

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo,
5 Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
6 Fidèle Babala Wandu, and Narcisse Arido
7 ICC-01/05-01/13
8 Single Judge Cuno Tarfusser
9 First Appearance
10 Thursday, December 5 2013
11 (The hearing starts in open session at 10.02 a.m.)

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

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

17 Please, Courtroom Officer, could you call the case. Thank you.

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

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

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

3 SINGLE JUDGE TARFUSSER: You fully understand and speak.

4 MR MANGENDA: (Interpretation) Indeed.

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

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

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

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

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

19 SINGLE JUDGE TARFUSSER: Now I turn to the Registry.

20 MR DUBUISSON: (Interpretation) Thank you, your Honour. Today
21 representing the Registry is Vera Chi Wang who is a legal officer within
22 the Office of the Director of Court Services. I am Marc Dubuisson,
23 representing the Registrar.

24 SINGLE JUDGE TARFUSSER: (Interpretation) Mr Dubuisson, thank you
25 very much.

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

6 I just remind everyone to speak slowly because of the translation
7 issue.

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

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

16 Please, Mr Mangenda.

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

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

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

1 directly redacted -- drafted in French.

2 So please, Courtroom Officer, you have the floor.

3 THE COURT OFFICER: Thank you, your Honour.

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

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

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

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

17 SINGLE JUDGE TARFUSSER: Thank you very much, Courtroom Officer.

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

24 You have the floor.

25 MR MANGENDA: (Interpretation) I just wished to say that I have

1 understood the counts, and indeed I do not acknowledge any of the counts
2 that have been lodged against me.

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

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

25 Have you understood, Mr Mangenda, all your rights? Having been

1 informed, now completely informed, have you understood all your rights?

2 MR MANGENDA: (Interpretation) I have understood all the rights.

3 SINGLE JUDGE TARFUSSER: Thank you very much.

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

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

11 In the view of Chamber, and I had discussions on this issue with
12 my two colleagues of the Chamber, this - and I mean the written
13 confirmation - is in this case the most appropriate course of action. At
14 this stage, and obviously subject to changes which may become necessary,
15 in particular in light of the developments relating to the surrender of
16 the other -- of the last of the five suspects, the Chamber sets the date
17 of 18th March 2014 for the filing of the document contained in the
18 charges and the list of evidence by the Prosecutor. Thirty days later,
19 on the 18th of April, 2014, both the Prosecutor and the Defence shall
20 file their written submissions. The Prosecutor shall then have until the
21 25th of April 2014 to reply to the written submissions of the Defence,
22 and the Defence finally shall have until the 2nd of May to reply to the
23 submissions of the Prosecutor.

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

1 Monsieur Flamme, I see that you're -- you have the floor.

2 MR FLAMME: (Interpretation) Thank you, your Honour.

3 I have several comments that relate to several matters and a few
4 questions as well, pre-trial issues to deal with regarding the topics you
5 just mentioned; for example, the application of Rule 162 regarding the
6 possibility of written proceedings.

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

17 And generally speaking, the principle is one of public hearings.
18 And in actual fact, the Article 162(2) -- no, rather, the provision
19 providing for a written -- for written proceedings does require specific
20 information to be provided; namely, whether this is in the interests of
21 justice and on what grounds written proceedings are preferable. I agree
22 with you and I do understand the position you have taken.

23 Given the circumstances, you are in favour of the matter being
24 dealt with on a speedy basis, but there are several issues to deal with
25 here. And there have been a number of seizures in Holland and various

1 materials are being held by the Dutch authorities. A number of items
2 have been seized from -- by my client's -- from my client's residence and
3 his office. The entire contents, in actual fact, of the office have been
4 seized and time will be needed. The Dutch authorities will have to look
5 at whether the seized items are confidential and whether everything needs
6 to be deemed confidential and whether various seized items are out of
7 scope; in other words, irrelevant to the charges.

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

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

19 MR GUARIGLIA: Thank you, Your honours. I can be very brief. It
20 seems to me that there are two different things here: One is the
21 modalities of the confirmation process and the other thing is the timing
22 of the confirmation process. It seems to me that my learned friend is
23 mixing both aspects of it.

24 On the first, on the issue of the modalities of the confirmation
25 process, we are perfectly fine with the course of action suggested by

1 Your honours and the use of written submissions. We don't see this as,
2 in any way, prejudicing the rights of the suspects. We are absolutely
3 sure that the Chamber will be extremely carefully monitoring and
4 scrutinising the submissions made by the parties.

5 In relation to that, this is a procedure foreseen in the Rules
6 and it will be extraordinary if the drafters of the Rules had envisioned
7 a procedure that is inconsistent with the rights of accused persons. We
8 think it's perfectly appropriate in this case to expedite the process and
9 to ensure that there is, if the Prosecution has brought a case that is
10 solid - and we are pretty sure that we have and we are very aware of our
11 responsibilities in this case, and in particular the fact that we are
12 dealing with serious matters, matters of corruption of witnesses and
13 improper use of Defence tactics - if the Prosecution has brought a
14 serious case, this case will be heard in a public theatre. So there will
15 be a public hearing where the accused will be -- have ample opportunity
16 to present their defence. So in a manner, this is consistent with the
17 position that the confirmation process is a filter and not a mini trial.
18 So that is the first thing.

19 The second thing is -- the second issue raised by my learned
20 friend has to do with the amount of seized materials and the impact that
21 this can have on the confirmation process. This is no longer a matter
22 related to the modality of the confirmation process but, at most, with
23 the timing of the confirmation process and whether the date set by
24 your Honour is a date that can be realistically achieved.

25 We have expressed our concerns and we know that there are a

1 number of factors that may conspire against this. We will work very hard
2 to ensure that. But this has nothing to do in the end with whether --
3 with the question of whether the confirmation process must be heard in
4 writing or not. And I think that at the end of the day, the assumption
5 is we will all try very hard to reach the date set by your Honour. If
6 there are external factors that conspire against it, we will have to
7 bring the matter back to your attention. That could be done by my
8 learned friend or by us. And your Honour ultimately will decide. But
9 this is a separate matter. And that's all that we have to do for the
10 time being -- we have to say for the time being.

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

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

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

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

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

25 As far as the seizures and the items held by the Dutch

1 authorities is concerned, yesterday you may know we had the first Status
2 Conference in this case in the presence of the other three suspects. We
3 couldn't -- we could not -- we were not able to join it in one Status
4 Conference today because the timing was not so good, so we had to hold
5 the Status Conference yesterday and the first Initial Appearance today.

6 But on the procedure, on the disclosure, which obviously implies
7 also to the items seized, the Single Judge has ruled yesterday, and I
8 will now instead of holding another conference, rule on -- or read out
9 the ruling of yesterday in the Status Conference which might address also
10 your concerns as far as the items seized by Mr Mangenda's home and the
11 office is concerned; in particular, the confidentiality, the irrelevance
12 of some of the items which I'm sure have been seized. So I will just
13 read them out and maybe then you take the floor again if you think there
14 is a need to intervene on that.

15 In the case ICC-01/05-01/13, the Prosecution against
16 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda
17 Kabongo, Fidèle Babala Wandu, and Narcisse Arido, the Single Judge heard
18 the submissions of the parties during the Status Conference held
19 yesterday, 4th December, in the presence of the Prosecutor and the three
20 suspects and the Defence of the three suspects;

21 Noting the general principle and rules governing the disclosure
22 of evidence before the confirmation hearing as set forth in particular in
23 Articles 61(3) and 67 of the Statute, Rules 76 to 83, and 121 of the
24 Rules of Procedure and Evidence, and Regulation 26 of the Regulations of
25 Court, as repeatedly stated and clarified in the case law of Pre-Trial

1 Chamber II;

2 Noting in particular that the dead-line of no later than 30 and
3 15 days before the start of the confirmation hearing respectively set
4 forth for the Prosecutor and the Defence to comply with their disclosure
5 obligations are only indicative of the last available point in time
6 beyond which no evidence which has not been disclosed can be relied upon
7 for the purpose of the confirmation hearing;

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

13 Considering that for the same purpose of the expeditiousness of
14 the proceedings it is necessary to avoid that the need to order and
15 implement protective measures, if any, result in delaying the disclosure
16 process;

17 Considering that in light of the nature of the case, it is
18 expected that the need for protective measures, if any, be very limited
19 in scope;

20 Considering that accordingly there is a need to establish a
21 calendar for the disclosure of evidence between the parties;

22 For these reasons, decides that the disclosure between the
23 parties will take place through the Registry and that all and any
24 evidence disclosed for the purpose of the confirmation hearing shall be
25 communicated to the Chamber;

1 Decides that as regards evidence collected until 23rd November
2 2013 on which she intends to rely for the purpose of the confirmation
3 hearing, no later than Friday, 20 December 2013, the Prosecutor shall
4 disclose it to the Defence or submit to the Chamber requests for
5 redactions or other protective measures;

6 As regards all evidence collected between 23rd November 2013 and
7 31st January 2014 on which the Prosecutor intends to rely for the purpose
8 of the confirmation hearing, no later than Friday, 31st January 2014, the
9 Prosecutor shall disclose it to the Defence or submit to the Chamber
10 requests for redactions or other protective measures;

11 Orders the Prosecutor to disclose to the Defence all evidence for
12 which redactions were sought no later than three days following the
13 notification of the Chamber's decision on the request for redactions;

14 Orders the Prosecutor to agree with the Defence on a location and
15 time to permit inspection of material relevant under Rule 77, if any;

16 Decides that the reports prepared by the independent counsel in
17 the case shall be shortly reclassified and communicated to the Defence,
18 subject to the appropriate protective measures;

19 Decides that the material seized upon the rest of the suspects is
20 made available by the relevant national authorities shall remain in the
21 custody of the Registry;

22 Decides that an independent counsel will be appointed in due
23 course with a view to determine whether any of the seized material is
24 subject to privilege or otherwise irrelevant;

25 Orders the Registrar to file the latest applicable e-court

1 protocol no later than Friday, 6th December 2013.

2 And here I have decided also on the exceptional restrictions of
3 contacts which I, in the case of Mr Mangenda, decide are expiring at the
4 end of the 72 hours determined by the arrest warrant. So any restriction
5 expires after the 72 hours.

6 Now, these decisions, what was decided yesterday, applies
7 obviously also to the case of Mr Mangenda. But I will give you -- I give
8 you, obviously, the opportunity to discuss these, if you have never heard
9 them before. If you don't know, if you are not aware of them, to discuss
10 them now.

11 But I just want to assure you that as far as the seized materials
12 are concerned, in this case from the beginning, from the very beginning
13 when the Chamber was involved in this case and the Chamber is involved in
14 the case from the very -- at the very early stage, not only the
15 Prosecutor but even more the Chamber was very well aware of the delicate
16 proceeding and of course of the privileged materials we will encounter
17 during the whole phase. So this was all treated in a proper way,
18 appointing independent counsel in order to separate what is privileged
19 from what is -- what is privileged and relevant and therefore not seen by
20 the Prosecutor from that what is relevant to the case in a very
21 conservative matter. So this will continue, of course, and we are aware
22 of this delicate issue.

23 And I give you the floor to comment on this if needed.

24 MR FLAMME: (Interpretation) Thank you very much, your Honour.

25 Indeed. There are certain things to be said about this because, well,

1 here we're dealing with a case which is extremely sensitive as indeed you
2 said. The seizure of all the contents of a lawyer's office is something
3 which is excessively sensitive and indeed explosive, for all the more
4 bearing in mind that here we're talking about an office which is dealing
5 with one case, and this case is still pending. And this is dynamite
6 basically.

7 My first question, obviously -- well, I think that you've already
8 imagined this. I don't know this person in the form of the independent
9 counsel. I haven't seen it in any text. That is one of the lacuna of
10 the text. There's no -- of the Court. There is no bar of the Court. As
11 the rules of the United Nations would be with regards to the role of
12 counsel, you have to have an independent bar, independent of the Court in
13 order precisely to deal with problems, for example, of this nature.

14 And on the one hand I note that we have items that have already
15 been seized. We don't know what they are, apart from a very concerning
16 mention that has been made of them. I'll mention that in another issue.
17 But seizures, there has been recordings made of telephone conversations.
18 That's one thing I know. Intercepts. There is also -- with regards to
19 what's happening within the International Criminal Court, there are items
20 that have been seized, and this independent counsel, who I don't know, is
21 meant to be responsible for those.

22 And on the other hand, probably most of the data or items that
23 have been seized last Saturday in the Office of the Defence of Mr Bemba,
24 this seizure is being dealt with by the Dutch authorities - the Dutch
25 Prosecutor and the Dutch Commissioner and the Chairman of the Bar of The

1 Hague.

2 Now, according to our tradition of bars, we all trust the
3 Chairman of the Bar. That's the way it is. That person is the arbiter.
4 That is the independent authority who decides on matters of
5 confidentiality. And I would suggest to the Court to join these two
6 issues and to understand our professional rules and the traditions in the
7 systems of democratic law according to which it is a requirement that
8 this operation be done jointly between the party which is prosecuting,
9 the independent party responsible for order, and the Defence which also
10 has to be present in order to supervise everything and to provide
11 commentary or observations concerning each item.

12 And I would really stress each individual item has to be seen.
13 It has to be viewed, controlled, and it has to go through these three
14 filters. And ultimately it will be the Chairman of the Bar of The Hague
15 who will ultimately decide in an independent way on what is disclosed or
16 not.

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

21 SINGLE JUDGE TARFUSSER: Thank you very much.

22 The floor goes to the Prosecutor.

23 MR GUARIGLIA: Well, your Honour, it seems to me that at this
24 stage it may be more productive to have Mr Flamme articulate in whatever
25 position and petition he wants to make to the Court in a comprehensive

1 and clear written submission so we can examine it and respond with some
2 clear suggestions. It seems to me that there is a lot of
3 hypotheticals here.

4 The Single Judge was very zealous in following a procedure that
5 offered adequate safeguards. The process of search and seizure was
6 carried out in conformity with Dutch procedures, properly monitored by
7 the head of the bar. The suspect was there represented by counsel. And
8 your Honour will continue along this course of action.

9 The Defence can, of course, make propositions to the Single
10 Judge. We will respond to them after adequate examining. It seems to me
11 that this is going well beyond the scope of an Initial Appearance. I
12 would say it doesn't make more sense to discuss these things right now.

13 SINGLE JUDGE TARFUSSER: I must say that I agree with the
14 Prosecutor. This is then material to be discussed in a later stage. I
15 can just assure you at this point in time that all materials, seized
16 materials, are closed and sealed and are in the possession of the
17 Registry. So that's it. Everybody is -- everything is safeguarded to
18 this moment and then we will find the procedure -- correct procedure in
19 order to open these seized items and try to find out only those materials
20 which are relevant to the case and in a safe way.

21 MR VANDERPUYE: Mr President, may I intervene for one moment,
22 please.

23 SINGLE JUDGE TARFUSSER: Yes, please.

24 MR VANDERPUYE: I'm very sorry.

25 SINGLE JUDGE TARFUSSER: Yes, please.

1 MR VANDERPUYE: There is one matter I just wanted to clarify.

2 Yesterday, you may recall that I had mentioned or rather
3 requested that the Chamber's decision of, I believe it's 27 November,
4 ICC-01/05-01/13-20, a confidential decision concerning surveillance
5 measures and monitoring of contacts in the detention facility, apply to
6 Mr Mangenda.

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

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

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

24 MR VANDERPUYE: Not entirely.

25 SINGLE JUDGE TARFUSSER: Not entirely.

1 MR VANDERPUYE: And I apologise for this.

2 What you ordered in the decision specifically is that for the
3 Registrar to implement adequate surveillance measures, to ensure the
4 contacts between the suspects during their interaction was adequately
5 monitored -- actively monitored, rather, and also that the Registrar
6 ensure that the contacts between each of the parties and third parties
7 during visits and so on were monitored and surveilled. I don't know if
8 that is the ordinary course or scope of the conduct of the Registrar, but
9 I'm wondering whether or not your decision yesterday and today undoes
10 this decision.

11 SINGLE JUDGE TARFUSSER: This is correct. My decision of
12 yesterday undoes my own decision. Not, obviously, the ordinary control
13 of the Registrar in the detention centre of the three. Okay. Now we're
14 clear? Okay, good.

15 And the last question I have, this goes to the Registrar and to
16 the Defence, but I don't know. The application, the 58 application of
17 the Prosecutor and the underlying documents, the request of the warrant
18 of arrest, which I reclassified, are they in the possession only of the
19 three -- the Defence of the three suspects of yesterday or also in the --
20 now available to the Defence and to Mr Mangenda -- the Defence of
21 Mr Mangenda and to Mr Mangenda? This is the question. Because I don't
22 know if the -- how internally this proceeding went.

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

24 So since this morning, normally all the documents have been
25 transmitted to the Defence, including indeed this application of the

1 Office of the Prosecutor, because -- well, so there be no discrimination
2 between, on the one hand, the suspect with regards to the three others.
3 So all communication took place this morning. Maître Flamme received it
4 this morning.

5 Now, with regards to the detention aspects, indeed we have
6 monitoring, passive monitoring, in order to take the precise terms of the
7 regulations of the Registry which does apply for communications which are
8 not under -- subject to client-counsel privilege.

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

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

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

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

1 Please, Mr Flamme.

2 MR FLAMME: (Interpretation) No, your Honour. I do have things
3 that are very important to say, please. I'd like to apologise. I will
4 be very brief. But it is necessary, however, for me to be able to speak,
5 and I will certainly do so as the Prosecutor asks.

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

10 Now, the Court has competence, has jurisdiction, that is certain.
11 The Court has jurisdiction for this. But I do, however, right from the
12 very outset, want to stress the rules that are concerned, 162(4) and
13 162(2)(e), which do say that the Court can unseize itself of a case in
14 favour of the Dutch authorities.

15 And why am I saying this? Well, because, Mr President, I would
16 say that there are a certain number of things that you don't know yet, I
17 think.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 SINGLE JUDGE TARFUSSER: Well, I take your point. I still think
15 that these are very, very serious things, what you said now. I think
16 maybe you are also not aware of a lot of things because you started to
17 say maybe certain things I don't know, but maybe it's also to you. So I
18 think we should just wait for the proceedings ongoing, and then in the
19 proceeding you can raise all the matters you will -- you think you have
20 to raise, and they will be decided obviously with a -- with very much in
21 detail and conscientiously.

22 So now I close the hearing. Please be free to raise all or
23 submit also submissions you think you have to make in the future. The
24 hearing is now, therefore, closed. Thank you.

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