

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 First Appearance
10 Thursday, 5 December 2013
11 (The hearing starts in open session at 10.02 a.m.)

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

14 SINGLE JUDGE TARFUSSER: Good morning to everyone inside and
15 outside the courtroom. Yes, I think that when you have finished to do
16 your job. Thank you.

17 Please, courtroom officer, could you call the case. Thank you.

18 THE COURT OFFICER: Thank you, your Honour. Situation in the
19 Central African Republic in the case of The Prosecutor versus Jean-Pierre
20 Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle
21 Babala Wandu, and Narcisse Arido, ICC-01/05-01/13.

22 SINGLE JUDGE TARFUSSER: Before introducing the teams, I would
23 try to solve the issue -- the language issue. And therefore, I ask
24 Mr Mangenda which language you fully understand and speak. I assume it
25 is French, but I would like you to confirm this.

1 MR MANGENDA: (Interpretation) Indeed, your Honour. I understand
2 French very well.

3 SINGLE JUDGE TARFUSSER: (Interpretation) -- (In English) you
4 fully understand and speak.

5 MR MANGENDA: (Interpretation) Indeed.

6 SINGLE JUDGE TARFUSSER: Solved this issue. I do not speak fully
7 and understand fully French, so I will continue in English.

8 I pass over to the teams asking to introduce themselves, and I
9 give the floor to the Prosecution.

10 MR GUARIGLIA: Good morning, your Honour. I am
11 Fabricio Guariglia, Prosecution's co-ordinator in the Office of the
12 Prosecutor. And appearing with me today are Mr Kweku Vanderpuye, senior
13 trial lawyer; Ms Florence Darques Lane, trial lawyer; and our trial
14 manager is Sylvie Vidinha.

15 SINGLE JUDGE TARFUSSER: Thank you very much. And now I turn to
16 the Defence of Mr Mangenda.

17 MR FLAMME: (Interpretation) Thank you. I am Jean Flamme and I am
18 a lawyer and a member of the bar Gent and I am defending the interests of
19 Mr Jean-Jacques Mangenda. Thank you.

20 SINGLE JUDGE TARFUSSER: The Registry.

21 MR DUBUISSON: (Interpretation) Thank you, your Honour. Today
22 representing the Registry is Vera Chi Wang is a ^ . I am Marc Dubuisson,
23 representing the Registrar.

24 SINGLE JUDGE TARFUSSER: (Interpretation) Thank you very much.

25 And court officer appointed by Pre-Trial Chamber II, and when I
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1 speak about Pre-Trial Chamber II I mean Judge Ekaterina Trendafilova and
2 judge Hans-Peter Kaul and myself. My team is composed today by the legal
3 officer ^ and Julia Landi, intern.

4 I just remind everyone to speak slowly because of the translation
5 issue.

6 Object and purpose of the hearing pursuant to Article 60(1) and
7 Rule 121(1) of the Rules of Procedure and Evidence is to identify the
8 person, the suspect, to determine whether he has been informed of the
9 crime which he is alleged to have committed, to determine whether the
10 person has been informed of his rights, and to set a date for the
11 confirmation of charges.

12 So I would first of all ask Mr Mangenda to identify himself
13 completely, meaning by name, place, date of birth, nationality.

14 Please, Mr Mangenda.

15 MR MANGENDA: (Interpretation) My name is is Jean-Jacques Mangenda
16 Kabongo. I was born in Kinshasa on the 1st of October, 1979, and I am a
17 citizen of the Democratic Republic of the Congo.

18 SINGLE JUDGE TARFUSSER: (Interpretation) Thank you very much.

19 (In English) Now I would pass to the determination on the
20 charges, and therefore I ask the courtroom officer to proceed to read out
21 the counts in both languages, in English which is, say, the original
22 language because the requests under Article 58 by the Prosecution was
23 written in English. So as in French because the warrant of arrest was
24 directly redacted -- drafted in French.

25 So please, courtroom officer, you have the floor.

26

1 THE COURT OFFICER: Thank you, your Honour.

2 Count 1: Presenting evidence that the party knows is false or
3 forged under Article 70(1)(b) read with Article 25(3)(c) by aiding and
4 abetting the presentation of false or forged documents in the main case.

5 Count 2: Corruptly influencing witnesses under Article 70(1)(c)
6 read with Article 25(3)(c) by eight, abetting, or otherwise assisting in
7 the bribing and coaching of witnesses to provide false testimony.

8 (Interpretation) Count 1: Presenting evidence that the party
9 knows is false or forged under Article 70(1)(b) of the Rome Statute, read
10 with Article 25(3)(c) by aiding and abetting the presentation of false or
11 forged documents in the main case.

12 Count 2: Corruptly influencing witnesses under Article 70(1)(c),
13 read with Article 25(3)(c), by aiding, abetting, or otherwise assisting
14 in the bribing and coaching of witnesses to provide false testimony.

15 SINGLE JUDGE TARFUSSER: Thank you very much, courtroom officer.

16 I assume, Mr Kabongo Mangenda, that you have understood --
17 completely understood what you are accused of. I invite you to say if
18 you have understood or not, and if you -- you may make at this point in
19 time any comment you deem necessary, reminding you that this is not the
20 right moment to go into the merits, of course. It just should be, if
21 any, a short comment if you have any to make.

22 You have the floor.

23 MR MANGENDA: (Interpretation) I just wished to say that I have
24 understood the counts and indeed I do not acknowledge any of the counts
25 that have been lodged against me.

1 SINGLE JUDGE TARFUSSER: Thank you very much. Now I will, again
2 for you, read out the -- your relevant rights, because this is another
3 task of the First Appearance, although I think you know what your rights
4 are but it is my duty to read them out to you.

5 So first of all you will be presumed innocent until proven guilty
6 beyond reasonable doubt at trial, with the burden of proof on the
7 Prosecutor. You have the right not to have imposed on you any reversal
8 of burden of proof or any onus of rebuttal. You have the right to
9 receive and to have disclosed to you material which shows or tends to
10 show your innocence, mitigates your guilt, or which may affect the
11 credibility of Prosecution evidence in possession of the Prosecutor. You
12 have the right to object to the charges, to challenge the evidence
13 presented by the Prosecutor, and to present evidence yourself. There
14 will be no trial in the case the charges are not confirmed. You will be
15 informed promptly and in detail of the nature, cause, and content of the
16 charges in the language you fully understand and speak, which is French
17 as you said. You're entitled to waive your right to attend status
18 conferences convened for the purpose of the disclosure procedure. You
19 will have adequate time and facilities for the preparation of your
20 Defence. You will be tried without undue delay. You may make an unsworn
21 oral or written statement in your Defence. You also have the right to
22 apply for interim release. And you have the right to appeal decisions.

23 Have you understood, Mr Mangenda, all your rights? Have you been
24 informed and now completely informed you have understood all your rights?

25 MR MANGENDA: (Interpretation) I have understood all the rights.
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1 SINGLE JUDGE TARFUSSER: Thank you very much.

2 Now we pass to the -- to settle the date for the confirmation.

3 As you know, we have already had the First Appearance of three of the
4 five suspects in this case and that the date -- the dates, I would say,
5 are already scheduled. So the Single Judge notes that Rule 165(3) allows
6 for the confirmation of charges relating to offences against the
7 administration of justice to take place on a written -- on the basis of
8 written submissions and therefore without a hearing.

9 In the view of Chamber, and I had discussions on this issue with
10 my two colleagues of the Chamber, this - and I mean the written
11 confirmation - is in this case the most appropriate course of action. At
12 this stage, and obviously subject to changes which may become necessary,
13 in particular in light of the developments relating to the surrender of
14 the other -- of the last of the five suspects, the Chamber sets the date
15 of 18th March 2014 for the filing of the document contained in the
16 charges and the list of evidence by the Prosecutor. 30 days later, on
17 the 18th of April, 2014, both the Prosecutor and the Defence shall file
18 their written submissions.

19 The Prosecutor shall then have until the 25th of April 2014 to
20 reply to the written submissions of the Defence, and the Defence finally
21 shall have until the 2nd of May to reply to the submissions of the
22 Prosecutor.

23 I don't know if there is any comments by the parties to be made
24 at this point in time?

25 Monsieur Flamme, you have the floor.

1 MR FLAMME: (Interpretation) Thank you, your Honour. I have
2 several comments that relate to several matters and a few questions as
3 well. Pre-trial issues to deal with regarding the topics you just
4 mentioned; for example, the application of Rule 162 regarding the
5 possibility of a written proceedings.

6 All the same, I must draw your attention to something; namely,
7 the Defence is opposed to written proceedings. And why? Because these
8 are very serious crimes that we are looking at here within the framework
9 of a major trial. We would be dealing with a trial within a trial, and
10 this could have an influence on the main case, the main trial. If one
11 were to attribute to lawyers crimes such as corruptly influencing
12 witnesses, producing false documents, this is an extremely serious matter
13 for justice in general and for the lawyers in question. Their very
14 careers are threatened for the rest of their days. And I think the
15 Prosecution realises that this is a very serious matter. And generally
16 speaking, the principle is one of public hearings.

17 And in actual fact, the Article 162(2) -- no, rather, the
18 provision providing for a written -- written proceedings does require
19 specific information to be provided; namely, whether this is in the
20 interests of justice and on what grounds written proceedings are
21 preferable. I agree with you and I do understand the position you have
22 taken. Given the circumstances, you are in favour of the matter
23 being dealt with on a speedy basis, but there are several issues to deal
24 with here. And there have been a number of seizures in Holland and
25 various materials are being held by the Dutch authorities. A number of
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1 items have been seized from by my client's -- from my client's residence
2 and his office. The entire contents, in actual fact, of the office have
3 been seized and time will be needed. The Dutch authorities will have to
4 look at whether the seized items are confidential and whether everything
5 needs to be deemed confidential and whether various seized items have out
6 of scope; in other words, irrelevant to the charges.

7 So really we are dealing with a matter here that is gigantic in
8 scope. So I think these dead-lines or this schedule that you suggest, we
9 will see. But it seems at fist glance impossible to conclude. I would
10 like to say that I am opposed to written proceedings because I believe
11 that the rights of the people who have been arrested must prevail, and
12 there is such a -- such offence against the rights that they are entitled
13 to public hearings. Thank you.

14 SINGLE JUDGE TARFUSSER: I take note of the fact that you are
15 opposed to a written confirmation and therefore I consider this as a
16 submission, and therefore I give the floor to the Prosecutor on this
17 submission, first of all.

18 MR GUARIGLIA: Thank you, Your honours. I can be very brief. It
19 seems to me that there are two different things here: One is the
20 modalities of the confirmation process and the timing of the confirmation
21 process. I will seems that my learned friend is mixing both aspects of
22 it of approximate on the first -- on the month did a lties of the
23 confirmation process, we are perfectly fine with the course of action
24 suggested by you Your honours and the use of written submissions. We
25 don't see this as -- in I any way prejudicing the rights of the suspects.

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1 We are absolutely sure that the Chamber will be extremely careful in
2 monitoring and skruz noising the submissions made by the parties. In
3 relation to that, this is a procedure forseen in the Rules and it will be
4 extraordinary in the drafters of the rules had envisioned a preach that
5 is inconsistent with the rights of accused persons. Weshg it's perfectly
6 appropriate in this case to expedite the process and to ensure that there
7 is, if the Prosecution has brought a case that is so would, as we are
8 pretty sure that we have, and we are very aware of our responsibilities
9 in this case, and in particular the fact that we are dealing with series
10 matters, matters of corruption of witnesses and improper use of Defence
11 tactics.

12 If the Prosecution has brought a serious case, this case will be
13 heard in a public tyre. So there will be a public hearing where the
14 accused will be -- have an opportunity to present their evidence Defence.
15 So in this is a facility and not a mini trial. So that is the first
16 thing.

17 The second thing is -- the second issue raised bif my learned
18 friend has to do with the amount of seized materials and the impact that
19 this can have on the confirmation process. This is no longer a matter
20 related to the modality. Confirmation process but at most with the
21 timing of the confirmation process and whether the dates set by
22 your Honour is a date that can be realistically achieved. We have
23 expressed our concerns and we know that there are a number of factors
24 that may conspire against this. We will work very hard to ensure that.
25 But this has nothing to do with in the end with whether -- with the
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1 question whether the confirmation process must be heard in writing or
2 not. And I think that at the end of the day, the assumption is we will
3 all try very hard to reach the date set by your Honour. If there are
4 external factors that conspire against it, we will have to bring the
5 matter back to your attention. That could be done by my learned friend
6 or by us. And your Honour will ultimately decide. And this is a Pratt
7 matter. And that's all we have to say for the time being.

8 SINGLE JUDGE TARFUSSER: As far as the seized -- you are on your
9 feet, so you have -- you want to intervene on what the Prosecution said?

10 MR FLAMME: (Interpretation) Your Honour, very briefly. I found
11 the provision in question, 165, subparagraph (4) -- no, (3). And I'll
12 read it out in English.

13 (In English) "written submissions without a hearing unless the
14 interests of justice otherwise require."

15 (Interpretation) In my opinion, the interests of justice here
16 must prevail and thus public hearings will be required. Plus, we wish to
17 call witnesses and this is our right. I really don't see how that could
18 be done without public hearings. And I do believe that regarding this
19 particular point, I can conclude.

20 SINGLE JUDGE TARFUSSER: The Chamber will deal with this matter
21 in writing in due course.

22 As far as the seizures and items held by the Dutch authorities is
23 concerned, yesterday you may know we had the first Status Conference in
24 this case in the presence of the other three suspects. We couldn't -- we
25 could not -- we were not able to join it in one Status Conference today

1 because the timing was not so good, so we had to hold the Status
2 Conference yesterday and the first Initial Appearance today. But on the
3 procedure, on the disclosure, which obviously implies also the items
4 seized, the Single Judge has ruled yesterday, and I will now instead of
5 holding another conference, rule on -- or read out the ruling of
6 yesterday in the Status Conference which might address also your concerns
7 as far as the items seized by Mr Mangenda's home and the office is
8 concerned; in particular, the confidentiality, the irrelevance of some of
9 the items which I'm sure have been seized. So I will just read them out
10 and then maybe you take the floor again if you think there is a need to
11 intervene on that.

12 In the case ICC-01/05-01/13, the Prosecution against
13 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Fidèle ^ , the Single Judge
14 heard the submissions of the parties during the Status Conference held
15 yesterday, 4th December, in the presence of the Prosecutor and the three
16 suspects and the Defence of the three suspects.

17 Noting the general principle and rules governing the disclosure
18 of evidence before the confirmation hearing as set forth in particular
19 Articles 61(3) and 67 of the Statute, Rules 76 to 83, and 121 of the
20 Rules of Procedure and Evidence and recollection 26 in the recollections
21 of Court, as repeated ^ .

22 Noting in particular that the dead-line of no later than 30 and
23 15 days before the start of the confirmation hearing, respectively set
24 forth for the Prosecutor and the Defence to comply with their disclosure
25 obligations, are only indicative of the last available point in time
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1 beyond which no evidence which has not been disclosed can be relied upon
2 for the purpose of the confirmation hearing.

3 Considering that for the purpose of the expeditiousness and the
4 proper conduct of the proceedings, it is appropriate that the process of
5 disclosure begin as early as practicable and continue to be carried out
6 on an ongoing basis prior to the expiry of the dead-lines set forth in
7 Rule 121(3) and 121(6).

8 Considering that for the same purpose of the expeditiousness of
9 the proceedings it is necessary to avoid that the need to order and
10 implement protective measures, if any, result in delaying the disclosure
11 process.

12 Considering that in light of the nature of the case, it is
13 expected that the need for protective measures, if any, be very limited
14 in scope.

15 Considering that accordingly there is a need to establish a
16 calendar for the disclosure of evidence between the parties.

17 For these reasons, decides that the disclosure between the
18 parties will take place through the Registry and that all and any
19 evidence disclosed for the purpose of the confirmation hearing shall be
20 communicated to the Chamber.

21 Decides that as regard evidence collected until 23rd November
22 2013 on which she intends to rely for the purpose of the confirmation
23 hearing, no later than Friday 20 December 2013 the Prosecutor shall
24 disclose it to the Defence or submit to the Chamber requests for
25 redactions or other protective measures.

1 As regard all evidence collected between 23rd November 2013 and
2 31st January 2014 on which the Prosecutor intends to rely for the purpose
3 of the confirmation hearing, no later than Friday 31st January 2014, the
4 Prosecutor shall disclose it to the Defence or submit to the Chamber
5 requests for redactions or other protective measures.

6 Orders the Prosecutor to disclose to the Defence all evidence for
7 which redactions were sought no later than three days following the
8 notification of the Chamber's decision on the request for redactions.

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

11 Decides that the reports prepared by the independent counsel in
12 the case shall be shortly reclassified and communicated to the Defence,
13 subject to the appropriate protective measures.

14 Decides that the material seized upon the rest of the suspect is
15 made available by the relevant national authorities shall remain in the
16 custody of the Registry.

17 Decides that any -- that an independent counsel will be appointed
18 in due course with a view to determine whether any of the seized material
19 is subject to privilege or otherwise irrelevant.

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

22 And here I have decided also on the exceptional restrictions of
23 contacts which I, in the case of Mr Mangenda, are expiring at the end of
24 the 72 hours determined by the arrest warrant. So any restriction is
25 expires after the 72 hours.

1 Now, these decisions, this what I -- what was decided yesterday,
2 applies obviously also to the case of Mr Mangenda. But I will give
3 you -- I give you, obviously, the opportunity to discuss these, if you
4 have never heard them before. If you don't know, if you are not aware of
5 them, to discuss them now. But I just want to assure you that as far as
6 the seized materials are concerned, in this case from the very beginning
7 when the Chamber was involved in this case and the Chamber is involved in
8 the case from the very -- at the very early stage, not only the
9 Prosecutor, but even more the Chamber was very well aware of the delicate
10 proceeding and of course of the privileged materials we will encounter
11 during the whole phase. So this was all treated in a proper way,
12 appointing independent counsel in order to separate what is privileged
13 from what is -- what is privileged and relevant and therefore not seen by
14 the Prosecutor from that what is relevant to the case in a very
15 conservative matter.

16 So this will continue, of course, and we are aware of this
17 delicate issue. And I give you the floor to comment on this if needed.

18 MR FLAMME: (Interpretation) Thank you very much, your Honour.
19 Indeed. There are certain things to be said about this because, well,
20 here we're dealing with a case which is extremely sensitive as indeed you
21 said. The seizure of all the contents of a lawyer's office is something
22 which is excessively sensitive and indeed explosive for all the more
23 bearing in mind that here we're talking about an office which is dealing
24 with one case, and this case is still pending. And this is dynamite
25 basically.

1 My first question, obviously -- well, I think you've already
2 imagined this. I don't know this person in the form of the independent
3 counsel. I haven't seen it in any text. That is one of the lacuna of
4 the Court, there is no bar of the Court. As regards the rules of the
5 United Nations would be ^ you have to have an independent bar in order
6 precisely to deal with problems, for example of this nature ^ . And on
7 the one hand I note that we have items that have already been seized. We
8 don't know what they are apart from a very concerning mention that has
9 been made of them. I'll mention that in another issue. But seizures,
10 there has been recordings made of telephone conversations. That's one
11 thing I know. Intercepts. There is also -- with regards to what's
12 happening within the International Criminal Court, there are items that
13 have been seized, and this independent counsel, who I don't know, is
14 meant to be responsible for those.

15 And on the other hand, probably most of data or items that have
16 been seized last Saturday in the office Of the Defence of Mr Bemba, this
17 seizure is being dealt with by the Dutch authorities. The Dutch
18 Prosecutor and the Dutch commissioner and the chairman of the bar of The
19 Hague.

20 Now according to our tradition of bars, we all trust the chairman
21 of the bar. That's the way it is. That person is the arbiter, that is
22 the independent authority who decides on matters of confidentiality. And
23 I would suggest to the Court to join these two issues and to understand
24 our professional rules and the traditions in the systems of democratic
25 law according to which it is a requirement that this operation be done
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1 jointly between the party which is prosecuting, the independent party
2 responsible for order, and the defence which also has to be present in
3 order to supervise everything and to provide commentary or observations
4 concerning each item. And I would really stress each individual item has
5 to be seen. It has to be viewed, controlled, and it has to go through
6 these three filters. And ultimately it will be the chairman of the bar
7 of The Hague who will ultimately decide in an independent way on what is
8 disclosed or not.

9 If not, we're going to have two different levels and two
10 different ways of seeing things. And with regard to this case, this is
11 extremely bad. You have to have an opinion, a single opinion, and one of
12 authority. Thank you.

13 SINGLE JUDGE TARFUSSER: Thank you very much.

14 The floor goes to the Prosecutor.

15 MR GUARIGLIA: Well, your Honour, it seems to me that at this
16 stage it may be more productive to have Mr Flamme articulate in whatever
17 in a comprehensive and clear written submission so we can examine it and
18 respond with some clear suggestions. It seems to me that there is a
19 lot of hypotheticals here.

20 The Single Judge was very zealous in following a procedure that
21 offered adequate safe guards T process of search and seizures was carried
22 in conformity with Dutch #3r50e67z. The suspect was there represented by
23 counsel ^ . And your Honour will continue along -- along this course of
24 action. The Defence can, of course, make propositions to the Single
25 Judge. We will respond to them after Commonwealth examining. It seems
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1 to me that this is going well beyond the skop was initial appearances. I
2 would say ^ .

3 SINGLE JUDGE TARFUSSER: I must say that I agree with the
4 Prosecutor. This is then material to be discussed in a later stage. I
5 can just assure you at this point in time that all materials, seized
6 materials are closed and sealed are in the possession of the Registry.
7 So that's it. Everybody is -- everything is safe guarded to this moment
8 and then we will find the procedure -- correct procedure in order to open
9 these seized items and try to find out only those materials which are
10 relevant to the case and in a safe way.

11 So --

12 MR VANDERPUYE: Mr President, may I intervene for one moment,
13 please.

14 SINGLE JUDGE TARFUSSER: Yes, please.

15 MR VANDERPUYE: I'm very sorrier.

16 SINGLE JUDGE TARFUSSER: Yes, please.

17 MR VANDERPUYE: There is just one matter I wanted to clarify.
18 Yesterday you may recall that I had mentioned or rather requested that
19 the Chamber's decision of -- I believe it's 27 November,
20 ICC-01/05-05-01-13 ^ confidential decision, concerning surveillance
21 measures and monitoring of contacts in the detention facility apply to
22 Mr Mangenda.

23 Yesterday, the Chamber at page 32 of the unofficial transcript, I
24 believe I have it here as lines 13 through 15, lifted all restrictions
25 basically in place at the detention centre on an exceptional basis. It
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1 was not clear to me, and maybe it's just me, but it's not clear to me
2 whether or not that effectually rescind's the Chamber's 27th November
3 decision referring to the importanting or surveillance to be put in place
4 with respect to the suspects or it refers to other conditions of
5 detention such as those imposed under the warrant of arrest. So I just
6 wondered if the Chamber could please clarify that.

7 SINGLE JUDGE TARFUSSER: Now yesterday I decided to lift all the
8 exceptional restrictions imposed on the three suspects of yesterday,
9 meaning that now the normal, the ordinary, say, control from the
10 administrative point of view by the Registrar is in place. Okay.

11 For Mr Mangenda, this will happen at the expiring of the 72
12 hours. Not before. After 72 hours, he is -- he is restricted -- the
13 restrictions are applied to him, and expiring the 72 hours he will be in
14 the same position as the other three. I hope it is clear.

15 MR VANDERPUYE: Not entirely.

16 SINGLE JUDGE TARFUSSER: Not entirely.

17 MR VANDERPUYE: And I apologise for this.

18 What you ordered in the decision specifically is that for the
19 Registrar to implement adequate surveillance measures, to ensure the
20 contacts between the suspects during their interaction was adequately
21 monitored -- actively monitors, rather, and also that the Registrar
22 ensure that the contacts between each of the parties and third parties
23 during visits and on were monitored and survey veiled. I don't know if
24 that is the ordinary course or scope in the conduct of the Registrar, but
25 I'm wondering whether your decision yesterday and today undoes this
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1 decision.

2 SINGLE JUDGE TARFUSSER: This is correct. This decision of
3 yesterday undoes my own decision. Not, obviously, the ordinary control
4 of the Registrar in the detention centre of the three. Okay. Now we're
5 clear? Okay, good.

6 And the last question I have, this goes to the Registrar and the
7 Defence, but I don't know. The application, the 58 application of the
8 Prosecutor and the underlying documents, the request of the warrant of
9 arrest, which I reclassified. Are they in the possession only of the
10 three -- the Defence of the three suspects of yesterday or also in the --
11 now available to the Defence and to Mr Mangenda -- the Defence of
12 Mr Mangenda and to Mr Mangenda? This is the question. Because I don't
13 know if how the -- internally this proceeding went.

14 MR DUBUISSON: (Interpretation) Thank you very much, your Honour.

15 So since this morning, normally all the documents have been
16 transmitted to the Defence including indeed this application of the
17 Office of the Prosecutor. Because -- well, also, there have been no
18 sdrims. So all ^ Maître Flamme received it this morning. Now in
19 regards to the deposition aspects, indeed we have monitoring. Passive
20 monitoring. In order to take the precise terms of the regulations of the
21 Registry which does apply for communications which are not under --
22 subject to client-counsel privilege.

23 So here we are going into the classical or traditional passive
24 monitoring system as well as normal surveillance of visits. But we are
25 not preventing visits, in order to be precise with regards to the
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1 measures that be being taken.

2 SINGLE JUDGE TARFUSSER: Thank you, Mr Dubuisson, for this
3 clarification. So I just wanted to make sure that this happened, and of
4 course I want the Defence of Mangenda to be in the same position as the
5 other three, and for the clarification on the detention which now should
6 be clear.

7 So just to make sure, the decision taken yesterday on the
8 disclosure proceedings applies fully also to the -- to Mr Mangenda, and I
9 invite obviously the -- Maître Flamme to -- if there are any problems to
10 submit it in writing so, as the Prosecutor said, we can exchange all the
11 comments and then come to a proper decision in -- also in writing.

12 So if there is no other issue to raise, I think this -- no? No.
13 I think this First Appearance, which is a bit -- a first appearance
14 incorporated the disclosure proceedings is closed -- no, not yet.

15 Please, Mr Flamme.

16 MR FLAMME:

17 MR FLAMME: (Interpretation) No, your Honour. I do have things
18 that are very important to say. Please. I do apologise. I will be very
19 brief. But it is necessary, however, for me to speak and I will
20 certainly do so as the Prosecutor asks.

21 In submissions or in an application, but right from the very
22 outset I would like to stress the following. We are here before a case
23 which is being investigated. It's fully being investigated at the moment
24 where it concerns very serious crimes.

25 Now, the Court has competence, a jurisdiction, that is certain.

26

1 The Court has jurisdiction for this. But I do want right from the very
2 outset stress the rules that are concerned, 164 and 162(2)(e), which do
3 say that the Court can unseize itself of a case in favour of the Dutch
4 authorities. And why am I saying this? Well, because, Mr President, I
5 would say that there are certain number of things that you don't know
6 yet, I think.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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Page 22 redacted – Redaction order.

1 (Redacted)

2 SINGLE JUDGE TARFUSSER: Well, I take your point. I still think
3 that these are very, very serious things what you said now. I think now
4 maybe you are also not aware of a lot of things because you started to
5 say maybe certain thing I don't know, but maybe it's also to you. So I
6 think we should just wait for the proceedings ongoing, and then in the
7 proceeding you can raise all the matters you will -- you think you have
8 to raise and they will be decided obviously with a -- with very much in
9 detail and consciously.

10 So now I close the hearing. Please be free to raise all or
11 submit also submissions you have to make in the future. The hearing is
12 now therefore closed. Thank you.

13 (The hearing ends in open session at 10.53 a.m.)