the
21 beginning of this week. That's a great task, to analyse that. The same
22 for our client. He has to look at these things, too. That's something
23 that's worrying me, as someone who's experienced in these kinds of
24 trials.

25 What also worries me is the financial situation. Mr. Kilolo

1 discussed that. I think that has to be resolved in a very quick manner.
2 That we all know, will there be legal aid and what happens to the assets.
3 Because, as Mr. Kilolo said, he himself, and I should be paid -- being
4 paid by Mr. Bemba. He, of course, tries to get resources from his family
5 and so on. That's a struggle. That's the same for the case manager, the
6 same for the legal assistant. And I think that we need a quick -- we
7 need a very quick solution.

8 I have a proposal to you, Madam President and Members of the
9 Bench, that before the Confirmation Hearing we have a second Status
10 Conference, and I suggest that would be the 22nd of October, that we can
11 discuss the ongoing issues. Because if I look at the material now, I
12 think it would be a very, very hard task for the Defence to be ready for
13 the Confirmation Hearing. We have about 6.000 documents to analyse. You
14 yourself asked, Do you have witnesses? We have to analyse those
15 documents to know if we want to present witnesses or perhaps other
16 evidence at the Confirmation Hearing, and we can only do that if we have
17 studied everything. I think you will understand the problem we are
18 having. The same with inspection of the books of the Prosecutor. We can
19 only do that if we know what we're talking about.

20 We're not to blame for that. Perhaps the system is to blame.
21 But I think the Prosecutor in the first place is to blame that there was
22 not any ongoing disclosure. He could have disclosed a few months ago,
23 after your decision concerning the disclosure. He should have done that,
24 because I've looked very quickly through all the evidence and there's
25 nothing very surprising that he couldn't have done earlier.

1 So we are the victims at the moment of that system, so I hope you
2 appreciate that. And then again I ask you, if it would be possible, to
3 have another Status Conference on the 22nd of October. Thank you very
4 much.

5 JUDGE DIARRA (interpretation): I would like some clarifications.
6 Did any member of the Defence team of Mr. Bemba, did any of them receive
7 Ringtail training?

8 MR. NKWEBE (interpretation): Not that I'm aware of, except for
9 our case manager Jean-Jacques. He was trained.

10 THE INTERPRETER: Microphone, please.

11 JUDGE DIARRA (interpretation): And you haven't received it?

12 MR. VAN DER SPOEL: No, I haven't, Madam President.

13 JUDGE DIARRA (interpretation): And the case manager, you did
14 receive training?

15 MR. KABONGO (interpretation): Yes, President, I received the
16 training because I was also a case manager at the OPCD first and it's
17 against that background that I was trained.

18 But I was in touch with the e-court administrator, too, for
19 training but there was a problem because at the time the Ringtail wasn't
20 available to the Defence. They gave the Defence access through the
21 Citrix system, but other members still don't have access. So we want to
22 solve this access problem and then we will try to arrange the rest.

23 JUDGE DIARRA (interpretation): Didn't you participate in a
24 training on the 13th of July as case manager in this case, the Prosecutor
25 against Mr. Jean-Pierre Bemba?

1 MR. KABONGO (interpretation): No. On the 30th of July I was
2 still in the OPCD, so I only joined the team on the 2nd of October.

3 JUDGE DIARRA (interpretation): Thank you.

4 MR. NKWEBE (interpretation): Sorry, Madam, I forgot something.

5 According to the relevant provisions of the Statute, my client,
6 during the preliminary hearings, stated that he intended to listen to the
7 proceedings in French. That was his choice. We have some knowledge of
8 the English language but we speak French a lot better, and so we asked
9 the Court on several occasions to provide us with all the texts
10 translated, but this appears to be difficult.

11 I would like to request you, unless I need to make an application
12 for this, I would like to request you to take this into account when
13 setting the deadlines for the Defence, for the deadlines to be set from
14 the moment the Defence team receives the texts in French.

15 (The Pre-Trial Chamber confers)

16 JUDGE DIARRA (interpretation): We took note of your request for
17 a Status Conference on the 22nd of October. Could you tell us what the
18 subject will be? Because, of course, we will have to communicate this to
19 the other party for the conference to be useful to both parties.

20 MR. KILOLO: If I may, basically what we had in mind was an ex
21 parte hearing, such as the one today. We weren't thinking about an inter
22 partes hearing.

23 JUDGE DIARRA (interpretation): This brings me back to my initial
24 question concerning the subject. What is it?

25 MR. VAN DER SPOEL: Yes, Madam President, it would, of course,

1 be: Is the Defence prepared for the Confirmation Hearing? Did we have
2 adequate time and facilities, seeing the problems, the challenges, we are
3 encountering now. Of course, the IT is doing its utmost best to help us,
4 but who says that those problems will be solved, that we have enough time
5 to go through all the disclosure material, to have enough time to prepare
6 our own defence case. At the moment, looking into the future, I cannot
7 say that it will be possible or impossible. I only see a lot of
8 problems. And if those problems are very serious, I do not want to
9 confront your Chamber just before the Confirmation Hearing with a
10 time-extension request. I would like to discuss those problems before
11 the Confirmation Hearing. So that would be the issue that should be
12 discussed, in our view, Madam President.

13 JUDGE DIARRA (interpretation): So unless I'm mistaken, you want
14 to hold a status hearing to evaluate the ability of the Defence to
15 participate in the Confirmation Hearing on 4 November?

16 MR. VAN DER SPOEL: Exactly, Madam President, and also, two, of
17 course, like I explained the first time, or tried to explain, the
18 resources of the Defence. I think the legal aid issue should be solved.
19 If it is not solved, then the question will be: Does the Defence at that
20 time have adequate resources to be prepared for the Confirmation Hearing?

21 MR. KILOLO: If I may, President, I would just like to say very
22 briefly that we only yesterday found out that we had a meeting today, but
23 when we were informed of the meeting, we weren't informed of the content
24 thereof. So what we had in mind was a status hearing that would be a
25 prolongation, in a way, of today, because some of the questions you're

1 raising today haven't been covered sufficiently.

2 And so, as Mr. Van der Spoel said, it's just to confirm our
3 intention, to say that we intend to work and we're already preparing the
4 Confirmation Hearing, because we would like to avoid the postponement of
5 the Confirmation Hearing as well as the postponement of the trial. At
6 least we don't want that to be due to us, if it was to be postponed.

7 So we thought it would be appropriate for us to have such a
8 Status Conference to cover in more detail the questions raised today to
9 which we didn't have answers due to the problems we mentioned.

10 JUDGE DIARRA (interpretation): I didn't quite understand what
11 you meant, as Mr. Van der Spoel just suggested that the Status Conference
12 would be on the subject he said.

13 All the Judges spent their weekend reading through the decisions
14 we issued, reading the documents that we received and comparing
15 everything with the texts of the Court and the Statute, and on Monday we
16 decided to convene a Status Conference. As soon as we took our decision,
17 everybody was informed thereof. That was yesterday.

18 When we convene a Status Conference, it's because we have a
19 reason to do so, and so when other parties want to convene a Status
20 Conference, we want to know why. That's the difference between a Status
21 Conference convened by the Chamber and that convened or suggested by the
22 parties. That's why we asked what it was on, and we have no objections
23 to the reasons given. If you are not -- if you do not have a problem
24 with this, that is okay. I just wanted those clarifications.

25 Yes, the floor is yours.

1 MR. NKWEBE (interpretation): I just wanted to add that this
2 conference is also necessary in light of the questions you asked us
3 earlier on, that is to say, whether or not we want to call witnesses. I
4 don't know how we will arrange things, because your decision requires us
5 to produce by the 20th of October at the latest what we want to produce.

6 JUDGE DIARRA (interpretation): So in regard to this you wanted
7 us to have the conference before?

8 MR. NKWEBE (interpretation): No. On the 20th is fine, but we
9 will try to stick to the deadline set.

10 JUDGE DIARRA (interpretation): Mr. Bemba, do you have any
11 remarks for the Chamber?

12 MR. BEMBA (interpretation): I do not have anything to add to
13 what the counsel has said. Just on the financial aspects and my family,
14 I just want to be able to fulfil my obligation to pay my counsel but also
15 my family. As you know, family aid exists in Africa, and at my age I am
16 responsible for my family and I have to take care of them, as well as
17 take care of my children.

18 JUDGE DIARRA (interpretation): Thank you.

19 This conference hearing with the Defence team is adjourned.
20 Thank you. Regards.

21 The hearing adjourned at 12.32 p.m.

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