

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Callixte Mbarushimana - ICC-01/04-01/10
5 Judge Sanji Mmasenono Monageng, Single Judge
6 Status Conference Hearing
7 Monday, 14 February 2011
8 (The hearing starts in open session at 10.00 a.m.)
9 THE COURT USHER: All rise. The International Criminal Court is now in session.
10 Please be seated.
11 JUDGE MONAGENG: Good morning, everybody. Court officer, please call the
12 case.
13 THE COURT OFFICER: Situation in the Democratic Republic of the Congo, in the
14 case of The Prosecutor versus Callixte Mbarushimana, ICC-01/04-01/10.
15 JUDGE MONAGENG: Thank you. Before we begin our proceedings this morning,
16 I wish to draw the parties' attention to the fact that we have only the rest of the
17 morning, because the court is going to be used for another case. So as much as
18 possible, let's try to accelerate our proceedings; and I'm not even suggesting, by any
19 chance, that you -- that you prejudice yourselves.
20 This hearing was convened by me for as to discuss issues relating to disclosure
21 between the parties. The Prosecution, the Defence Counsel and the Registrar have
22 been invited.
23 And in accordance with the established practice of the Court, I will ask the parties
24 and participants to introduce themselves, starting of course with the Office of the
25 Prosecutor.

1 And before you do the introduction, let me also draw your attention to the fact that
2 we need to be a bit slow when we make our presentations to allow our interpreters to
3 catch up with us. Mr Prosecutor, please introduce yourself and your team.

4 MR STEYNBERG: Good morning, your Honour. The Prosecution is represented
5 today by Marion Rabanit and Regina Weiss, assistant trial lawyers; Grace Goh, case
6 manager; and myself, Anton Steynberg, senior trial lawyer. Thank you.

7 JUDGE MONAGENG: Thank you very much. May I now request the
8 Defence counsel to introduce himself and his team.

9 MR KAUFMAN: Good morning, your Honour. My name is Nicholas Kaufman. I
10 represent Mr Callixte Mbarushimana, who is sitting behind me. Today I'm assisted
11 by Ms Verdrana Residovic from the Office of the Public Counsel for Defence. She's
12 my temporary case manager, since I'm still in the process of recruiting a team.

13 JUDGE MONAGENG: Thank you very much. And the Registrar.

14 MS DAHURON-JACOBY: (Interpretation) Good morning, your Honour. To
15 represent the Registry today, we have Mr Dahirou Sant-Anna, associate legal officer;
16 Bibiana Becerra Suarez, who is the legal coordinator within Court Services; and
17 myself, Charlotte Dahuron, who is the Chief of the legal administration services.

18 JUDGE MONAGENG: Thank you very much. I am Judge Sanji Mmasenono
19 Monageng, and I am the Single Judge of Pre-Trial Chamber I responsible for the case
20 of the Prosecutor against Mr Mbarushimana.

21 The purpose of the present hearing is to discuss the matters listed in the decision
22 scheduling this hearing issued by the Single Judge on 7 February 2011. We, of
23 course, will also discuss any other matter relevant to disclosure. A final decision on
24 the system of disclosure will be issued in due course, taking into account submissions
25 made by the parties and participants at this hearing. I would like to remind the

1 parties and participants that they may request that we go into private session if a
2 confidential matter needs to be discussed.

3 The Prosecutor is requested to provide information on the issues listed on page 4 of
4 the Decision issued on 7 February 2011 in order for the Single Judge to establish an
5 articulate calendar for disclosure. I trust that the Prosecutor is familiar with the
6 Decision and the said issues.

7 The Prosecutor, the Defence and the Registrar are also invited to submit their views
8 on the system of disclosure that has been established and implemented through
9 recent decisions of the Chamber, including technical modalities. Finally, the
10 Prosecutor and the Defence are invited to submit their views on the envisaged scope
11 and timing of the inspection to be conducted pursuant to Rules 77 and 78 of the
12 Rules.

13 For purposes of this hearing, I would suggest that we proceed as follows: One, the
14 Prosecutor will provide information on all the matters that I have just enumerated;
15 the Defence will, thereafter, respond to the statement made by the Prosecutor; the
16 Registrar will then make her presentation. And, finally, the Prosecutor and the
17 Defence will have the opportunity to comment on any other matter that may be
18 relevant to the disclosure proceedings.

19 And in the absence of any other observations and objections, I don't know whether
20 you have any at this point, we will now start. Mr Steynberg.

21 MR STEYNBERG: Thank you, your Honour. Your Honour mentioned the issue of
22 going into private session. I should just let your Honour know that I do intend to
23 request that, when I deal with item number 5 of the issues raised on page 4 of the
24 Decision which you alluded to earlier relating to -- I beg your pardon, it's not the
25 correct one. It's the -- yes, sorry, it's number 4, dealing with the protective measures.

1 I beg your pardon, your Honour.

2 JUDGE MONAGENG: Item number 5?

3 MR STEYNBERG: It's item number 4, an indication whether he intends to request
4 protective measures to be put in place to protect witnesses. The Prosecution submits
5 that it is appropriate to deal with that issue in a private sessions, but I will deal more
6 fully with that when we get to that point.

7 If I may then proceed to deal one-by-one with the questions raised on page 4 of the
8 Decision and, for the purposes of the record, I will read the various questions --

9 JUDGE MONAGENG: Mr Steynberg.

10 MR STEYNBERG: Yes, your Honour.

11 JUDGE MONAGENG: Just give me a minute. Can you, please, help me with my
12 equipment.

13 (Pause in proceedings)

14 Thank you, Mr Steynberg. Please proceed.

15 MR STEYNBERG: Thank you, your Honour. Starting, then, with the issues on
16 which the Prosecution has specifically been asked to be answer questions, it is
17 convenient to deal with the first two questions together. The first question is: The
18 Prosecutor is requested to give information relating to an estimate of the overall
19 number and volume of documents he intends to use as evidence at the confirmation
20 hearing; and, number 2, the number of witnesses, if any, that he intends to call to
21 testify at the confirmation hearing; and the number of witness statements he intends
22 to use at the confirmation hearing pursuant to Rule 76 of the Rules.

23 Your Honour, the Prosecution is mindful of the need to disclose all evidence that we
24 intend to rely on at the hearing in a timely manner and in accordance with the
25 deadlines by the Statute and Rules. The Prosecutor aims for expeditious

1 proceedings and, therefore, intends to present only core evidence during the
2 confirmation hearing.

3 The Prosecution is still in the process of assessing the witnesses it may call.

4 However, our preliminary assessment is that we do not presently plan on calling
5 witnesses during the hearing, but we reserve the right, your Honour, to revisit this
6 position. Instead, the Office plans to rely on documentary evidence and witness
7 statements.

8 The Prosecution assessment of the number and volume of documents we will rely on
9 at the hearing, or the number of witnesses and witness statements we will rely --

10 THE INTERPRETER: Could the Prosecutor please slow down for the interpreters.

11 Thank you very much.

12 MR STEYNBERG: Thank you. I will try to do so. Let me repeat that point.

13 The Prosecution's assessment of the number and volume of documents we will rely
14 on at the hearing and the number of witnesses and witness statements we will rely on
15 is contingent upon several factors, the two most important of which are, firstly, it is
16 contingent on the Registry making available a copy of the electronic media and
17 communication devices seized from the Suspect.

18 Once this is fully available to the Prosecution, we will then be in a position to prepare
19 an informed estimate for the Chamber about the time it will take to process and
20 analyse this information. At this stage, the Prosecution anticipates that the volume
21 of evidence could be significant.

22 Secondly, the Prosecution's investigations are still ongoing. Investigative activities
23 are likely to generate further relevant evidence up to the date of the confirmation
24 hearing.

25 Turning then to the third question, the Chamber sought an indication as to whether

1 the Prosecution intends to request that certain documents be disclosed to the
2 Defence in redacted form and, if so, an estimate of the number and volume of such
3 documents.

4 The Office anticipates seeking limited redactions to witness statements, your Honour,
5 in order to protect the safety of witnesses, victims and other persons based on
6 working in areas that are still immersed in conflict until protective measures are in
7 place. This will be the case, in particular, for any witnesses who are in the eastern
8 DRC, Democratic Republic of the Congo.

9 We are already in contact with the Victims and Witnesses Unit to ensure that the Unit
10 is informed of the progress of our investigation and can insist in a timely manner.

11 The Prosecution expects, however, to be able to disclose to the Defence the identity of
12 most witnesses it relied on at the arrest warrant stage, which we are also likely to rely
13 on at confirmation. We are likely to seek to redact some information contained in
14 their statements, particularly, your Honour, pursuant to Rule 81(4), but their
15 identities will not need to be redacted.

16 We expect, your Honour, that much of the documentary evidence that is currently in
17 the Prosecution's possession can be disclosed in unredacted form, regardless of
18 whether we actually rely on it at the confirmation hearing or disclose it pursuant to
19 Articles 67(2) and Rule 77. As to the number and volume of documents to be
20 redacted, your Honour, this is also contingent upon the two factors which I referred
21 to earlier.

22 Proceeding then to point number 4, an indication as to whether the Prosecution
23 intends to request that protective measures be put in place in order to protect
24 witnesses, victims or other persons at risk prior to disclosure of the names of
25 witnesses or of certain documents or otherwise, including any relevant information

1 on the steps he is taking and/or intends to take in this respect which might be
2 available at this stage.

3 Your Honour, as indicated earlier, the Prosecution requests that that this issue be
4 dealt with ex parte by yourself at the end of the hearing and in the absence of the
5 Defence .

6 I will then proceed to the next point, your Honour, point number 5, the Court sought
7 an indication as to whether the Prosecution intends to rely on documents or
8 information obtained on the condition of confidentiality under Article 54(3)(e) of the
9 Statute. Your Honour, I can inform the Chamber that the Prosecution does not
10 intend to rely on any materials collected on conditions of confidentiality pursuant to
11 the relevant Article. No such materials have been collected to date for the purposes
12 of the investigation into the events in north and south Kivus.

13 Your Honour, that concludes the five points on page 4 of the order. May I then
14 proceed to address the issues on which the Prosecution, the Defence and the Registry
15 have been asked to submit their views? Thank you.

16 Your Honour, there are three issues, and I intend to address them for the sake of
17 convenience together, but I will read them together into the record. The first issue
18 on which the parties have been asked to give their views is in respect of the envisaged
19 scope and timing of inspection to be conducted by the parties pursuant to Rules 77
20 and 78 of the Rules.

21 The next is with a view to enhancing the overall effectiveness of the disclosure
22 process, the views on the system of disclosure as established and implemented in the
23 recent practice of the Chamber, including its technical modalities. And, thirdly, any
24 information, observation or concern which they deem relevant for the purposes of the
25 overall effectiveness of the disclosure process.

1 Your Honour, in this regard, the Prosecution agrees for the most part with the system
2 of disclosure adopted by the Chamber in the matter of Abu Garda and Banda and
3 Jerbo cases which recalled the disclosure procedure effected in the proceedings
4 relating to the Confirmation of Charges in Lubanga and Katanga and Ngudjolo cases.
5 The first point the Prosecution wishes to make, your Honour, is that we invite the
6 Chamber to follow, in particular, the majority ruling in Abu Garda that potentially
7 exculpatory and Rule 77 material should not be communicated to the Chamber or
8 otherwise filed in the record of the case unless one of the parties has decided to rely
9 on it at the confirmation hearing. The decision I refer to, your Honour, may be
10 found at ICC-02/05-02/09-35 at paragraph 9.

11 With the exception of --

12 JUDGE MONAGENG: Excuse me, Mr Steynberg. The interpreters are asking you
13 to slow down. Thank you.

14 MR STEYNBERG: Thank you, your Honour. With the exception of the Pre-Trial
15 Chamber in Bemba, no other Pre-Trial Chamber has required this. The system of
16 disclosure used in the cases that preceded Bemba was found by your Honours to be
17 "fair and efficient" and to have "operated successfully" in other cases. I refer again,
18 your Honour, to the Abu Garda decision at paragraph 12. Your Honour, the
19 Prosecution sees no reason to depart from that system.
20 Secondly, if your Honours decide, however, to deviate from the practice of the
21 previous Chambers in this respect, then the Prosecution strongly urges the Chamber
22 to waive the requirement of Regulation 39 of the Regulations of the Court and to
23 permit the filing in the record of the case of documents that are neither in English, nor
24 in French.
25 Your Honour, imposing the requirement to translate potentially exculpatory evidence

1 and Rule 77 material into a working language of the Court would unnecessarily
2 engage the Court's resources with evidence that will ultimately not be relied upon at
3 the confirmation hearing. It would also unfairly transfer to the Prosecution the
4 burden of translating materials that the Office has collected in the investigation but
5 does not rely upon as incriminating evidence.

6 We also recall that your Honours have ordered the registration in the record of a
7 large collection of materials seized from the Suspect. The Prosecution urges the
8 Chamber to adopt a system that is reasonable in light of the parties' and organs' legal
9 obligations, as well as the Court's resources.

10 Thirdly, your Honour, consistent with the majority finding by your Honours that the
11 disclosure system employed in the Lubanga and Katanga and Ngudjolo cases was
12 proven to be fair and efficient and to have operated successfully, the Prosecution
13 requests that it not be required, as it was in the Abu Garda and Banda and Jerbo cases,
14 to provide the Defence with a summary of the content and an explanation of the
15 relevance of each item disclosed pursuant to Article 67(2) and Rule 77. Your Honour,
16 the imposition of such an obligation is a departure from the previous system, which
17 has not been found to be "fair and efficient" or to have "operated successfully."

18 In relation to the Rule 77 materials, there has been little practice on the basis of which
19 to test the fairness to both parties and the efficiency of this aspect of this system
20 adopted in Abu Garda and in Banda and Jerbo; this is because there were no
21 materials falling within the scope of Rule 77 in those cases.

22 However, in contrast, your Honour, in this matter the Prosecution proposes to give
23 access to the Defence to a large pool of evidence initially as Rule 77. We have, in fact,
24 already provided access to the Defence to over 1,700 intercepted communications and
25 over 4,000 associated files and expect to disclose in due course more of these, as well

1 as a collection of FDLR press releases in our possession.

2 Taken together, your Honour, these materials represent more than half of the
3 evidence currently collected by the Prosecution during the investigation into the
4 events in north and south Kivu Province.

5 In providing access to these materials pursuant to Rule 77, the Prosecution seeks to
6 ensure that the Defence has access as early as possible to materials that are relevant to
7 this case. The Prosecution, therefore, seeks to uphold the Defence's right to have
8 adequate time for the preparation of his Defence in terms of Article 67(1)(b).

9 Together with these materials, the Defence will also have access to MetaData required
10 by the eCourt protocol for all disclosures once such a protocol is adopted as binding
11 in the present case. This MetaData will allow the Defence to make preliminary
12 determinations about the contents of the materials and to investigate them at will.

13 Your Honour, the Prosecution alleges that the Suspect had knowledge of the FDLR's
14 functioning and of alleged FDLR crimes. Information about the FDLR's operation
15 and alleged crimes was exchanged between FDLR field commanders and top FDLR
16 leaders based abroad by telephone and by email. The collection of intercepted
17 communications involving top FDLR leaders is, thus, directly relevant to the
18 Suspect's case, irrespective of the contents of the individual communication. What
19 we are saying, your Honour, is that the whole picture is what is important, more than
20 the individual items.

21 This has already been confirmed by the Defence, your Honour. The Defence has
22 already requested access to extensive information relating to intercepted
23 communications generally and not just to the specific communications relied on by
24 the Prosecution in its arrest warrant application; which were limited to, I think,
25 approximately 20 items -- 18 items. It also announced that it would file a demand

1 for the substantive recordings or transcripts of intercepted communications insofar as
2 they exist, and I quote from ICC-01/04-01/10-29, especially at paragraphs 4, 5, 27 and
3 30(b).

4 Your Honour, given the role attributed to the Suspect by the Prosecution in the theory
5 of the case, the Prosecution also considers that all press releases issued by the FDLR
6 are relevant to the Suspect's case and proposes to give the Defence access to them
7 pursuant to Rule 77 promptly.

8 The Prosecution has an obligation to disclose incriminating and potentially
9 exculpatory evidence collected by the Prosecution from sources other than the
10 Suspect himself. The Office intends to comply with these obligations in a timely
11 manner. This is likely to result in the re-disclosure of Rule 77 items as incriminating
12 or potentially exculpatory evidence as the Prosecution advances in the review of the
13 material.

14 In summary therefore, your Honour, we intend to give the Defence access to the
15 broad pools of evidence at this stage in terms of Rule 77, but this will in due course be
16 further refined, and those materials which the Prosecution intends to rely on in due
17 course will be re-disclosed as incriminating evidence and those items of evidence that
18 are identified as being potentially exculpatory will also then be re-disclosed in terms
19 of Rule 67(2)

20 Turning then to the issue of potentially exculpatory material, the Office's proposal is
21 to present a report setting out the various categories of information that we consider
22 potentially exculpatory, to explain the criteria to adopt such categories, to highlight
23 particularly relevant examples and to provide the full list of documents falling into
24 each category. This will, your Honour, be an improvement over a similar report
25 presented in the Lubanga case, and the reference for that, your Honour, is

1 ICC-01/04-01/06-1248.

2 Your Honour, this will reduce the burden on the Office that would result from the
3 application in this case of the decision adopted in the Abu Garda and Banda and
4 Jerbo cases; namely, that we provide descriptions of -- detailed descriptions of each
5 item of evidence disclosed.

6 In summary therefore, your Honour, the Prosecution is of the view that it should not
7 be required to summarise for the Defence the contents and to explain the relevance of
8 each item disclosed pursuant to Article 67(2) and Rule 77; it should not be required to
9 do so as necessary for the preparation of the Defence, given that it has not been
10 shown by the practice of the Court so far that this is necessary for the fairness and
11 efficacy of the proceedings.

12 THE INTERPRETER: Please slow down for the interpreters. Thank you.

13 MR STEYNBERG: I'll repeat that. It should not be required to do so as necessary
14 for the preparation of the Defence, given that it has not been shown by the practice of
15 the Court so far that this is necessary for the fairness and efficiency of the
16 proceedings.

17 It has not been shown that Defence teams would even use such summaries. The
18 requirement to summarise and explain relevance was not a requirement imposed in
19 any of the cases that are currently at trial, and the Chambers presiding over those
20 trials have so far been able to conduct them fairly despite the absence of summaries.

21 Instead, your Honour, the Prosecution proposes to tender a report on the types of
22 information it treats as potentially exculpatory and to highlight particularly relevant
23 items.

24 Turning, then, to the fourth point regarding the technical modalities of the system of
25 disclosure established and implemented in the recent practice of the Chamber. In

1 disclosing materials in previous cases, including Abu Garda and Banda and Jerbo, the
2 Office follows the data scheme and standards set out in an eCourt protocol. The
3 purpose of this protocol, as your Honours are aware, is to ensure efficient exchange of
4 disclosure information between the parties and to allow the Registry to receive in a
5 consistent format, across all cases, the electronic materials that the parties intend to
6 rely on during proceedings.

7 Successive Chambers of the Court have adopted separate eCourt protocols. After an
8 external review, an eCourt audit, it was recognised that the Court should adopt a
9 single protocol for all cases to be updated by a coordination body within the Court.

10 In September 2010, the Registry established an eCourt User Group to centralise all
11 discussions concerning eCourt in order to address them more efficiently. The
12 underlying objective of the discussions is to evaluate and improve information
13 management and systems in ICC proceedings, including the administration of
14 improvements to a single eCourt protocol. This expert eCourt User Group receives
15 submissions from parties interested in implementing improvements in the Court's
16 electronic systems.

17 The Office submits that matters relating to technical practice -- I beg your pardon,
18 matters relating to technical practice improvements should be directed to that group.

19 Other Pre-Trial Chambers have not had the opportunity to be advised by this group.

20 We wish to encourage the Chamber to incorporate this Group's advice into its
21 deliberations.

22 The Office submits that the Chamber should direct the Registrar or, in the alternative,
23 the eCourt User Group to submit to the parties the latest eCourt protocol for adoption
24 in the present case with any proposed improvements as agreed upon by that group.

25 Your Honour, that brings me to the end of the submissions which the Prosecution

1 wishes to make in reply to your Honours -- or to the Chamber's order, unless there
2 are further matters on which your Honour would like to hear me.

3 JUDGE MONAGENG: Thank you very much, Mr Steynberg. Just one inquiry. I
4 know that you might not be able to give us a concise answer, but are you able to give
5 us an estimate of how many witness statements you might be using?

6 MR STEYNBERG: It is difficult, your Honour, as you have anticipated, especially
7 due to the fact that the investigations are ongoing, and that the need to rely upon
8 witnesses at the confirmation hearing will be affected by the nature and volume of
9 evidence seized from the Suspect once such evidence has been -- is available to us,
10 firstly, and has been reviewed, secondly.

11 I can inform the Chamber -- and if I could just, perhaps, collect -- check my figures
12 before I do so --

13 (Pause in proceedings)

14 I can inform the Court, the Chamber, at this stage, your Honour, that at present we
15 have 15 insider, or so-called insider statements, statements of people from within the
16 FDLR of which 10 were relied upon in the Prosecution's application in terms of
17 Article 58.

18 We have, at this stage, a further -- three crime-based witnesses, but we are not able at
19 this stage to give any firm undertaking as to whether this number will grow or not.

20 We imagine that it will probably grow, probably considerably, but it is really too
21 early to tell how many we will actually be relying on at this stage.

22 JUDGE MONAGENG: Thank you very much, Mr Steynberg. Mr Kaufman.

23 MR KAUFMAN: Thank you, your Honour. Good morning. If I may start by
24 dealing with, in fact, your Honour's question to the Prosecution just now and item
25 number 1 on page 4 of your Honour's decision, number 52 in the case record.

1 I don't believe I've heard this morning an answer to the estimate of the overall
2 number and volume of documents which the Prosecution proposes to rely on at the
3 confirmation hearing. What I have heard is that the Prosecution has seized from
4 Mr Mbarushimana a large amount of electronic media, hard disks, SIM cards,
5 telephones and the like, and has yet to extract the information or obtain the
6 information.
7 I've also heard that the Prosecution is, at the present moment in time, continuing its
8 ongoing investigations. What I would wish to state at this stage, your Honour, is
9 that perhaps it's better to say I express my hope that this should not be a grounds for
10 holding up the confirmation hearing. In fact, it was my intention - and at this point,
11 it is still my intention - potentially to file an application for an expedited confirmation
12 hearing.

13 If I may now turn, with your Honour's permission, to item number 5 on page 4 of
14 decision number 52, specifically with respect to the information under Article 54(3)(e).
15 I am now aware that the Prosecution does not intend to rely on documents obtained
16 under Article 54(3)(e) as incriminating evidence. Nevertheless, the Defence would
17 request that the OTP, as master of its own information, review all 54(3)(e) evidence
18 collected in the DRC situation for the existence of materials which may meet the
19 requirements of Rule 77 and Article 67(2) in the context of the case against
20 Mr Mbarushimana.

21 I would ask this learned Pre-Trial Chamber not to forget the sorry genesis of the
22 Article 54(3)(e) collection currently retained by the Office of the Prosecutor. It is
23 now, may it be said, a historical fact that in the early days of the OTP's DRC
24 investigation profuse quantities of documents were seized from MONUC and other
25 NGOs without any thought, in my submission, whatsoever being applied to future

1 repercussions.

2 The OTP, in my submission, neglected to consider whether the UN - in this case,

3 MONUC - as a provider would agree to disclose their sources. It was also neglected

4 to consider whether an accused might, in due course, be denied access to Article

5 54(3)(e) materials of an exculpatory nature.

6 In the present case, the Defence intends to challenge the jurisdiction of this Court to

7 entertain the case against Mr Mbarushimana. It will argue inter alia that the

8 situational referral presented by President Joseph Kabila of the Democratic Republic

9 of the Congo on 3 March 2004 was never intended to encompass the events unfolding

10 at that time in the Kivus.

11 MONUC, a source of 54(3)(e) information --

12 JUDGE MONAGENG: Excuse me. The interpreters are --

13 MR KAUFMAN: I apologise.

14 JUDGE MONAGENG: Can you slow down a little bit.

15 MR KAUFMAN: Yes, I shall slow down.

16 MONUC, a source of Article 54(3)(e) information, in the past was present at that time

17 in the Kivus just as it was present in the Ituri province. For the sake of example,

18 therefore, and this is by no means intended to be an exclusive example, it could be the

19 case that MONUC passed information to the Office of the Prosecutor under the guise

20 of Article 54(3)(e) information which speaks to a contemporaneous alliance or shared

21 interests between the government of President Joseph Kabila and the FDLR. This, in

22 my submission, at the very least would be Rule 77 material for the process of the

23 jurisdictional challenge.

24 To conclude, your Honour, on this point, the Defence respectfully requests that the

25 Pre-Trial Chamber oblige the Office of the Prosecutor to conduct a review of its entire

1 Article 54(3)(e) collection obtained in a DRC situation. Furthermore, I would ask
2 that an extremely short time limit be set for the disclosure of any Rule 77 or Article
3 67(2) material arising there from pertinent to the parameters of the jurisdictional
4 challenge that I have already communicated to the Office of the Prosecutor.
5 This may be an onerous task for the Prosecution, but unfortunately institutional
6 failings - which formerly beset the Office of the Prosecutor, as mentioned in the case
7 against Mr Lubanga - characterized by the wholesale and unsupervised collection of
8 reams of 54(3)(e) documents cannot be the cause for Mr Mbarushimana prolonged
9 detention.

10 With your permission, your Honour, I will now turn to the disclosure protocol. The
11 Defence agrees to the procedure for disclosure adopted by this Pre-Trial Chamber in
12 the Abu Garda case. That's decision 35 in the Abu Garda case, which my learned
13 friend Mr Steynberg was referring to.

14 Although the issue is now apparently settled precedent at first instance, however,
15 I would state for the record that the Defence for Mr Mbarushimana favours the
16 interpretation accorded to Rule 121(2)(c) given by his Honour Judge Cuno Tarfusser.
17 We, therefore, believe that the Pre-Trial Chamber should be provided with the
18 complete corpus of exculpatory evidence identified by the Prosecution in advance of
19 the confirmation hearing.

20 Such a course will not harm the interests of the Defence. Quite the opposite, it will
21 provide the Pre-Trial Chamber with the full gamut of information necessary for
22 enabling it to assess whether the necessary, substantial grounds exist for confirming
23 the charges against Mr Mbarushimana. Indeed, it is quite fitting and, in my
24 submission, most appropriate that this burden be placed on the Office of the
25 Prosecutor which, by virtue of Article 54(1)(a), has the duty to ensure the examination

1 of both incriminating and exonerating circumstances.

2 Furthermore, and in order to distinguish the present instance from that of Mr Abu

3 Garda, the evidential materials released so far to the Defence contain a vast amount of

4 intercepted communications provided by the German Security Services. And to

5 date, only a minuscule proportion of these interceptions have been translated from,

6 apparently, Kinyarwanda into a working language of the Court.

7 Only a minuscule proportion of these intercepts have been deemed incriminating

8 evidence. Having said that, your Honour, 99 per cent to -- perhaps in my estimate of

9 these documents, are currently defined as being of material benefit to the

10 Defence pursuant to Rule 77 yet are in a language which is totally incomprehensible

11 to counsel for the Defence and to, I assume, the Court.

12 Accordingly, in the specific circumstances of this case, and in my submission in the

13 interests of justice, there are grounds to depart from the precedent established by the

14 majority of this Pre-Trial Chamber and to order the Prosecution with its vastly greater

15 budget to ensure translation of all of these intercepts and to have them made

16 available to the Pre-Trial Chamber well in advance of the confirmation hearing.

17 Now, I've heard Mr Steynberg this morning talk about unfair burdens, but his team is

18 the master of the investigation and by seizing these materials wholesale for the

19 purposes of what was no more or less, in my submission, than a fishing expedition,

20 they should not now saddle the Defence with the tortuous task of translating all this

21 information. This is even more the case given that the OTP itself currently defines

22 the intercepts as material to the Defence pursuant to Rule 77.

23 Your Honour, I now turn to the eCourt protocol. The Defence has no objection to

24 the eCourt protocol which was appended to the decision in the Abu Garda case.

25 Once again, given the vast amount of intercepted communications currently disclosed

1 to the Defence under Rule 77 - the admissibility of which I stress will be
2 challenged - we feel that in addition to the existing MetaData fields, provisions ought
3 also to be made for certain, additional MetaData fields which will enlighten the
4 Pre-Trial Chamber as to various aspects of the chain of custody as set out in
5 paragraph 4 of the Defence Request for Disclosure, which is document number 29 in
6 the case record.

7 In due course, when the OTP is obliged to supply its list of evidence in support of the
8 charging document, the Defence feels that provision ought to be made for a certain
9 amount of subjective MetaData; whereby, both the Defence and the Court is made
10 aware of the relevance of each and every piece of evidence.

11 In cases of this enormity, there is often a tendency, in my submission, for the
12 Prosecution to overload its evidence collection just for good luck, as it were, obliging
13 the OTP therefore to supply subjective MetaData linking each piece of evidence to an
14 element of the charges or make the Pre-Trial Chamber 's task more effective and more
15 expeditious.

16 Your Honour, I have a number of general observations with respect to disclosure.

17 I don't know whether you would like to hear them now or perhaps after the Registry
18 has made its observations.

19 JUDGE MONAGENG: I think you better just put everything on the table so that if
20 there are issues to do with the Registry, they can respond appropriately. And, of
21 course, your friend will also be given a chance afterwards.

22 MR KAUFMAN: Thank you, your Honour. So with your Honour's permission,
23 I would like to address a few general concerns that the Defence has concerning the
24 disclosure which has already been affected.

25 The first matter relates to what I believe to be the OTP's lack of compliance with the

1 Pre-Trial Chamber's order on disclosure, document number 47 in the case record.
2 The wording of this order was quite clear: The OTP was mandated to disclose, and I
3 quote, "Information and documents which relate to the intercept conversations
4 referred to by the Defence in paragraph 4 of its request and which are essential for the
5 preparation of an application challenging the intercepted communications," end
6 quote.
7 To date, all the Prosecution has disclosed, in my submission, through Ringtail are
8 MetaData relating to the alleged interlocutors in these intercepts, their alleged
9 telephone numbers and the time and duration of such communications. No
10 information, however, has been disclosed which relates to the appropriate judicial or
11 administrative authorisation of such intercepts. No information has been disclosed
12 as to the identity of the people listening into these conversations, nor as to the
13 technical means by which such interception was performed.
14 Your Honour, it is these criteria which are essential for facilitating a challenge to the
15 legality of an intercept, and I would request that this learned Pre-Trial Chamber order
16 the Prosecution to effect immediate compliance with the order and disclose all the
17 information requested in paragraph 4 of the Defence request.
18 The second matter of concern to the Defence relates to the disclosure of intercepts
19 from the French authorities. In this matter, I would refer your Honour to a
20 television interview given by the Prosecutor himself to French television which I cited
21 at paragraph 3 of the Defence Request for Disclosure, and I quote the Prosecutor's
22 words, "I think the arrest of Mbarushimana in France is the great example of what I
23 was talking, the new dimension, because it was basically the result of a common
24 effort from France who investigated the crimes for us and helped us to collect
25 intercept conversations."

1 I would respectfully request --

2 THE INTERPRETER: Please slow down for the interpreters.

3 MR KAUFMAN: I would respectfully request that this Pre-Trial Chamber ask the
4 representative of the Prosecutor to identify these intercept conversations, of which
5 Mr Moreno-Ocampo --

6 JUDGE MONAGENG: Excuse me, Mr Kaufman. You're being asked to slow down
7 again.

8 MR KAUFMAN: Okay. I would respectfully ask this Pre-Trial Chamber to request
9 the representative of the Office of the Prosecutor to identify these intercept
10 conversations, of which Mr Moreno-Ocampo was so proud.

11 I have searched and searched for this information, which the Court ordered to be
12 disclosed, but have found nothing apart from a 78-page long list of ingoing and
13 outgoing telephone numbers emanating from some francophone authority.

14 This log was disclosed as incriminating evidence, it bears the ERN
15 DRC-OTP-2004-0340, it is referred to at paragraph 28(e), but the Prosecution's
16 application under Article 58 as being one of the major pieces of evidence for which
17 my client's arrest was sought.

18 I wrote to the Prosecution concerning this document, inquiring as to whether it
19 comprised the illusive French intercepts so dear to the Prosecutor. I received a reply
20 informing me that this document did not emanate from the French authorities and,
21 insofar as it was a log and not a series of intercepts, it did not fall under the
22 Chamber's disclosure order number 47.

23 Your Honour, my request is twofold: Firstly, I would ask the Court to order the
24 Prosecution to disclose the French intercept conversations mentioned by the
25 Prosecutor in his interview on French television. Secondly, I would ask the Court to

1 find that the telephone log, as a record of telephone communications traffic allegedly
2 to and from my client, is subject to Court order number 47. By obtaining such a
3 telephone log, the Prosecution in my submission has invaded the privacy of an
4 individual, something which should normally be sanctioned by a Court order.
5 I would suggest that the Pre-Trial Chamber require the Prosecution to disclose all
6 information attesting to the legality of the means by which this telephone log was
7 produced. Who is the source of this log? At whose request was it prepared? For
8 what purpose was it prepared? When was it prepared?
9 My third and final cause for concern, your Honour, relates to disclosure which is
10 absolutely necessary for promoting an effective application for interim release. By
11 way of example, I would refer the learned Pre-Trial Chamber to paragraph 48 of its
12 Decision to arrest my client. Here, the Pre-Trial Chamber substantiates its finding
13 that Mr Mbarushimana will allegedly pose a flight risk -- sorry, that my client will
14 allegedly pose a risk to witnesses by reference to paragraph 184 of the Prosecution's
15 application under Article 58.
16 Perusal of the said paragraph, that is paragraph 184, reveals that it remains subject to
17 redactions imposed by the Prosecution. My request for the OTP's agreement to lift
18 this redaction, which is essential for me to be able to pursue an application for interim
19 release, was flatly refused by way of email, without any reasons whatsoever.
20 Similarly, certain aspects for the grounds for my client's arrest are substantiated by
21 references to annexes 5 and 6 to the Prosecutor's application under Article 58. These
22 annexes comprise excerpts from intercepted communications and interviews with
23 various witnesses - insider witnesses, respectively - and I stress that at present these
24 annex have been released to the Defence in a very selective manner. The evidence
25 concerned is, according to my client, in parts badly translated; it is, in other parts,

1 summarised and incomplete.

2 I need do no more than refer this learned Pre-Trial Chamber to the binding precedent
3 of the Appeals Chamber of this Court in the Prosecutor versus Jean-Pierre Bemba,
4 document number 323 in that case record, where it was stated that at the time of
5 initial appearance an arrestee should be granted access to all documents that are
6 essential in order effectively to challenge the lawfulness of the detention, bearing in
7 mind the circumstances of the case.

8 I would invite the learned Pre-Trial Chamber to look at Section F of the Prosecutor's
9 application under Article 58 entitled "Necessity of the arrest of Mr Callixte
10 Mbarushimana." Generous amounts of this section, your Honour, which justify my
11 client's detention, are blacked out and, as I've mentioned, the Prosecution has refused
12 my request to lift at least one of these redactions.

13 I ask how I can possibly be expected to request interim release in such circumstances?
14 It is almost as if the OTP believes that my client should be subjected to the strictures
15 of a police state, where detention can be ordered without the full grounds for such a
16 request being given to the arrested person. I would ask the Pre-Trial Chamber to
17 order the lifting of all redactions in Section F and to order the release of the full
18 materials mentioned in annexes 5 and 6.

19 That concludes my presentation, your Honour. Thank you.

20 JUDGE MONAGENG: Thank you very much, Mr Kaufman. I have no questions
21 for you at the moment. I'll now invite the representative of the Registry to make her
22 presentation, and also to try and address all issues that have been raised that are
23 directed at the Registry, especially from the Prosecution, because they are the ones
24 who raised a few issues. Thank you very much.

25 MS DAHURON-JACOBY: (Interpretation) Your Honour, first of all, with regard to

1 the eCourt protocol, the suggested solution from the OTP which would be based on
2 the generic protocol that currently exists would be provided for review and by the
3 user group, which the Defence is represented on. That would be a good approach.
4 And perhaps the generic protocol could be amended and provided to the Chambers
5 by the Registry. Clearly, during the discussions within the eCourt group, account
6 will be taken of the various suggestions made by Defence counsel.

7 Then let us turn to the evidence seized by the Registry in Paris. First of all, I'd like to
8 make reference to filing 53 of 11 February in which the Registry made a report and an
9 update on the treatment of these various pieces of evidence.

10 First of all, for the documents -- rather, the documentary evidence seized, they have
11 been scanned and, this week, the items can be provided to Chambers -- to the
12 Chamber and other parties by way of the Ringtail system.

13 As for the electronic items, the hard drives, the mobile phones, as was explained in
14 the report we have decided to use an interim solution, and we have contacted the
15 company in question which has the necessary equipment, and we do hope that within
16 the next few days we will be able to borrow the equipment to copy the hard drives.

17 So there you have it. This is what I can add to this report regarding the evidence
18 that was seized.

19 That is all for the Registry at this particular moment, unless you have any further
20 questions.

21 JUDGE MONAGENG: Thank you very much, Charlotte. Quite obviously, I'm now
22 addressing both parties, insofar as the Registry's report is concerned we can only
23 await their further advices and I'm hoping that you'll be keeping all of us informed.
24 Now, there has been quite a lot of information or queries that need to be answered by
25 the Prosecution, and I'll just want to ask you - as you respond to Mr Kaufman's

1 queries - to just give us a short explanation on why you did not provide the
2 information that was ordered by the Chamber. This would be over and above the
3 queries that have been raised by Mr Kaufman. You have the floor. Thank you.

4 MR STEYNBERG: Thank you, your Honour. Your Honour, I'm mindful of the
5 time limits that we have to finalise this status conference, but there are one or two
6 issues in particular relating to Mr Kaufman's request pertaining to the review of
7 Article 54(3)(e) material which I would like to take some instructions from my
8 learned friend who is more familiar with the size and nature of the case record than I.
9 I wonder if I might prevail upon your Honour to stand down for approximately ten
10 minutes so I can take the necessary instructions, and then I'll be pleased to reply to
11 Mr Kaufman's points.

12 JUDGE MONAGENG: Any objection, Mr Kaufman?

13 MR KAUFMAN: Of course not, your Honour.

14 JUDGE MONAGENG: Then the Court will adjourn for about ten minutes.

15 MR STEYNBERG: Thank you.

16 JUDGE MONAGENG: And when we come back, you will proceed. Thank you
17 very much.

18 THE COURT USHER: All rise.

19 (Recess taken at 11.10 a.m.)

20 (Upon resuming in open session at 11.20 a.m.)

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

22 JUDGE MONAGENG: The hearing shall proceed with Mr Steynberg giving a very
23 concise response to all that Mr Kaufman has said.

24 MR STEYNBERG: Thank you, your Honour. Firstly, I'm indebted to your Honour
25 for the indulgence.

1 If I may first address the issue raised by my learned friend relating to the review of
2 Article 54(3)(e) material connected -- in connection with other aspects of the DRC-3
3 situation.

4 I can inform the Court, your Honour, that the Prosecution has already commenced
5 the process of reviewing the entire DRC-3 collection of evidence for relevant material,
6 including potentially exculpatory material and Rule 77 material. So that is the entire
7 collection of DRC material, not just that collected for this case, and that would include
8 the Article 54(3)(e) material.

9 Having said that, your Honour, that material was not collected for the purposes of
10 this case and is not regarded by the Prosecution as a priority in that we do not feel
11 that it is likely to contain much relevant information. We obviously in the time
12 allotted to us to complete our evidence review for the purposes of disclosure need to
13 prioritise certain aspects, and the aspects we are prioritising are those aspects which
14 we deem to be the most relevant for the purposes of the confirmation hearing.
15 Should your Honour grant my learned friend's request to impose a short time limit to
16 review any particular bodies of evidence, that will of necessity involve pulling
17 resources from what the Prosecution perceives to be the priority areas of review
18 which will, in turn, impact upon the Prosecution's ability to complete its disclosures
19 review in the available time, and I will ask your Honour to kindly take that into
20 account in assessing my learned friend's request.

21 Secondly, your Honour, the request which Mr Kaufman has made to order the
22 Prosecution to translate all Rule 77 material disclosed, if I understand him correctly,
23 with particular reference to the intercepts which have already been disclosed, your
24 Honour, such an order would, in the Prosecution's submission, fly in the face of the
25 Statute and rules governing this Court and also the previous jurisprudence of this

1 Court.

2 However, to the extent that the Prosecution intends to translate such documents for
3 its own use, we will of course be glad to disclose such translations to the Defence and,
4 indeed, we have already informed my learned friend of that fact in an email dated
5 Thursday, 10 February, to which I believe he has already alluded.

6 I would also point out, your Honour, that the majority of the -- the vast majority of
7 the intercepted communications are, in fact, either in the Kinyarwanda language or in
8 French. Both languages, I believe the Suspect to be fluent in. So in light of the
9 above, the Prosecution's submission is that the Chamber should not depart from the
10 current practice of this Court and to impose additional obligations on the Prosecution
11 to translate material upon which it does not intend to rely at the confirmation
12 hearing.

13 I have already earlier alluded to the fact, your Honour, that we are reviewing
14 material which is currently -- which has currently been disclosed in terms of Rule 77,
15 or which will shortly be disclosed in terms of this Rule, and if we do intend to rely
16 upon any such material as incriminating evidence, that will of course be fully
17 translated and provided to the Defence .

18 Regarding my learned friend's submissions on the MetaData and the
19 explanatory -- proposed explanatory notes, the Prosecution has already made
20 submissions on that point and I do not intend to reply further on that issue.

21 Turning then, your Honour, to the question of the Court order and the Prosecution's
22 compliance with the Court order, the Prosecution, your Honour, is of the view that
23 we have fully and properly complied with the Court's order relating to the disclosure
24 evidence. I refer to the order, of course, dated 27 January 2011.

25 The Prosecution and the Defence have already exchanged certain correspondence in

1 this regard. I had regarded this matter as being finalised, in terms of the last
2 correspondence, but evidently I was mistaken. My submission, your Honour, is that
3 this is not an issue which can be ventilated adequately at an oral hearing and that if
4 my friend wishes to persist in this matter the Prosecution's request is that he makes
5 the appropriate filing in writing, to which the Prosecution would then like to reply in
6 writing.

7 Alternatively, if he has nothing further to add to his oral submissions today, then the
8 Prosecution would request the indulgence of the Court for an opportunity to reply in
9 writing to these submissions.

10 Without prejudice to that request, however, your Honour, I'd like to make certain
11 observations: The first is that my learned friend has complained that we have not
12 provided various items of information to which -- or which he requested in his letter
13 and which is -- and which request was contained in -- if the Court will bear with
14 me for a second. Paragraph 4 of the request. That was his Request for Disclosure.
15 The Prosecution's obligation, your Honour, is to disclose material which is in its
16 possession or under its control. The Prosecution made it very clear in the covering
17 letter which was delivered to the -- if the Court will bear with me, please, I beg your
18 pardon, your Honour -- which was delivered to the OPCD on behalf of Mr Kaufman
19 that certain items or certain pieces of information that he requested was not or is not
20 in the Prosecution's possession and that is the reason why those pieces of information
21 have not been disclosed. It is our submission that we are not obliged to disclose
22 information that we do not know.

23 Pertaining to the French intercepts, I draw the Court's attention to the fact that
24 the -- this Chamber partially granted the Defence's request. And my learned friend
25 seems to have overlooked the fact that the Prosecution was not ordered to

1 indiscriminately and completely disclose all information relating to all intercepts.
2 And perhaps I should just read for the information of all present what the Chamber's
3 order was. I quote from paragraph 1(a) on page 10 of the Chamber's order. In fact,
4 I will start at paragraph 1: "The Chamber hereby partially grants the request and
5 orders the Prosecution to disclose the following to the Defence, subject to restrictions
6 on disclosure pursuant to Rule 81 of the Rules and as long as the Prosecutor's
7 confidentiality obligations so allow."
8 Then the relevant paragraph is, "A, informations and documents which relate to the
9 "intercept conversations" referred to by the Defence in paragraph 4 of the request
10 which are essential for the preparation of an application challenging the legality of
11 the intercepted communications which --" and I emphasize "-- which form part of the
12 material supporting the Prosecutor's application for the warrant of arrest."
13 Now, I draw to the Chamber's attention, your Honour, the fact that the --
14 JUDGE MONAGENG: Excuse me, Mr Steynberg. You're going --
15 MR STEYNBERG: Too fast.
16 JUDGE MONAGENG: -- too fast. Thanks.
17 MR STEYNBERG: I apologise, your Honour. If the Court will bear with me, your
18 Honour.
19 THE INTERPRETER: Many thanks from the interpreters and from the court
20 reporters.
21 MR STEYNBERG: I draw to your Honour's attention the fact that the Prosecution
22 did not rely on any French intercepted communications in our application in terms of
23 Article 58. And in the Prosecution's submission, therefore, none of those intercepted
24 communications fall within the ambit of this order.
25 I could perhaps also inform the Court that these interceptions were only very recently

1 received. I speak from memory, but I believe it was on Friday, 21 January, that the
2 information was received from the French authorities.

3 So the Prosecution is obviously still reviewing this evidence and it will, of course, be
4 disclosed in due course - and, in fact, as soon as the Prosecution is able - but our
5 submission is that it is not covered by the present order.

6 Turning, your Honour, then to the information necessary for the interim release, my
7 learned friend complains of lack of disclosure and of redactions to the information
8 provided relating to the Prosecution's application in terms of Article 58.

9 On the issue of disclosure, the Prosecution's submission is that this is a field which
10 has been well plowed already. The Defence has made -- submitted a filing, the
11 Prosecution has responded and the Chamber has issued an order as to the scope of
12 the disclosure to which the Defence is entitled. It does not behove the Defence now
13 to raise this issue again without challenging the order, which the Chamber has
14 already handed down in the appropriate manner.

15 As to the redactions, as your Honour is aware, the redactions to the confidential
16 version of the arrest warrant application, which has been provided to the Defence,
17 were approved by the Chamber. In the Prosecution's submission, they are necessary
18 redactions and reasonable redactions. If my learned friend differs from the
19 Prosecution on this point, my submission again is that this should be done by way of
20 an appropriate filing, to which the Prosecution will respond in writing.

21 If your Honour will bear with me one second.

22 (Pause in proceedings)

23 Thank you, your Honour. Unless you have any further questions, those are the
24 Prosecution's submissions in reply to Mr Kaufman.

25 JUDGE MONAGENG: Thank you very much, Mr Steynberg. I don't have

1 anything for you. Mr Kaufman.

2 MR KAUFMAN: Thank you, your Honour. Of course, I do believe it is the
3 Defence's right to have the last word under the Statute and Rules.

4 With respect to the Prosecution's submissions on Article 54(3)(e), my learned friend
5 requests that this issue not be given priority, but I submit respectfully that the Statute
6 and the Rules state that jurisdictional arguments should be given priority.

7 In fact, they have to be raised, in my submission, before the confirmation hearing.

8 After all, it would be a total waste of this Court's time if the Court were to find that it
9 didn't have jurisdiction to entertain the case only after it had gone to the extent of
10 having a long and extensive confirmation hearing.

11 With respect to the translation of Rule 77 documents, even if this Chamber rejects my
12 request, I would refer your Honour to decision number 35 in the Abu Garda case,
13 paragraph 16, where the Office of the Prosecutor should be obliged to provide a
14 concise summary of the same items and an explanation, also, of the relevance of such
15 items for the preparation of the Defence .

16 If I'm not mistaken, the Prosecution objects to that as well today.

17 Now, my learned friend, Mr Steynberg, says that both languages, Kinyarwanda and
18 French, are understood by my client. Well, from my brief perusal of these thousands
19 of intercepted communications received from the German Security Services, they are
20 mostly in Kinyarwanda. That's a language I don't understand and I think it's a
21 language that the Pre-Trial Chamber doesn't understand either. If there is someone
22 who does understand the language, of course I apologise.

23 However, is my learned friend, Mr Steynberg, seriously suggesting that my client
24 should be able to go through all these thousand or more documents and ascertain
25 what is relevant for his Defence? He's not a lawyer; I am the lawyer. I am the

1 person who has to make that decision.

2 Mr Steynberg requests that I put my submission on the alleged non-compliance with
3 decision number 47 in writing. Well, I think I've made my submission sufficiently
4 clear today, and if the Pre-Trial Chamber is minded to hear further submissions on
5 the point I would ask that the Office of the Prosecutor submit something in writing.
6 I have no objection to that.

7 But when Mr Steynberg was talking about the inability to disclose what he doesn't
8 actually have in his possession, then I would also ask the Prosecution to be minded in
9 its response to the Chamber to state whether or not it does, in fact, possess a copy of
10 the judicial authorisation for those intercepts; because just as I'm an experienced
11 Prosecutor in the past, so is Mr Steynberg is an experienced Prosecutor, and he knows
12 full-well that the legal authorisation of intercepts is a basic requirement for their
13 admissibility in a court of law.

14 I have not seen such a judicial authorisation to date, and I would like the Prosecution
15 to state to this Court whether or not such authorisation exists or whether or not it
16 intends to submit such authorisation under a cloak of privilege.

17 Now, it's new to me this morning that the Prosecution has received intercepted
18 communications from the French authorities on 21 January. In my respectful
19 submission, this information should be made available immediately. It is of crucial
20 importance for Mr Mbarushimana to know what exactly the French authorities, who
21 are apparently listening in on him, heard. After all, he intends to make an
22 application for interim release.

23 If these French spies had heard him plotting his escape or plotting to interfere with
24 witnesses then, of course, that would be important information. I submit to this
25 Chamber there is no such information of that nature. And in order for to be able to

1 prove that to the Chamber, I need that information and I need it immediately.
2 Once again, Mr Steynberg asks that I raise issues in writing by way of filing; for
3 example, my comments on the extent of redactions to the Prosecution's application
4 under Article 58. Once again, I believe I've made these submissions sufficiently clear
5 in the context of this morning's hearing and I don't feel that there's any need to put
6 that in writing, once again, and I ask the Pre-Trial Chamber not to order me to do so.
7 For me to do so gives the Prosecution the right to reply, and they can reply within the
8 time limits under the regulations of up to 21 days. Once again, I state that I need
9 these redactions to be lifted in order to promote an application for interim release by
10 my client, and he does not wish to wait another 21 days for the Prosecution to reply at
11 its leisure in order to be able to file his application for interim release.

12 Your Honour, I thank you for your attention.

13 JUDGE MONAGENG: Thank you very much, Mr Kaufman.

14 I think this now brings our proceedings to an end; otherwise, we can go on and on.
15 But before we wind up, I also wish to observe that you have raised fresh, fresh issues
16 I think, in my very humble view, and -- but I cannot take any decision right now, as
17 you are aware. A decision will be issued by the Chamber in due course, that's
18 number 1.

19 The second issue is that -- I'm just wondering if I should right away request that both
20 of you make -- or this, the last part, in writing. As we are aware, we can always
21 shorten the time for the other party to respond, but I think we will come back to you
22 on some of these issues once a decision has been taken.

23 Now, before concluding, there's been a request for the ex parte hearing. We have a
24 problem. We cannot hold it now, because we need 30 minutes in between these
25 proceedings, as the Bemba trial will be resuming. We shall get in touch with you or

1 the court clerk will get in touch with you. We are trying to see if we can do it
2 tomorrow or the day after tomorrow, depending on the availability of courts. We
3 could do it in the small court, but I would rather we do it in a proper court where
4 there will be a transcript. You should get a response by close of business today.

5 MR STEYNBERG: Thank you, your Honour, that will be in order. The Prosecution
6 is available at your service to attend any hearing any time this week.

7 On the issue of the written submissions, perhaps I may be so bold as to suggest that
8 perhaps an appropriate course of action would be for your Honour to take some time
9 to confer with your Honour's colleagues and issue a decision on which particular
10 aspects the Chamber might require written submissions on.

11 JUDGE MONAGENG: Thank you very much. This is why I'm deferring the
12 matter. We will discuss it and come back to you.

13 Now, before concluding this hearing, I wish to remind the parties of their right to ask
14 the Chamber to hold a status conference as and when the need arises pursuant to
15 Rule 121(2)(b) of the Rules of Procedure and Evidence.

16 And in the absence of any other thing, this concludes the present hearing. And
17 I would like to thank the parties, participants, our interpreters and recorders, for
18 attending this hearing and, particularly, for assisting us to conduct a very appropriate
19 hearing. I thank all of you.

20 THE COURT USHER: All rise.

21 (The hearing ends at 11.47 a.m.)