

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo,
5 Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
6 Fidèle Babala Wandu, and Narcisse Arido

7 ICC-01/05-01/13

8 Single Judge Cuno Tarfusser

9 Status Conference

10 Wednesday, 4 December 2013

11 (The hearing starts in open session at 2.01 p.m.)

12 THE COURT USHER: The International Criminal Court is now in
13 session. Please be seated.

14 SINGLE JUDGE TARFUSSER: Good afternoon to everybody in the
15 courtroom.

16 THE INTERPRETER: Microphone, please.

17 SINGLE JUDGE TARFUSSER: Thank you.

18 Good afternoon to everyone in the courtroom, inside and behind
19 the window. This is a Status Conference convened to try to -- hang on,
20 let me just a moment.

21 This is a Status Conference convened in order to start the
22 disclosure proceedings going then to the confirmation hearing. As I said
23 in the Initial Appearance a few days ago, I request in this
24 Status Conference all parties and participants - but I mean the
25 Prosecutor, the Defence teams, and the Registrar or the Registry to give,
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1 especially the Prosecutor and the Defence team - to give an estimate
2 amount of the nature of documents the Prosecutor intends to rely on for
3 the purpose of the confirmation including, obviously and in particular,
4 if whether witnesses are to be used in the witness statements or
5 witnesses viva voce -- viva voce witnesses are to be used, what are the
6 redactions you estimate to be necessary will be required, and also to
7 indicate whether the Prosecutor intends to rely on documents or
8 informations provided under conditions of confidentiality.

9 The same, obviously, is requested for the Defence as far as this
10 is possible at this stage. And I aim, this just to announce it, to give
11 a decision orally at the end of this hearing and not to postpone the
12 decision on disclosure, at least a first decision on disclosure which can
13 always be modified while the process is ongoing. But just to have a sort
14 of a quite concrete streamline.

15 But before giving the floor to the Prosecutor and then to the
16 Defence, I want to give the floor to the Registrar, to the Office of the
17 Registrar, in order for them -- for the Registry to give us an update on
18 the situation of the other two suspects which have to be -- are not yet
19 surrendered to the Court or maybe one, yes. And an update on the -- and
20 the technicalities on the material, the size of the material and how much
21 it is, in which status the material is, and how until now it was dealt
22 with in order to find a proper way to deal with it also for disclosure
23 purposes.

24 Therefore, I would give the floor to the registrar. Oh, I heard
25 that I did not -- well, I realise now that I didn't give the -- for the
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1 record, I didn't give the floor to the teams in order to be identified on
2 the record.

3 (Trial Chamber and Court Officer confer)

4 SINGLE JUDGE TARFUSSER: So I started quite in a hurry.

5 Could you please call the case court officer? Thank you.

6 THE COURT OFFICER: Thank you, your Honour.

7 The situation in the Central African Republic, in the case of The
8 Prosecutor versus Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
9 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu, and Narcisse Arido,
10 ICC-01/05-01/13. We are in public session.

11 SINGLE JUDGE TARFUSSER: Thank you. And apologise for that.

12 Now the Prosecutor to present the team. Thank you.

13 MR VANDERPUYE: Thank you and good afternoon, Mr President.

14 The team is represented -- rather, the Office of the Prosecution
15 is represented today by Florence Darques-Lane, trial attorney;
16 Sylvie Vidinha, case manager; and myself, Kweku Vanderpuye, senior trial
17 attorney.

18 SINGLE JUDGE TARFUSSER: Thank you.

19 The Defence teams, please, starting by the Defence of Mr Bemba.

20 MS PIRARD: (Interpretation) Thank you, your Honour. I am
21 Ms Pirard from the Verviers bar.

22 SINGLE JUDGE TARFUSSER: Thank you.

23 And now following the Defence team of Mr Kilolo.

24 MR KILENDA: (Interpretation) Good afternoon, your Honour. I am
25 Jean-Pierre Kilenda, and I am the counsel for Mr Kilolo.

1 MR FOFÉ: (Interpretation) Good afternoon, your Honour, I am
2 Jean-Pierre Fofé. I am a professor of criminal law, and I am defending
3 Mr Fidèle Babala with the assistance of Mr Paul Djunga. Thank you.

4 SINGLE JUDGE TARFUSSER: Thank you.

5 Now it's the turn of -- oh no, that's all.

6 The Registrar, please.

7 MR DUBUISSON: (Interpretation) Thank you, your Honour.
8 Representing the Registry today is Ms Charlotté and
9 Bibiana Becerra Suarez, and myself, Marc Dubuisson, director of court
10 manager services on behalf of the Registrar, Mr Herman Von Hebel.

11 SINGLE JUDGE TARFUSSER: Mr Dubuisson, I think you can keep the
12 floor and we continue where I interrupted before. Thank you.

13 MR DUBUISSON: (Interpretation) Thank you, your Honour.

14 First of all, I think it's important to point out that this
15 morning we took Mr Jean-Jacques Mangenda into custody. This morning he
16 was transferred into our custody at 10.15, and he arrived at the
17 detention centre at 11.00 this morning.

18 As for your first question, the materials that we have available
19 to us. First of all, for the time being we are awaiting some information
20 from Belgian and Dutch authorities. Other information from other
21 jurisdictions have already been transferred to us; for example, from the
22 French authorities, the DRC authorities, and there was a seizure of items
23 at the detention centre as well. Regarding materials and the volume
24 thereof, I would say it's really quite a modest amount. There are not a
25 great many documents, less than a filing cabinet or a binder I would say.

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1 So I don't think it would take considerable amount of time to go through
2 all this material.

3 Now, we do not know exactly what the extents of the electronic
4 material are, particularly the hard drives and what they may contain. We
5 don't know that for time being. If we draw a comparison with other cases
6 before the Court, we are not talking about 30 hard drives. We are
7 talking about one or two hard drives. So that is limited. It depends on
8 the capacity of the hard drive. We will know more once we proceed.

9 As for the materials held by Dutch and Belgian authorities, we
10 were not notified officially yet so it's difficult to say. But if we're
11 talking about telephones, cameras, paper, passports, identification
12 documents, and computers, it would be restricted to a relatively modest
13 volume of materials. But I do point out a certain amount of electronic
14 materials. Once we've received those documents, we will inform the
15 Chamber that we have received the materials and we will inform the
16 parties as well.

17 Regarding the method that we will use to gain access to the
18 materials. As far as we are concerned, it is utterly necessary to ensure
19 that the two cases and their integrity are respected fully, and we
20 recommend that before going ahead with the opening of any sealed
21 document, that we have the presence of an independent counsel or counsel
22 appointed by the Chamber to ensure that the proceedings are properly
23 respected. In actual fact, we do hope that this will be in the presence
24 of Registry staff - only Registry staff - and independent counsel, to go
25 through the documents. And given that the documents will be privileged,
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1 will be subject to client-solicitor privilege, it will not be disclosed
2 immediately to the Prosecution. That is how we intend to go about
3 things.

4 For the time being, we have not opened any sealed document
5 because we are awaiting a decision from the Chamber on the specific
6 point. So that is the state of play right now.

7 SINGLE JUDGE TARFUSSER: Thank you, Mr Dubuisson. I just want to
8 assure once more that in this case we have always been very, very much
9 aware of the delicate nature of the documents and very carefully handling
10 in order not to hand out to anybody confidential or privileged materials.
11 So just to ensure also all the Defence teams and the suspects about this.

12 Now I would turn to the Prosecutor and ask him, as far as
13 possible, a detailed -- as detailed as possible overview on -- on the
14 case and how he will proceed.

15 MR VANDERPUYE: Thank you very much, Mr President. And good
16 afternoon to you again. Good afternoon to everyone.

17 If I could just follow-up for one moment on what my colleague,
18 Mr Dubuisson, has said. With respect to the disposition of certain
19 materials that are -- that will be the result of the search, there is one
20 added complication. I don't propose to resolve that today. But to the
21 extent that that material contains privileged information, although it
22 will not be disclosed to the Prosecution, it may nevertheless be
23 requested to be disclosed by the Defence to whom the privilege applies.
24 In this case it would be Mr Bemba. It may be Mr Kilolo. And it may also
25 be Mr Mangenda when he gets here. But that's just something I wanted to
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1 flag as a relevant issue as concerns any disclosure considerations that
2 the Chamber is intending to dispose of today.

3 In terms of the evidence that the Prosecution intends to rely on
4 in response to the Chamber's first inquiry. Fundamentally, the evidence
5 is that evidence that was used to support the arrest warrant of which the
6 Chamber is -- to which the Chamber is privy. These include reports that
7 were prepared by independent counsel as well as the underlying audio
8 materials. In addition, there are other audio materials that were also
9 used to support the arrest warrant, particularly in relation to
10 Mr Babala, and those we intend to use as well, as well as the evidence of
11 financial transactions as are detailed in the arrest warrant, public
12 version of the Chamber's decision.

13 I do want to also point out a few other issues which I think will
14 be relevant to the Court's consideration of this issue. We do intend to
15 introduce a number, not many, a very limited number of statements to the
16 extent that we were able to secure those as part of a continuing but very
17 limited and focused investigative -- preliminary investigative steps. In
18 addition, we do expect that we will retrieve additional financial --
19 records of transactions that will be relevant for the purposes of the
20 confirmation proceedings. There are limited selections of material that
21 we expect to -- to call from the searched items. And as my colleague
22 indicated just a moment ago, we do not yet have information about the
23 amount of the information, particularly digital or electronic records,
24 hard drives, and so on, that were seized by the Belgian or the Dutch
25 authorities, and that may be quite a substantial amount of material. As
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1 my colleague indicates, it depends on the size of the hard drive, it
2 depends on how much of it actually is relevant to the case, and it also
3 depends on how much of it is privileged. But that, I think, is an
4 important piece of information that we will need in order to give the
5 Court a better idea or a more precise idea of what the evidence is that
6 we intend to rely on.

7 But what I'm talking about now is just possible additions to the
8 evidence that I've outlined, the principal evidence that I've outlined.
9 This will also include OTP analytical products because all of that
10 information has to be analysed and put into a form that will be useful to
11 the Court even for the purposes of the confirmation proceedings, and that
12 also depends on certain of the information that is outstanding. There is
13 still information relevant to that that is outstanding that is also
14 actually indicated in the arrest warrant.

15 There is one other matter and that relates to certain records
16 that relate to Mr Mangenda that are in the possession of the -- of the
17 Registry. The Prosecution has been given access through the Registry to
18 some of these records. To that extent, I think it's important for us --
19 and we've not examined those records because of the possibility that they
20 may actually contain privileged materials notwithstanding the Registry's
21 determination that they are non-privileged. Our position is essentially
22 that to the extent that it might contain privileged materials, it would
23 be incumbent upon us to request the Chamber, perhaps, to appoint
24 independent counsel to review those materials as was done previously.

25 I intend to file a motion to that effect so that we don't have to
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1 dispose of it just now, but I just wanted to flag that to your attention
2 as well.

3 To answer your other questions with respect to the
4 confidentiality agreements. At this moment, I can tell you that it does
5 not appear to be an issue in this case. There are no 54(iii)(e)
6 agreements that I am aware of, and certainly even if there were it
7 wouldn't be dispositive of any salient issue before the Chamber. With
8 respect to redaction considerations to the extent that we may use
9 statements, and literally just a handful of them at best, we don't
10 anticipate that they would require any substantial redactions going
11 forward except as may concern certain security issues. But
12 fundamentally, that would not be the case.

13 Just a couple of other points I wanted to make which may be
14 helpful to the Chamber. At the Initial Appearance, you had asked in
15 general terms about any investigative steps. Not necessarily the content
16 of the investigative steps but the state and the time-line. We do intend
17 to continue investigating the case, but this is not for the purposes of
18 expanding the scope of the investigation itself, rather for closing the
19 investigation and tying up any loose ends that may be there.

20 So it's our proposal -- or rather we were thinking of conducting
21 narrow -- a very narrow and focused investigation, very targeted, which
22 we expect may continue right up and through perhaps the end of February.
23 But in any event, it will be very narrowly focused which will not affect
24 disclosure obligations in relation to the confirmation proceedings. The
25 date for the confirmation is 18 March, I believe, and so I think that is
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1 a relatively reasonably cut-off point in order to be able to meet
2 disclosure obligations that the Court may be considering in relation
3 thereto.

4 There is one other aspect, or a few other aspects but let me
5 start with this one first, that I think are worth mentioning. To the
6 extent that it is our policy to be as close to trial-ready as possible
7 for the purposes of the -- by the time of confirmation. I am aware that
8 there is jurisprudence. I am aware that there have been opinions issued
9 in respect of this. But it also is the policy of the office to do so.

10 But in order to be as close to trial-ready as possible, it is also
11 important for us as an office, and in this case in particular, to be able
12 to review all of the material before going forward, and that entail the
13 material that is the result of the seizure, it would entail additional
14 records as I mentioned earlier that are in the possession of the Registry
15 that we have not reviewed because of the potential of conflict -- of
16 privileged information there.

17 And in order to substantially discharge or fully discharge,
18 rather, obligations under Article 54(1)(a) and also under Article 67(2),
19 I think it's very important that we have all of that information and are
20 able to go through it carefully, at least by the time of the
21 confirmation. And that may -- it will impact the date of the
22 confirmation if the material is not received during -- during a
23 reasonable period of time. We don't know when we will actually get that
24 material at that point, but I just wanted to flag that also to your
25 attention, Mr President.

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1 We have also a number of other issues that could affect your
2 decision in terms of the timing of the proceedings, and I'm sure that
3 you're aware of most of them. Nevertheless, I think it's important to
4 mention them. One has to do with the disposition of the records that
5 I've indicated before that may contain privilege material. Those
6 materials may have to be transcribed, they may have to be translated, and
7 my understanding is that they could amount to - although I don't know
8 particularly - they could amount to quite a substantial volume of
9 information.

10 In addition to that, the records that we are in fact for sure
11 relying on, which is the independent counsel reports and the underlying
12 records, do amount to really quite a substantial volume of material that
13 I believe will need to be transcribed and translated; particularly, as I
14 understand it, some of these conversations -- some of these conversations
15 were conducted in Lingala and not all of our accused necessarily are
16 fluent and speak Lingala. So that may be an issue. And it may have to
17 be translated into French as well.

18 Our preliminary assessment of the materials in the independent
19 counsel reports thus far amount to, in addition to the records that are
20 in possession of the Registry, amount to well over a hundred hours,
21 closer to 200 hours of audio materials. We're informed by our language
22 services personnel that it could take roughly, depending on the quality
23 of the audio and other factors, it could take as much as three days, two
24 to three days to transcribe an hour of audio material. So we have really
25 quite some substantial challenges ahead of us in terms of doing that. I
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1 understood also that the Court has translation -- has access to or uses
2 translation services which may be able to assist in this endeavour, but
3 those are fundamentally the statistics -- the average statistics that
4 we've received from our language service personnel, and that's basically
5 for one individual.

6 So in order to translate that much material within, say, 30 days,
7 it may involve putting as many as 10, 15 people dedicated to those
8 translation services which could present really quite a substantial
9 challenge.

10 The other issues that affect perhaps the timing of the
11 proceedings that the Chamber has in mind will be, as I mentioned, the
12 status of the search materials. The ability to vet those materials for
13 any potentially privileged information which may apply to -- well, will
14 clearly apply to Mr Bemba, clearly apply to Mr Kilolo, clearly will apply
15 to Mr Mangenda, may apply to Mr Arido, and likely does not apply to
16 Mr Babala but in any event, all of that material I would submit probably
17 needs to be vetted for potential privilege.

18 In addition from our end, we have certain outstanding issues to
19 resolve with -- concerning requests that we've made for assistance from
20 various states that were part of the initial investigation or the main
21 investigation which have yet to be completed or resolved and so we will
22 have to see where we are on those, hopefully sooner rather than later.

23 So that's essentially what I have for the Chamber today. I'm
24 happy, obviously, to answer any other questions or specific questions the
25 Court may have.

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1 SINGLE JUDGE TARFUSSER: Thank you very much to the Prosecutor.

2 I now turn to the Defence. Who wants to take the floor?

3 MR KILENDA: (Interpretation) Thank you. With the leave of
4 Ms Magali, I will be first to speak on behalf of Mr Kilolo.

5 Initially, your Honour, I cannot rule out amongst the various
6 means of Defence that I may use, I may wish to use documental and
7 testimonial evidence. But as of today, I would be inclined to say that I
8 do not know exactly which items I will be relying on. I do not know
9 which documents I will be adducing. I do not know on this particular
10 point in time which witness I will call to take the stand. Of course,
11 this will depend greatly on the disclosure from the OTP. So I think
12 gradually, as the various items of evidence are disclosed to us, my
13 client and I will be in a position to determine exactly which evidence we
14 wish to use in our turn to defend the interests of Mr Kilolo as best
15 possible.

16 All the same, your Honour, in compliance with 67(2) of the
17 article, we do think that Mr Kilolo should be granted a number of things.
18 As you must realise, he is the lead counsel in the Bemba trial, the main
19 case. And in that particular case, he had a number of tasks to carry out
20 which come within his general mandate. Given the charges against him
21 today, we thought the following documents could be concerned by your oral
22 decision at the end of this hearing.

23 First of all, one: The decision of the 29th of July, 2013,
24 reference ICC-01/05-052-CONF-*ex parte*. And this is from
25 Pre-Trial Chamber II which authorises the Office of the Prosecutor to
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1 review the monitoring of calls between my client, Mr Kilolo, and his
2 client in the main case.

3 The second document is the decision of the 10th of October, 2013,
4 ICC-01/05-62-CONF-*ex parte*. In that particular ruling,
5 Pre-Trial Chamber II asked for disclosure regarding the calls of certain
6 Defence witnesses, and those two -- with those two rulings disclosed, we
7 think that these two documents could impact your ruling at the end of the
8 day; namely, the report from the independent counsel, ICC-01/05-64. And
9 then the second report, 14th of November, 2013, reference
10 ICC-01/05-66-Confidential-*ex parte*. These documents, if they are
11 affected by your oral ruling, will shed light on the following matters.

12 On the hard drive of my client, the hard drive that was seized,
13 there are a number of Defence documents for Mr Jean-Pierre Bemba but also
14 information relating to other customers of Mr Kilolo, and those
15 particular documents are privileged communications; thus, my client and I
16 think that the hard drives should be returned because they contain the
17 files for the entire law firm of Mr Kilolo in Brussels and those files
18 have absolutely nothing to do with the case at hand.

19 Furthermore, your Honour, amongst the items that were seized
20 there are a number of private photographs, family photographs of my
21 client. They're entirely private in nature. And, actually, they are
22 protected under Article 8 of the European Convention on Human Rights.
23 The Prosecution should not have access to these confidential documents
24 which relate to Mr Kilolo's law firm, and there is an entire -- all kinds
25 of proceedings relating to the law firm in Brussels. And I think you
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1 will see for yourself when you hand down your ruling to what extent you
2 will involve the Brussels authorities in this particular case.

3 I think you will leave it at that for the time being, your
4 Honour. And if I were to sum up I would say, yes, certainly, we will
5 have documents to adduce; yes, we may have witnesses to call; but all of
6 this will be determined in light of materials to be disclosed by the OTP.
7 We will have more requests by the end of the hearing that may not relate
8 to this particular topic.

9 So that is all for the time being, your Honour, unless my client
10 wishes to add something, which he will do if you choose to allow him to
11 address the Court.

12 SINGLE JUDGE TARFUSSER: Just a moment. I -- I just can repeat
13 what I said in the Initial Appearance and just before, that we take very
14 much care of the privileged material and on the private -- on material of
15 private nature, and we will try to handle it in a very confidential and
16 quick manner in order to give it back to whom it might concern as soon as
17 possible. So this is -- and we make also sure, myself through the
18 Registry, that it will not get into the knowledge, into the hands of the
19 Prosecution and that the Prosecution will have only to deal with material
20 which is -- will be indicated by the independent counsel as related to
21 this case. And that's it.

22 So more, I can't say more about it. But we are aware and we will
23 deal with it in a proper manner.

24 Please, I will now give the floor to other Defence counsel. Who
25 wants to take the floor? Please.

1 MR FOFÉ: (Interpretation) Thank you very much, your Honour.

2 Your Honour, at this stage of the proceedings, we, on the Defence
3 side, we're waiting for the evidence which is held by the Prosecutor,
4 evidence that shall determine how we will proceed. When we -- when there
5 was the arrest of Mr Fidèle Wandu in the conditions that we all know, and
6 it was after an analysis of this information that we are going to
7 determine this, your Honour.

8 In the presentation of the Prosecution, I heard that they
9 intended to continue carrying out certain investigations. That's what I
10 thought I understood at least, your Honour. And on this subject, I have
11 a question -- a way of clarification that I would like to put to them via
12 yourself, that I would like to put to the Prosecutor. And my question is
13 as follows: The investigations that the Prosecutor carried out, will
14 they also concern my client, Mr Fidèle Babala? That's something that I
15 would be very interested in having clarification on.

16 Thank you very much, your Honour.

17 SINGLE JUDGE TARFUSSER: (Interpretation) Thank you, Counsel.

18 MS PIRARD: (Interpretation) Thank you very much, your Honour.

19 Indeed -- well, we are not perhaps as lucky as the Registry, because the
20 series of documents that's already been passed on to us by the
21 Prosecution, it's not just one ring folder but two, and they've been
22 communicated. I've already examined them partially also with Mr Bemba,
23 and certainly I am in the same situation as my two previous colleagues;
24 namely, we have a whole series of information, we're going to deal with
25 it very quickly, as quickly as possible such that we will be able to deal
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1 with it as quickly as we can knowing that, nevertheless, we shouldn't
2 allow it to delay the first case.

3 And we're now waiting for the Office of the Prosecutor which
4 is -- got a lot of investigative documents. And as Mr Kilenda said
5 previously, I do think that effectively we will act as soon as we can
6 with Mr Bemba in order to examine the different information and evidence.
7 We are not currently able to say if we will call for witnesses to
8 testify, and also with regards to the volume of the documents that are to
9 be communicated.

10 SINGLE JUDGE TARFUSSER: (Interpretation) Thank you. (In English)
11 I just ask the Prosecutor if he wants to respond to the question phrased
12 by the Defence of Mr Babala.

13 MR VANDERPUYE: Thank you, Mr President. I would be happy to
14 respond. I can tell you that the investigation will be conducted with
15 respect to the case as a whole. And that's about as much as I'm prepared
16 to tell you at this point in time, which, of course, necessarily
17 includes all of the accused, five in total and the three presently in the
18 courtroom.

19 SINGLE JUDGE TARFUSSER: Before closing this hearing, if there
20 are no other questions raised by the parties and participants -- are you
21 raising a question?

22 Please. You have the floor.

23 MS PIRARD: (Interpretation) Thank you very much, your Honour.
24 Indeed. I would like to take advantage of this opportunity, because we
25 are all here in the courtroom at the moment, to address the issue of the
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1 restrictions that are in regards for contact with Mr Bemba and also for
2 the other accused.

3 There were certain difficulties during the previous hearing;
4 namely, very quickly, the evening before the hearing there was a decision
5 which was issued in order to reject the document from the Office of the
6 Prosecutor. And you know that between the time that you issued your
7 decision, which partially lifted the restrictions that there were, there
8 was two days that passed, and Mr Bemba didn't see these conditions with
9 regards to contact. They weren't extended until the Friday evening, that
10 was around 5.00. And I'm (* indiscernible) there was an exchange of
11 e-mails that was solved, but it did take two days. Unless I am wrong,
12 the first decision provisions restrictions with regards to 14 days.

13 Provides for restrictions.

14 Now we have to -- that must take us to Saturday morning, come in
15 Saturday morning, and Mr Bemba did have concerns in this regard. So with
16 regards to the contact, principally family contacts, they are limited to
17 half an hour of telephone communication, one hour of visits, and they're
18 under surveillance with a third person in the room who is filming. And
19 this very disturbing for Mr Bemba's children. I just wanted to have the
20 certainty that from Saturday there will be no more difficulties and that
21 we will come back to the normal system.

22 Thank you. That was my main concern with regard to Mr Bemba.

23 And the second comment that I also wanted to make, I heard the
24 Registry mention the Office of the Prosecutor was doing their very best
25 to examine all the evidence and in the -- seized from Mr Bemba and there
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1 are questions because among the items that were seized, there are
2 documents which have nothing to do with the case in question but which
3 are handwritten notes that he took and which makes it possible for him to
4 continue his work as a senator and with regards to different posts,
5 vice-president on different commissions. Thank you.

6 SINGLE JUDGE TARFUSSER: The Chamber will take care also and is
7 perfectly aware on the detention condition, and I was also going to
8 decide also on this issue at the end of this Status Conference.

9 Please, Mr Kilenda.

10 MR KILENDA: (Interpretation) Thank you, your Honour. I've looked
11 at all the different -- well, I agree with the -- whatever Ms Magali said
12 with regard to these different developments. And I would like to say,
13 specifically where it concerns Mr Kilolo, that there are -- he has three
14 small children, minors, and he has to ensure their education. And we
15 can't have a situation where the result of his detention has an impact
16 with regards to his younger generation. The children of Mr Kilolo really
17 are very small children, and I think that even before taking these
18 restrictive measures the Registry would have been able to hear Mr Kilolo
19 in accordance with Rule 101 of the Regulations of the Court. And I
20 wanted to bring this to your attention when you're going to examine this
21 issue, because as I've just said these are minors, these children. And
22 in accordance with Article 3.1 of the International Convention on Rights
23 of the Child: In any decision which is taken by courts or by the
24 administration, account has to be taken of the higher interest of -- the
25 best interest of the children. And to ask minors, children who have not
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1 seen their father for two weeks today to have a meeting with him just for
2 an hour? Well, we think this is really adding an additional punishment
3 on the children.

4 We know and we are confident that you will take that into account
5 at the time that you rule on this issue with regards to the restrictions
6 with regards to 30-minute telephone calls per day and one hour visits
7 when Mr Kilolo will receive his wife and his children. I think that we
8 can continue on other subjects.

9 But with regards to restrictions, I would remain there.

10 MR FOFÉ: (Interpretation) If you would allow me, where it
11 concerns the concern that has just been expressed by my colleague, they
12 are the same for Mr Fidèle Babala. They are the same concerns. And that
13 is how in order not to take too much time, I wanted to take this
14 opportunity to ask you to grant us leave to speak with Fidèle Babala
15 after this hearing for approximately 30 minutes before he goes back to
16 the detention centre. We would like to have a small working session with
17 him after the hearing. Thank you, your Honour.

18 SINGLE JUDGE TARFUSSER: I think you can speak with Mr Babala and
19 that counsel can speak with their clients while I go back to decide, and
20 maybe it would take me a half an hour or so in this -- in this period. I
21 think you -- if there is -- if it's possible also from the availability
22 and from the security, I mean, this is also an issue, you could speak
23 with your client.

24 MR FOFÉ: (Interpretation) Thank you, your Honour.

25 MR VANDERPUYE: Mr President, if I may.

1 SINGLE JUDGE TARFUSSER: Mr Prosecutor.

2 MR VANDERPUYE: Thank you very much.

3 I have just have one or two small points that I wanted to make.

4 One was that, since we are on the topic of restrictions in the detention
5 centre, I did note Mr Dubuisson's representation that Mr Mangenda has
6 been received. And to the extent that the Court has issued a decision
7 concerning the conditions of detention for the three individuals that are
8 here today, I would simply ask that a similar order is issued with
9 respect to Mr Mangenda even in advance of his Initial Appearance.

10 Perhaps if the Chamber would prefer, I can making it more formal,
11 but I think it's reasonably clear.

12 The second thing is with respect to the Chamber's decision
13 concerning the conditions of detention, my understanding was that it only
14 really amounted to surveillance monitoring of the accused' activities
15 within the detention centre. It was not a no contact order nor did it
16 bear upon the length or the nature of family visits and things of that
17 like. So I'm unclear about what is concerning my colleagues particularly
18 that needs to be addressed to the Chamber as opposed to the
19 administrative facilities available to them within the detention centre,
20 but I think it sounds like it's more properly addressed to the detention
21 centre than to the Chamber, but that's merely an observation.

22 Thank you, Mr President.

23 SINGLE JUDGE TARFUSSER: Probably there is a bit of confusion at
24 this moment between the administrative and the judicial decisions, so I
25 think I have to rule on this in order to make clarity.

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1 And now --

2 MR KILENDA: (Interpretation) Just one minutes, your Honour. Just
3 one minute. Would you see any problem with giving the floor to my client
4 with regard to restrictions? Just to talk about restrictions, nothing
5 else.

6 SINGLE JUDGE TARFUSSER: Of course, please.

7 You have the floor, Mr Kilolo.

8 MR KILOLO: (Interpretation) Thank you very much, your Honour. I
9 really wanted to draw your careful attention to Regulation 101 of the
10 Regulations of the Court, which is very clear.

11 When the Chamber seized with the case is called upon to issue the
12 decision relating to the contact restrictions between the detained person
13 and third parties, then the detained person must necessarily be heard.
14 And from this provision, in principle, when the detained person is heard
15 before the Chamber issues its decision. But in the case of the speed,
16 given the urgency, the Chamber can - as you have done - issue a decision,
17 render a decision, but the provision does provide that as soon as
18 possible the detained person will be informed thereof and is authorised
19 to be heard or to present his observations.

20 With your leave, I would just very briefly give a few comments
21 and make some observations which I believe to be important. I would like
22 to ask you, your Honour, taking into account Regulation 101, and namely
23 paragraph 2 thereof, part (b), there are a series of conditions that are
24 set in the second paragraph. And here they're talking about limiting
25 conditions under which it can be envisaged that relation are restricted

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1 or that contacts are restricted between a detained person and third
2 parties, and I think that what is aimed at by the Office of the
3 Prosecutor is point (b), when these contacts could harm or influence in
4 any way the outcome of the proceedings.

5 And on this subject, your Honour, humbly, I would like to ask you
6 to make a distinction between two categories of interlocutor. We have
7 third parties, contacts with third parties, on the subject of which
8 you've already taken a decision which will come to an end, I think, on
9 Saturday. So there -- I'm not coming back to that. However, I would
10 like to ask you to make a distinction between the general third parties
11 and the members of the nuclear family; in particular, the children,
12 minors, and the wife. I think you will understand directly with me that
13 none of the criteria under paragraph 2 of Regulation 101 of the
14 Regulations of the Court is fulfilled with regards to a minor child. We
15 are not going to say to a detained person we refuse you or we will
16 restrict your contacts with your child who is 10 years old, or your girl
17 from 8 years old, your child who is 6 years old, because we fear that
18 they could through these contacts contribute to harming or in any way the
19 outcome of the proceedings which has been undertaken.

20 Please, your Honour, I would like to insist on that. I think
21 this is a question of principle of law. The New York Convention on the
22 Protection of Children Prescribes that in your decision that you take
23 into account the interests of children, and I would also call upon your
24 humanity on this subject. So I would really ask, if possible, that right
25 from now that the restrictions be lifted with regard to minor children
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1 and with regards to the wife. I can even read in the document -- in the
2 different documents of the Office of the Prosecutor that at no time were
3 the wives mentioned where it concerns the proceedings.

4 So I would finish just by adding something which concerns me
5 specifically in my capacity as a counsel at the Brussels bar.

6 Your Honour, I would like to ask for leave to have privileged
7 contacts with a lawyer of my choice from the Brussels bar, and I ask that
8 for two reasons: Firstly, because as I am currently detained at the
9 Scheveningen detention centre, it is impossible -- materially impossible
10 for me to ask a certain number of questions and -- with regards to the
11 dossier which is already open and which is under way with regards to my
12 cabinet in Brussels. So it is absolutely necessary for me to take up
13 contact with another colleague for the Brussels bar with whom I can go
14 into all the different matters which I was responsible for which are
15 currently open. They are covered by client-counsel privilege, but they
16 do need to be followed up diligently by another lawyer.

17 And the second reason is quite simply because my temporary
18 distance from my family space has caused an inconvenient situation for me
19 such as it's necessary for me to call upon the services of a lawyer, a
20 lawyer other than one who works, as is the case Mr Kuru (* phon), of the
21 International Criminal Court. I need a lawyer who is able to follow-up a
22 certain number of questions, legal questions, with regard to me which
23 require his intervention.

24 And I would finish by saying that what I would ask you is nothing
25 new in the case. In the Katanga Ngudjolo case, I saw that another Judge
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1 took a decision which was similar authorising a witness to be in contact
2 not only with the lawyer who was helping him before the International
3 Criminal Court in his capacity as a witness but also to have privileged
4 contact with another lawyer who in the case -- point -- was in the
5 country of origin where he came from, namely Congo, because it was
6 necessary for that witness to follow-up with a certain number of
7 privileged contacts and to enter into proceedings in the Congo. So by
8 way of parallel, it would seem that this request which I humbly address
9 to you is reasonable. Thank you.

10 SINGLE JUDGE TARFUSSER: Thank you. I could simply reply saying
11 *iura novit curia*, meaning that I'm perfectly aware that the detention
12 restrictions are exceptional, of an exceptional nature. I said this also
13 before and I am perfectly aware and I will rule on this taking this
14 exceptionality in account.

15 On the second question, I will obviously rule in the written
16 decision.

17 The last point I have to raise is that today, via DHL, addressed
18 to me, there arrived an envelope with paper material in it. It's more --
19 I think it's facture in the -- are airplane tickets of
20 (Redacted) from the CAR. I think its something which I
21 should hand over to the Registrar. I wanted just to give notice on that.
22 But I think it relates to the fifth person in detention in France. I
23 think, but I am not so sure. I just wanted to give notice of this and
24 hand it over as I received it to the Registrar to deal with it.

25 So it's now five to 3.00. I suspend -- oh, sorry, yes. You want

1 to -- yeah.

2 MR KILENDA: (Interpretation) Thank you very much, your Honour. I
3 just wanted to speak but in private session.

4 SINGLE JUDGE TARFUSSER: Is this related to the Status Conference
5 or is it something else? Because I could go out, make a decision, and
6 then continue, or do we deal with it here because it's related to the
7 Status Conference? This is the question.

8 MR KILENDA: (Interpretation) Thank you very much, your Honour. I
9 think that it's related to the Status Conference, but as I have to
10 mention certain confidential information I think it would be much more
11 appropriate for it to be done in private session to make it possible for
12 you to rule once and for all.

13 SINGLE JUDGE TARFUSSER: Just another question: Have you an
14 estimate on how long it will take you to deal with this question you want
15 to raise? In time, I mean.

16 MR KILENDA: (Interpretation) Less than ten minutes, your Honour.

17 SINGLE JUDGE TARFUSSER: Okay.

18 Then, courtroom officer, I think we have to go in private
19 session.

20 (Private session at 2.57 p.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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Page 27 redacted – Private session.

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1 (Redacted)

2 (Redacted)

3 (Open session at 3.06 p.m.)

4 THE COURT OFFICER: We are in open session, your Honour.

5 SINGLE JUDGE TARFUSSER: It's now five past 3.00. I will now
6 suspend the hearing and adjourn it to 3.45. I think this could be good
7 timing in order to render an oral decision which I do not know at this
8 point in time, but I think not, will cover all the questions raised but
9 for sure the ones related to the disclosure. And probably in a separate
10 filing next week, I decide on many other issues like the one raised in
11 private session by Mr Kilenda.

12 So the hearing is adjourned until 3.45. Thank you.

13 (Recess taken at 3.06 p.m.)

14 (Upon resuming in open session at 3.55 p.m.)

15 THE COURT USHER: All rise. Please be seated.

16 SINGLE JUDGE TARFUSSER: I will speak slowly also in favour of
17 the translation and for you to understand well what I'm going to say.

18 In the case ICC-01/05-01/13, the Prosecutor versus
19 Jean-Pierre Bemba, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
20 Fidèle Babala Wandu, et Narcisse Arido, the Single Judge, having heard
21 the submissions of the parties during the public Status Conference held
22 on Wednesday, 4th December 2013 in the presence of the Prosecutor, the
23 Defence of Jean-Pierre Bemba Gombo, the Defence of Aimé Kilolo Musamba,
24 and the Defence of Fidèle Babala Wandu, and representatives of the
25 Registry.

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1 Noting the general principles and rules governing the disclosure
2 of evidence before the confirmation hearing, as set forth in particular
3 Articles 61(3) and 67 of the Statute, Rules 76 to 83 and 121 of the Rules
4 of Procedure and Evidence, and Regulation 26 of the Regulations of the
5 Court has repeatedly stated and clarified in the case law of
6 Pre-Trial Chamber II.

7 Noting in particular that the dead lines of no later than 30 and
8 15 days before the start of the confirmation hearing respectively set
9 forth for the Prosecutor and the Defence to comply with their disclosure
10 obligations are only indicative of the last available point in time
11 beyond which no evidence which has not been disclosed can be relied upon
12 for the purpose of confirmation hearing.

13 Considering that for the purpose of the expeditiousness and the
14 proper conduct of the proceedings, it is appropriate that the process of
15 disclosure begin as early as practicable and continue to be carried out
16 on an ongoing basis prior to the expiry of the dead lines set forth in
17 Rules 121(3) and 121(6).

18 Considering that for the same purpose of the expeditiousness of
19 the proceedings it is necessary to avoid that the need to order and
20 implement protective measures, if any, result in delaying the disclosure
21 process. Considering that in light of the nature of the case, it is
22 expected that the need for protective measures, if any, be very limited
23 in scope. Considering that, accordingly, there is a need to establish a
24 calendar for the disclosure of evidence between the parties.

25 For these reasons decides that the disclosure between the parties
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1 will take place through the Registry and that any and all evidence
2 disclosed for the purpose of the confirmation hearing shall be
3 communicated to the Chamber.

4 Decides that as regard the evidence collected until 23rd November
5 2013, on which she intends to rely for the purpose of the confirmation
6 hearing, no later than Friday, 20 December 2013, the Prosecutor shall
7 disclose it to the Defence or submit to the Chamber requests for
8 redactions or other protective measures.

9 As regard all evidence collected between 23 November 2013 and
10 31st January 2014 on which the Prosecutor intends to rely for the purpose
11 of the confirmation hearing, no later than Friday, 31st of January the
12 Prosecutor shall disclose it to the Defence or submit to the Chamber
13 requests for redactions or other protective measures.

14 Order the Prosecutor to disclose to the Defence all evidence for
15 which redactions were sought no later than three days following the
16 notification of the Chamber's decision on the request for redactions.

17 Order the Prosecutor to agree with the Defence on a location and
18 time to permit the inspection of material relevant under our Rule 77, if
19 any.

20 Decides that the reports prepared by the independent counsel in
21 the case shall be shortly reclassified and communicated to the Defence
22 subject to the appropriate protective measures.

23 Decides that the material seized upon the rest of the suspects,
24 as made available by the relevant national authorities, shall remain in
25 the custody of the Registry.

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1 Decides that an independent counsel will be appointed in due
2 course with a view to determine whether any of the seized materials is
3 subject to privilege or otherwise irrelevant.

4 Orders the Registrar to file the latest applicable e-court
5 protocol no later than Friday, 6 December 2013.

6 Decides that all exceptional restrictions of context currently in
7 place at the detention centre for Jean-Pierre Bemba Gombo, Aimé Kilolo
8 Musamba, and Fidèle Babala Wandu shall be lifted with immediate effect.

9 Decides that all the other issues raised during today's
10 Status Conference which are not addressed by this decision will be
11 addressed in due course.

12 So decided today, 4th October 2013 at 4.05.

13 The hearing is closed. Thank you very much.

14 (The hearing ends in open session at 4.04 p.m.)