

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 - ICC-01/05-01/13
7 Single Judge Cuno Tarfusser
8 First Appearance
9 Wednesday, 27 November 2013

10 (The hearing starts in open session at 3.02 p.m.)

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

13 SINGLE JUDGE TARFUSSER: I would invite now the courtroom officer
14 to call the case, please.

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

19 SINGLE JUDGE TARFUSSER: (Interpretation) My French is not really
20 strong enough to continue in that language. (In English) And therefore I
21 will switch to English, and I rely, obviously, on the trusted
22 interpreters to convey what I'm going to say and what we are here going
23 to say.

24 And this, the issue language is the first issue I will raise
25 because I think it is a fundamental precondition to the beginning, to the

1 continuing, to the beginning of this hearing. I assume that you,
2 Mr Bemba, and that you, Mr Kilolo, you speak and fully understand French.
3 I would ask you if this is the case.

4 Mr Bemba, please.

5 MR BEMBA: (Interpretation) Yes, I can confirm that, your Honour.

6 SINGLE JUDGE TARFUSSER: Thank you very much.

7 Mr Kilolo.

8 MR KILOLO: (Interpretation) Yes. I speak both languages, but
9 I'm more at ease in French. Thank you.

10 SINGLE JUDGE TARFUSSER: Thank you very much. Mr Babala, what
11 about you?

12 MR BABALA: (Interpretation) Your Honour, as far as I'm concerned,
13 I would prefer French to be used.

14 SINGLE JUDGE TARFUSSER: Thank you very much. So this settled,
15 we can continue, and I would turn to the Prosecutor to ask her to
16 introduce the team of the Prosecution.

17 MS BENSOUA: Thank you, Mr President, your Honour. The Office
18 of the Prosecutor is today represented by Fabricio Guariglia, the senior
19 Prosecution coordinator; Kweku Vanderpuye, senior trial lawyer;
20 Florence Darques-Lane, trial lawyer; Sylvie Vidinha, case manager; and I
21 am Fatou Bensouda, Prosecutor.

22 SINGLE JUDGE TARFUSSER: Thank you very much, Ms Bensouda, Ms
23 Prosecutor.

24 Now I would turn to the Defence of Mr Bemba to introduce herself
25 for the record.

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1 MS PIRARD: (Interpretation) Thank you, your Honour. I am
2 Magali Pirard from Belgium, and I am a member of the bar of Verviers.

3 SINGLE JUDGE TARFUSSER: Thank you very much.

4 The Defence of Mr Kilolo.

5 MR KILENDA: (Interpretation) Thank you, your Honour. On behalf
6 of Mr Kilolo, I wish to say that I am a member of the Brussels bar and I
7 am ensuring the Defence and interests of Mr Kilolo.

8 MR KEITA: (Interpretation) Good afternoon. I am
9 Xavier-Jean Keita, chief counsel, public office for Defence counsel, and
10 at Mr Kilolo's request I am attending this hearing on an exceptional
11 basis. Thank you.

12 SINGLE JUDGE TARFUSSER: Thank you very much.

13 Now the Defence of Mr Babala.

14 MR DUBUISSON: (Interpretation) I am Paul Djunga and a member of
15 the Paris bar.

16 SINGLE JUDGE TARFUSSER: Thank you.

17 The Registry.

18 MR DUBUISSON: (Interpretation) Thank you, your Honour. Here
19 representing the Registry is Ms Becerra, who is a Legal Officer and
20 coordinator, and myself, Marc Dubuisson, director of Court Services, and
21 representing Mr Von Hebel, the Registrar.

22 SINGLE JUDGE TARFUSSER: Thank you very much, Mr Dubuisson. I,
23 myself, I am Judge Cuno Tarfusser. I am a member of PTC II, and PTC has
24 appointed me -- and when I talk about PTC II, I talk about

25 Judge Trendafilova, Ekaterina Trendafilova and Judge Hans-Peter Kaul,

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1 together with me. I was appointed as Single Judge to act on behalf of
2 the Chamber. My team is represented by Legal Officer Federica Gioia and
3 by the intern Giulia Landi.

4 So before going on, I would just want to remind everybody to
5 speak slowly because of the interpretation. We need a correct
6 interpretation so it's better to slow down.

7 The object and the purpose of this hearing, of this First
8 Appearance hearing pursuant to Article 60(1) and Rule 121(1) of the Rome
9 Statute and of the Rules of Procedure and Evidence is, first of all, to
10 identify correctly the persons which are here detained as accused. Then
11 to determine whether they have been informed of the crimes which they are
12 alleged to have committed. Third, to determine whether the persons have
13 been informed of their rights, and finally, to set a date of the -- for
14 the confirmation of charges.

15 Therefore, now, I pass to the first point, meaning the
16 identification of the suspects, and I would last ask Mr Bemba, Mr Kilolo,
17 and Mr Babala, in this order, to completely identify themselves with the
18 name, place, and date of birth, and nationality, and any other thing they
19 reckon is useful for their identification.

20 Please, Mr Bemba.

21 MR BEMBA: (Interpretation) My name is Jean-Pierre Bemba Gombo. I
22 was born on 4 November 1962, and I am from the DRC, from the Congo.

23 SINGLE JUDGE TARFUSSER: Thank you very much, Mr Bemba.

24 Mr Kilolo.

25 MR KILOLO: (Interpretation) Thank you, your Honour. My name is
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1 Kilolo Musamba Aimé. I was born in Kinshasa on 1 January 1972, and I am
2 a Belgian citizen and not Congolese as was incorrectly mentioned in the
3 warrant of arrest. And I am a lawyer by profession. Thank you.

4 SINGLE JUDGE TARFUSSER: We will take care of this mistake we
5 made in the warrant of arrest.

6 Now, Mr Babala, please.

7 MR BABALA: (Microphone not activated)

8 THE INTERPRETER: Microphone, please.

9 MR BABALA: (Interpretation) I am Fidèle Babala Wandu. I was born
10 on 27 July 1956, of -- and I am a Congolese citizen and a member -- or,
11 rather, a citizen of the DRC and also a Member of Parliament.

12 SINGLE JUDGE TARFUSSER: Of the DRC.

13 MR BABALA: Yeah.

14 SINGLE JUDGE TARFUSSER: Thank you very much, Mr Babala.

15 Now I come to the determination whether the persons have been
16 informed of the charges, and I ask, first of all, the court officer to
17 read out the charges in English and in French, as English is the original
18 language because the Judge was addressed in English, so the first draft
19 of the charges was -- of the counts, better, was done in English and it
20 was the Judge, the Office of the Judge, who has translated it into
21 French. But I think if we read them in both it is -- both languages, it
22 is better.

23 So please, court officer, you have the floor.

24 THE COURT OFFICER: Thank you, Mr President.

25 For Mr Jean-Pierre Bemba Gombo.

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1 Count 1: Presenting evidence that the party knows is false or
2 forged under Article 70(1)(b), read with Article 25(3)(b), by ordering,
3 soliciting, or inducing his associates to present such evidence.

4 Count 2: Corruptly influencing witnesses under Article 70(1)(c),
5 read with Article 25(3)(b), by ordering, soliciting or inducing his
6 associates to pay money to and coach witnesses.

7 (Interpretation) Count 1: Presenting evidence that the party
8 knows is false or forged under Article 70(1)(b), read with
9 Article 25(3)(b), by ordering, soliciting, or inducing his associates to
10 present such evidence.

11 Count 2: Corruptly influencing witnesses under Article 70(1)(c)
12 of the Statue, read in conjunction with Article 25(3)(b), by ordering,
13 soliciting or inducing his associates to pay money to and coach
14 witnesses.

15 (In English) For Mr Aimé Kilolo Musamba.

16 Count 1: Presenting evidence that the party knows is false or
17 forged under Article 70(1)(b), read with Article 25(3)(a), by knowingly
18 presenting forged and false documents to the Court during trial
19 proceedings in the main case.

20 Count 2: Corruptly influencing witnesses under Article 70(1)(c),
21 read with Article 25(3)(a), by bribing and coaching witnesses to provide
22 false testimony in court in the main case.

23 (Interpretation) Count 1: Presenting evidence that the party
24 knows is false or forged under Article 70(1)(b), read with
25 Article 25(3)(a), by knowingly presenting forged and false documents to
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1 the Court during the trial proceedings in the main case.

2 Count 2: Corruptly influencing witnesses under Article 70(1)(c),
3 read with Article 25(3)(a), by bribing and coaching witnesses to provide
4 false testimony in court in the main case.

5 (In English) For Mr Fidèle Babala Wandu.

6 Count 1: Corruptly influencing witnesses under Article 71(1)(c),
7 read with Article 25(3)(a), by bribing witnesses to provide false
8 testimony in the main case.

9 Count 2: Presenting evidence that the party knows is false or
10 forged under Article 70(1)(b), read with Article 25(3)(c), by aiding,
11 abetting, or otherwise assisting in the crime of presenting evidence that
12 he knows is false or forged.

13 (Interpretation) Count 1: Corruptly influencing witnesses under
14 Article 70(1)(c), read with Article 25(3)(a), by bribing witnesses to
15 provide false testimony in the main case.

16 Count 2: Presenting evidence that the party knows is false or
17 forged under Article 70(1)(b), read with Article 25(3)(c), by aiding,
18 abetting, or otherwise assisting in the crime of presenting evidence that
19 he knows is false or forged.

20 (In English) Thank you, Mr President.

21 SINGLE JUDGE TARFUSSER: Thank you, courtroom officer. Maybe
22 when you've heard that the courtroom officer referred to "the case" or to
23 the "main case," obviously the main case is the case of The Prosecutor
24 against Jean-Pierre Bemba, but because it was not defined better in
25 the -- also in the counts provided by the Prosecutor, led the Judge to

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1 formulate some criticism in the paragraph 11 of the warrant in French and
2 in English. Just this for clarification.

3 The Single Judge notes that the warrant of arrest has been served
4 upon the persons -- upon their arrest and that each of them is assisted
5 by Duty Counsels, as we heard at the beginning of this hearing, appointed
6 by the Registrar. The Single Judge notes also that the three persons are
7 not yet in the possession of the documents underlying the arrest warrant,
8 and I refer in particular to the Prosecutor's application for warrant of
9 arrest and all its annexes.

10 That these documents are fundamental to be able to start to
11 prepare their Defence, I reckon it quite obvious. I think that the
12 principles of fair trial, right of the Defence, equality of arms,
13 et cetera, should also be vested with content and not just be empty
14 words. And I note also that to date -- and I mean not only to date but
15 also to hour, because at 5 to 3.00 of -- when I left my office, no
16 request for redactions of the application under Article 58 has been
17 submitted by the Prosecutor, and therefore the Single Judge orders the
18 reclassification of the Prosecutor's application for warrant of arrest
19 and of all its annexes as confidential.

20 I assume that all three suspects have now understood what they
21 are accused of, and I ask if they have at this stage any comment to make,
22 reminding them that this is not the right and the appropriate moment to
23 go into the merits of the case, of course.

24 So I ask again in the order, Mr Bemba, Mr Kilolo, Mr Babala, if
25 they have understood what they are accused of and if they have any
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1 comments to make to those -- to the charges -- to what they are accused
2 of.

3 Please, Mr Bemba.

4 MR BEMBA: (Interpretation) Your Honour, I do understand the
5 charges that have been attributed to me. I am very surprised because as
6 far as these documents are concerned, there have been discussions and
7 questions about these documents during the last -- during the testimony
8 of the last witness, but I believe the Prosecutor is well aware of that.
9 And we had an opportunity to challenge those documents and show the
10 veracity of those documents. I do understand what this is all about, and
11 we will do the same work and provide the necessary evidence to show that,
12 as far as I'm concerned, I have been acting in good faith regarding these
13 documents. I believe I know what this is all about.

14 So I can assure you, your Honour, I have understood. I think
15 it's unfortunate that this matter has gotten to this particular stage. I
16 thought that these issues could have been dealt with at trial. Regarding
17 corruption, that is a very strong word to my mind, but I do think that
18 this is the opportunity to indicate that I differ regarding this word,
19 which is far too strong a word. I am entirely willing to co-operate with
20 the Court and I will do all I can to ensure that the truth is heard. I
21 thank you.

22 SINGLE JUDGE TARFUSSER: Thank you, Mr Bemba.

23 I turn now to Mr Kilolo to ask for his comments, if he has
24 understood the charges, the accused, and if he has to make any comments
25 on them. The floor is yours.

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1 MR KILOLO: (Interpretation) Thank you, your Honour. I certainly
2 have understood the charges, and I can assure you I do understand what
3 the purpose of today's hearing is, particularly read in light of
4 *Article 60 paragraph 1. Allow me to state very briefly that I await with great
5 calm the so-called evidence from the Prosecution so that I will be in a
6 position to respond thereto in a very detailed manner with the assistance
7 of my legal counsel.

8 I do wish to say that as soon as notification of the warrant of
9 arrest occurred, and as soon as the charges were notified, as currently
10 defined, I immediately said to the Belgian investigating judge,
11 Judge Ancio (* phon), that I did not intend to take advantage of various
12 proceedings that were possible to me under Belgian law and that I wished
13 to make myself available to the Court and to the Prosecution immediately
14 to help with the demonstration of the truth.

15 Consequently, whereas I was deprived of my liberty on Saturday,
16 and I asked the Belgian judge to make all the necessary arrangements for
17 my transfer to the seat of the court. So, you see, my first obligation,
18 because I must point out that I am the co-lead counsel of Mr Bemba in the
19 case against Mr Bemba, and I do wish to state that I said to the Belgian
20 judge in the presence of investigators and members of the OTP who were
21 there in Brussels at the time, I said that as a counsel before the ICC,
22 it was my duty to make myself available to the court and to co-operate
23 with the investigation and the proceedings.

24 Finally, your Honour - and I will conclude on this particular
25 note - I was surprised to be deprived of my freedom given that I spent
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1 most of my time in The Hague within the very premises of the court where
2 I have my offices. I do think that the Prosecutor could have considered
3 a prior hearing. I think Bensouda -- Ms Bensouda does not doubt for a
4 moment that if she had called upon me in advance, I would have responded.
5 I would have attended. And I do deplore the way -- the strong-arm
6 tactics, the humiliating way in which use was made of an arrest warrant.
7 A mere summons to appear would have sufficed. I would have appeared. I
8 don't think anyone doubts that point.

9 So do I think it is really a pity that I was coming out of a
10 meeting, a meeting relating to an investigation that was underway -- an
11 investigation mission that was going to allow me to identify a number of
12 criminal law experts who were actual specialists in handwriting and
13 specialists in radio transmissions who were on duty when operational
14 messages were sent by the Bangui headquarters because that was the issue
15 at stake when we were talking about forged documents.

16 And I can reassure you, your Honour, that I do think it is a
17 shame that the Prosecution made use of these tactics and also, in this
18 way, harmed the work being done. The Defence of Mr Bemba in the main
19 case, which has practically come to an end, we were already beginning to
20 draft final submissions. As for the rest, I shall call upon my lawyers
21 to represent me.

22 SINGLE JUDGE TARFUSSER: I didn't interrupt you because I
23 understand your emotional moment. I can understand it. But if we
24 keep -- if we keep it with "the evidence" and not "the so-called
25 evidence" because, I mean, there is not only involved the Prosecutor but
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1 also the Judge had to make a findings on what you are calling "so-called
2 evidence." We know that you made yourself available to the court and we
3 are very grateful that you are here, and I think the Prosecution is very
4 happy if you are willing to help to demonstrate the truth, whatever the
5 truth is what -- that we will find out in the next -- in the very next
6 future.

7 About the summons to appear or not summons to appear or the way
8 this proceedings was triggered, also this is a decision which is not only
9 the Prosecutor's decision but also a judicial decision. Therefore, I
10 just -- I don't want to defend the Prosecution, but I just, as you
11 perfectly know, this is the procedure.

12 Now I turn to Mr Babala for the same reason, asking if you have
13 understood the -- what you're accused of and to make comments brief if --
14 as brief as possible.

15 MR BABALA: (Interpretation) Thank you, Mr President. I am very
16 surprised to find myself in this situation. Given the circumstances of
17 my arrest, I did not have the time to really familiarise myself prior to
18 the arrest of the charges. After my arrival here, I have had the time to
19 read the documents but I really do not understand very much. I will be
20 very happy to have the underlying documents for those charges, but I'd
21 like to underscore the fact that the circumstances of my arrest are not
22 consistent with the relevant provisions of the Rome Statute.

23 I am attached to my country, but I deplore the circumstances of
24 my arrest. At 2.00 a.m. in the morning with 30 policemen, my house was
25 broken into, and my children traumatised. So I am really wondering
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1 whether this is in compliance with the applicable procedures. That is
2 what I have to say for the time being. Thank you.

3 SINGLE JUDGE TARFUSSER: Thank you, Mr Babala. About the
4 first -- the first thing you -- you raised, that you have not very much
5 understood, I am sure that your lawyers will explain better to you what
6 this is about. And as you have heard just before, I lifted -- I
7 reclassified for the Defence teams all the documents on which the arrest
8 warrant is based, so you will in the next few days understand better and
9 familiarise with the accused.

10 As your arrest -- as far as your arrest is concerned, I think
11 this is -- your concern, you have to raise your concern with the
12 authorities of your state. We have just made a request of co-operation,
13 but we can't influence the way the co-operation is done. So this is
14 something which is out of our possibility to influence. So that's what I
15 have to say. Thank you very much.

16 And I will now pass to determine the -- the next step is to
17 determine whether you have been all informed of your rights on what I --
18 I have read through filings which was -- which were done by the Registry
19 in the last days, I have been informed that you are -- that you have been
20 informed of your rights, but to make sure I will read them out again. So
21 just not to leave out anything.

22 First of all, you will be presumed innocent until proven guilty
23 beyond a reasonable doubt at a trial, if a trial -- if we arrive at a
24 trial, and the burden of proof lays by the Prosecutor.

25 You have the right not to have imposed on you any reversal of
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1 burden -- of the burden of proof or any onus of rebuttal. You have the
2 right to receive and to have disclosed to you material which shows or
3 tends to show your innocence, mitigates your guilt, or which may affect
4 the credibility of Prosecution evidence in possession of the Prosecutor.

5 You have the right to object to the charges, to challenge the
6 evidence presented by the Prosecutor, and to present evidence yourself.
7 There will be no trial in case the charges are not confirmed. And this
8 is the proceeding we are beginning now.

9 You will be informed promptly and in detail of the nature of the
10 cause and the content of the charges, much more than you been now through
11 the arrest warrant, in the language which you fully understand and speak
12 which you told me all together is French.

13 You are entitled to waive your right to attend status conferences
14 convened for the purposes of disclosure of evidence, which are more
15 technical hearings. You will have adequate time and facilities for the
16 preparation of your defence. You will be for sure tried with undue
17 delay. You may make unsworn oral or written statements in your defence.
18 You also have the right to apply for interim release, and you have the
19 right to appeal decisions pursuant to Article 82 of the Statute.

20 I will now turn to the date of the confirmation hearing. The
21 Single Judge notes that Rule 121 of the Rules of Procedure and Evidence
22 makes it mandatory to the Chamber to set at this point the date of the
23 confirmation of charges. It notes also that Rule 165(3) allows for the
24 confirmation of charges relating to offences against the administration
25 of the court -- of justice to take place on the basis of written
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1 submissions without a public hearing.

2 It is the view of the Chamber, and I consulted on the issue with
3 my two colleagues, of course, that this - and I mean by this the written
4 confirmation - is the most appropriate course of action in this case.

5 This said, and obviously subject to changes which may become necessary in
6 light of developments relating to the surrender of other two persons for
7 whom the warrant of arrest was issued, the Single Judge, on behalf of the
8 Chamber sets the date of 18 of March 2014, for the filing of the document
9 containing the charges and the list of evidence by the Prosecutor.

10 Following this date, of course, according to the Statute, 30 days
11 later, which means on the 18 April, both the Prosecutor and the Defence
12 shall file their written submissions. The Prosecutor shall then have
13 until the 25 April 2014 to reply to the written submissions of the
14 Defence and finally the Defence shall have until 2 May 2014 to reply to
15 the submissions of the Prosecutor.

16 As you may see, when I said before that one of the rights is that
17 you will be tried with undue delay, I think this is something which goes
18 in this direction.

19 As regards the disclosure of the relevant evidence, I hereby
20 convene a Status Conference to be held on Wednesday, 4 December, at 1400
21 hours to discuss issues related thereto, I mean to the disclosure.

22 At this Status Conference, the Prosecutor is required to indicate
23 the status -- somehow the status of the ongoing investigations - I mean,
24 not the status in the content but the timing - and to provide an estimate
25 of the amount and the nature of documents she intends to rely on for the
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1 purpose of the confirmation, including in particular whether she wishes
2 to use witness statements and whether any redaction to the evidence will
3 be required. The Prosecutor is also required to indicate whether she
4 intends to rely on documents or information provided under conditions of
5 confidentiality, but I think lots of these does not apply in this case.

6 The Defence is invited to give to the Chamber, and to the extent
7 possible, obviously, at this stage -- at this early stage, analogous
8 information as those requested to the Prosecutor.

9 And the registry shall also attend this Status Conference and
10 provide relevant information as to all the technicalities of the
11 disclosure process.

12 Before we come to the end and I give the floor to both for
13 comments or requests, I also ask the Registrar with the end of this
14 hearing to lift all detention restrictions related to communications
15 among the three persons.

16 So as far as the Initial Appearance is concerned, I think I have
17 completed. But before closing, I ask the parties and participants if
18 they have any comment or concern or question to raise.

19 The floor is to the Prosecution.

20 MS BENSOUA: Thank you, Mr President. I will invite, with your
21 permission --

22 SINGLE JUDGE TARFUSSER: (Microphone not activated)

23 MS BENSOUA: -- Prosecution's coordinator.

24 SINGLE JUDGE TARFUSSER: Of course.

25 MR GUARIGLIA: Good afternoon, your Honours. Well, I start with
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1 one point in relation to the lifting of restrictions. We filed shortly
2 before walking into this courtroom a request to maintain, for a limited
3 period of time, the restrictions on communication between the accused
4 persons amongst themselves. We filed inter partes so the Defence has an
5 opportunity to respond to that submission, and only for a confined period
6 of time in order to enable us to conduct the pending interviews of -- of
7 the accused, or the suspects at this stage. So I just wanted to flag
8 that issue for your Honour's attention.

9 In relation to the date of the hearing, we take note of that and
10 we will make our best effort to make sure that we arrive prepared to that
11 date. I only note that it's not only an issue of the pending surrender
12 of the other persons, including the warrant of arrest to this Court, but
13 it's also an issue of the transmission of the CIST (* phon) material to
14 the Office of the Prosecutor. By this I mean both the material that is
15 currently within the possession of the registry and the material that is
16 still in possession of the national authorities and that will most likely
17 be subject to a scrutiny to ensure that the office does not receive any
18 privileged material erroneously.

19 Now this is a process that the Office of the Prosecutor does not
20 role and making may affect, undoubtedly, our ability to fully complete
21 the investigation before the confirmation process. So I'm just flagging
22 this issue in order to ensure that your Honour is aware of this factor
23 and that this factor may have an impact on the date of the hearing.

24 That's all I have to say. Thank you so much.

25 SINGLE JUDGE TARFUSSER: Oh, sorry. I was already responding.

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1 Please to the Defence. The Defence of Mr Bemba, please, you have the
2 floor.

3 MS PIRARD: (Interpretation) Thank you, Mr President. At the
4 present time I have no observations to make.

5 SINGLE JUDGE TARFUSSER: Thank you.

6 The Defence of Mr Kilolo.

7 MR KEITA: (Interpretation) Thank you, Mr President. Mr Kilolo's
8 Defence would like to first of all thank you for the respectful conduct
9 of this hearing. We thank all the parties. Also, the Defence has taken
10 due note of the dates that you have stipulated and we will do everything
11 possible to comply with those dates and not cause any delay, and we hope
12 that the Chamber will comply with the decision taken itself, particularly
13 regarding the lifting of detention restrictions. This is neither the
14 place nor the time, but the Defence will write to the Chamber as is done
15 in an adversarial process, and will raise questions about the timing of
16 this case, raise issues about the consequences on the main case, and also
17 talk about the involvement of the OTP because the OTP is a full fledged
18 party to the main case also. Thank you.

19 MR KILENDA: (Interpretation) Thank you, Mr President. There are
20 two of us here, but I would like to join my voice to that of
21 Maître Keita. You have defined the purpose of this hearing, and under
22 Article 61 of the Statute, I would like to say the following: You have
23 listened to the statement made by my client. He was fully occupied in
24 his activities as a lawyer when he was shamefully accosted at the airport
25 last Saturday.

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1 If the Office of the Prosecutor had taken the time to interview
2 him, I do not think that an arrest warrant would have been issued against
3 him. I know Mr Kilolo for a long time now and he has a well-known firm,
4 a well-known and reputable firm in Belgium, so he could not have fled
5 from justice. In fact, it was after the advice that I gave him that he
6 accepted to make himself immediately available to the Court so that the
7 truth should come out.

8 It is amongst these concerns, Mr President, that I would like to
9 notify you that in the coming hours or days under Article 61 of the
10 Statute I would like to file a formal and sufficiently justified
11 application for the provisional release of Mr Kilolo. We have also
12 followed the statement of the Prosecutor relating to the restrictions
13 which they hope to maintain.

14 Mr Kilolo is a family head who has had no contact with his
15 children for some days now, and we do not think that these restrictions
16 between him, his wife, and his children should be continued to be
17 maintained.

18 As for the rest, we will file to the Chamber in due time to
19 necessary and relevant applications. Thank you.

20 SINGLE JUDGE TARFUSSER: Thank you very much.

21 Now the floor is to the Defence of Mr Babala.

22 MR DJUNGA: (Interpretation) Thank you, Mr President. In the
23 interest of Mr Babala, we notified you that we will file a formal
24 application very soon, and this application will be centred on the
25 substantive and procedural irregularities. Of course, Mr President, we

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1 will raise the issue of the circumstances of the arrest of Mr Babala. I
2 have followed what you said, that this is the responsibility of the DRC,
3 but I would like to point out, Mr President, that the circumstances of
4 his arrest may make the proceedings before your court defective. And if
5 the DRC, which is a state party to the Rome Statute, does not respect or
6 comply with the provisions enforce, it is your court, Mr President, that
7 will end up being tarnished. We believe this is relevant and we are
8 going to speak to that.

9 As Mr Babala stated, Mr President, he was arrested at his home -
10 and I repeat, at his home - at 2.00 am in the morning. That is outside
11 of the usual hours provided for by the applicable rules and regulations
12 governing such arrests.

13 So, Mr President, we are going to file a sufficiently justified
14 application for that purpose. Our application will also raise the issue
15 of the presumption of innocence which is a fundamental principle. And I
16 would like to inform the Court that the national television channel of
17 the Democratic Republic of the Congo has been broadcasting until today
18 images of video on the arrest of Mr Babala, his transfer, and he can be
19 seen in a small cell. He is badly dressed and in humiliating
20 circumstances, and he was handcuffed right up to the time he boarded the
21 plane.

22 And I have two applications to make, Mr President. First of all
23 in the interest of the dignity of Mr Babala and the presumption of
24 innocence, your court should request the DRC to stop immediately the
25 broadcast of these pictures. We also wish that your court should demand
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1 that the DRC hand over the videotapes of those images.

2 So very briefly, Mr President, I would like to say that the case
3 of Mr Babala today brings to light the conflict between the Rome Statute
4 and the constitutions of certain countries. The Rome Statute has a
5 priority over laws but not over the constitution, so I would have to say
6 that the constitution of the Democratic Republic of the Congo, which is
7 the supreme law of the country, has been violated. He does not benefit
8 from immunity in this court, but the constitution of the Republic of
9 Congo guarantees a minimum of rights to Members of Parliament,
10 particularly during parliamentary sessions, and this was not respected,
11 and this is a fundamental issue that has to be studied side by side with
12 the provisions of the Rome Statute and the constitutions of the states.

13 We would also like to announce to your court that very shortly we
14 are going to file an application for the provisional release of
15 Mr Babala. That will be done very, very soon.

16 Mr President, you know that a judicial error is always a
17 masterwork of coherence. So we believe that in compliance with this
18 statute drawn up by the state parties, you are going to avoid that
19 certain things that tarnish the image of this court should continue to
20 repeat themselves. Thank you.

21 MR KILENDA: (Interpretation) Thank you, Mr President.

22 SINGLE JUDGE TARFUSSER: Excuse me, we do not start now to have
23 reply -- an exception. Okay. Take it as an exception.

24 MR KILENDA: (Interpretation) Thank you, Mr President. I forgot
25 one point. As you are aware and you have even pointed out, Mr Kilolo is

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1 lead counsel for Mr Jean-Pierre Bemba. Amongst the materials seized,
2 there is his iPad and his Blackberry which contain the entire defence
3 strategy or theory in that case. We believe that you have the powers to
4 order that those effects be handed back and we will file a reasoned
5 application for that request. Thank you.

6 SINGLE JUDGE TARFUSSER: I start with the Prosecution.

7 I heard now that you filed a restriction to communicate, I think,
8 among the persons. I can say I haven't seen it before coming here. I
9 assume that the Defence, and I talk on behalf of them, is obviously
10 against this, their comments are -- otherwise I have to file a request to
11 the Defence to take action in another filing on your request. But to
12 shorten up the time, I -- I assume that you are against the request of
13 the Prosecution, and the Judge will file a decision if not this evening,
14 tomorrow morning on that. Okay. So tomorrow in the course of the
15 morning.

16 About the date of the confirmation, I know that the date is,
17 according to what happens in -- what happened in the past, quite a short
18 date, but we have to be aware that this is a different type of crime
19 which must be treated also in a bit different way, and I will be very,
20 very, very strict in handling with the timing. I can also say that I
21 thought about the other two suspects, and the timing of their possible
22 surrender to the court. If this timing is not -- does not comply with --
23 the timing of the surrender does not comply with the timing of the dates
24 I set, it could also be that one separates the cases and makes up two
25 trials on the same issue in order just to speed up this trial, but we'll
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1 see what happens in the future. I can't say it now.

2 So the other, the third issue the Prosecution raised is the
3 transmission of the seized material, which brings us back to the date of
4 the confirmation. As far as the seized material are in the possession of
5 the registry, there is no problem because it's in the possession of the
6 court, and the Judge will - and the Chamber - will take care of it in
7 order to separate, and this is -- I say this also to the Defence, what
8 has also done until now, to separate in a very, very strict manner all
9 the documents -- the documents -- and in particular the documents
10 pertaining to the lawyers in their function of lawyers from those which
11 are related to the case.

12 I mean, we have -- I can assure you that we have done it until
13 now, all the privileged documents, we made really sure that no privileged
14 document came in the possession of the Prosecution, and we will do the
15 same -- exactly the same also with the seized materials. We will -- the
16 Prosecution will have only those things which pertain very rigidly to the
17 case and not to other things, nor private, nor other things the
18 Prosecution will see, and this I will take very strictly care of it as we
19 have done until now.

20 So it might not be that you will -- that we hand out immediately
21 or very soon the materials, but these material are in the possession of
22 the Prosecution and not -- of the Court, meaning by the Court the
23 registry, under the supervision of the Chamber and not the Prosecution.

24 As far as the material concerns which have been seized with the
25 two suspects which are not yet -- have not yet been surrendered, of

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1 course they will be handed out by the state when they surrender it. So
2 this goes together with the destiny, we'll say, of the other two. But
3 we'll see. We can't at this stage predict what's going to happen, but I
4 just want to assure that this is all material which the Chamber is very
5 much aware of it and handles it very carefully.

6 The Defence counsel have predicted the filing of various
7 requests, meaning applications for irregularities in the arrest or
8 provisional release or whatever. I can just can assure that also in this
9 case Chamber will very, very carefully assess the reason behind and
10 decide as good as possible, of course. So I just want to assure that the
11 balance is held. Okay.

12 I repeat about what the Congo -- the republic democratic -- the
13 authorities of the Congo is doing, it's a bit outside of what the ICC and
14 the -- the judiciary at the ICC can deal with. But if we'll have a
15 filing in this direction, we will try to deal also with it.

16 I hope I have touched upon all the issues that more or less have
17 been raised, but we'll have the first opportunity next Wednesday in the
18 first Status Conference. And obviously, I am -- I am here to listen to
19 you all, of course, whenever -- whenever you deem it appropriate or in
20 writing by responding to applications or orally through
21 Status Conferences.

22 The only person I have not given the floor is the registry.

23 Mr Dubuisson, have you something to say, some question to raise?

24 MR DUBUISSON: (Interpretation) I seek only one clarification,
25 Mr President, with your leave. The decision was taken during this
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1 hearing to suspend all the measures relating to communication between the
2 suspects, but you later on said that there will be another decision
3 tomorrow morning. Does this mean that there is a suspensive effect on
4 your previous decision and that we should await a decision tomorrow
5 morning.

6 SINGLE JUDGE TARFUSSER: That is exactly -- that is correct,
7 thank you. I think wait a few other hours is not a big issue neither for
8 the registry nor for the detention centre and I think also not for the
9 persons who are detained or affected by this measure.

10 So if there is nothing else, do you -- have this -- the hand up
11 in order to -- no. If there is no other question, other comments, I
12 declare this hearing closed and we'll see each other on Wednesday at
13 2.00. Thank you very much.

14 (The hearing ends in open session at 4.03 p.m.)

15 CORRECTION REPORT

16 The Court Interpretation and Translation Section has made the following correction
17 in the transcript:

18 *Page 10 line 4

19 "Article 70(1)(b)" is corrected by "Article 60 paragraph 1".