

Initial Appearance

(Open Session)

ICC-01/09-01/15

1 International Criminal Court
2 Pre-Trial Chamber A
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. Paul Gicheru and Philip Kipkoech
5 Bett - ICC-01/09-01/15
6 Single Judge Reine Adélaïde Sophie Alapini-Gansou
7 Initial Appearance - Courtroom 1
8 Friday, 6 November 2020
9 (The hearing starts in open session at 4.00 p.m.)
10 THE COURT OFFICER: [16:00:55] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 THE INTERPRETER: [16:01:36] Microphone, please, Judge.
14 JUDGE ALAPINI-GANSOU: [16:01:56](Interpretation) Thank you very much.
15 Madam courtroom officer, could you please call the case, the reasons for our presence
16 here today.
17 THE COURT OFFICER: [16:02:19] Good afternoon, your Honour.
18 Situation in the Republic of Kenya, in the case of The Prosecutor versus Paul Gicheru
19 and Philip Kipkoech Bett, case reference ICC-01/09-01/15.
20 And for the record, we are in open session.
21 JUDGE ALAPINI-GANSOU: [16:02:41](Interpretation) Thank you very much,
22 courtroom officer.
23 Let me introduce myself, I am Judge Reine Adélaïde Sophie Alapini-Gansou. And
24 by decision of 2 November 2020, the president of the pretrial section composed a
25 Pre-Trial Chamber comprising a single judge from the pretrial section to perform

1 the duties of the Pre-Trial Chamber in this case, this case that brings us together today
2 pursuant to Rule 165(2) of the Rules of Procedure and Evidence, as modified on
3 10 February 2016, and Regulation 66*bis* of the Regulations of the Court. And I was
4 therefore appointed for that purpose and am assisted by Mr Zehnder Bruno, member
5 of the team of jurists of the Pre-Trial Chamber, and Annabel Gary.

6 So I would like to welcome you all and I believe that we shall attain the objectives of
7 this initial appearance hearing.

8 First of all, I would like to make sure that Mr Gicheru, Mr Gicheru, that you
9 understand and speak English perfectly and that you are able to follow this hearing
10 by means of the English interpretation.

11 MR GICHERU: [16:04:46] Thank you lady judge, I speak the English language.

12 JUDGE ALAPINI-GANSOU: [16:04:58](Interpretation) So you can indeed follow
13 the interpretation that is being provided to you, you can follow the hearing, as such?

14 MR GICHERU: [16:05:06] Yes, I can.

15 JUDGE ALAPINI-GANSOU: [16:05:10](Interpretation) Thank you very much,
16 Mr Gicheru.

17 I shall now ask the parties to also, as usual, introduce themselves, starting with
18 the Office of the Prosecutor.

19 But before so doing, I would like to ask everybody to speak slowly, and to observe
20 pauses before answering questions, any questions that might be put. This will
21 enable the interpreters to do their job properly.

22 So, Prosecutor, could I please now ask you to introduce yourself and members of
23 your team.

24 MR STEYNBERG: [16:06:05] Good afternoon, your Honour.

25 My name is Anton Steynberg, senior trial lawyer, appearing today on behalf

1 of the Prosecutor. And with me, case manager Ramu Bittaye, associate trial lawyer
2 Inbal Djalovski, and trial lawyer Alice Zago. Thank you.

3 JUDGE ALAPINI-GANSOU: [16:06:43](Interpretation) Thank you very much,
4 Prosecutor.

5 I would like to now address Mr Gicheru directly because I have understood that it is
6 your wish to conduct your defence in person, and, if so, could you please confirm this
7 fact, that you would like to conduct your own defence in person without any counsel?
8 Over to you, Mr Gicheru.

9 MR GICHERU: [16:07:14] Honourable lady judge, I wish to confirm that on 6th,
10 which is today, I signed a waiver for legal assistance, limited to today's appearance.
11 So during today's appearance I will be appearing in person. Thank you.

12 JUDGE ALAPINI-GANSOU: [16:07:44](Interpretation) That's what we heard. And
13 we are happy for you to be confirming it here. This is your right at any moment in
14 time.

15 Now, could you please introduce yourself, Mr Gicheru. Could you please provide
16 us with your full name, your date and place of birth and your nationality?

17 MR GICHERU: [16:08:11] Honourable lady judge, my names are Paul Gicheru.
18 I was born on 28 November 1972, in Nandi district within the Republic of Kenya.
19 Thank you.

20 JUDGE ALAPINI-GANSOU: [16:08:37](Interpretation) Thank you very much,
21 Mr Gicheru.

22 I would like to start by clarifying the nature and scope of this hearing. It is
23 important to recall that this is not a trial, nor is it a confirmation of charges hearing.
24 Nor will there be any questions going to the guilt or innocence of Mr Gicheru.
25 I would now like to outline how this hearing will unfold.

1 It will be conducted on four salient points. The first point will be to verify certain
2 points pursuant to some of the provisions of the Rome Statute, and then we shall
3 review some of the rights the suspect, Mr Gicheru.
4 And then, subsequently, these rights will certainly include the right to request an
5 interim release, after which we shall go on to broach those matters associated with
6 the procedure of filing the confirmation of charges document. And also to see
7 whether we shall be holding a possible confirmation of charges hearing, subsequent
8 to which we shall broach the matter of a disjoinder for the case here to the extent that
9 Mr Gicheru, according to the warrant of arrest that is ongoing, was with another
10 suspect who is not present here today.

11 So I shall briefly broach the first matter, which is to, as usual, verify the identity of
12 the suspect. I think you have already introduced yourself and these are the details
13 that you would like us to bear in mind.

14 And then, Mr Gicheru, as required by Article 60 of the Rome Statute, I would like to
15 ask you whether you have been informed of the charges against you and in
16 the instance -- instant case, the offences against the administration of justice as
17 defined and outlined in Article 70 of the Rome Statute.

18 So, I am going to ask, so that you have a specific idea of the matters with which
19 you are charged, I'm going to ask the courtroom officer to read out the offences
20 against the administration of justice with which you are charged and which have been
21 outlined in the warrant of arrest on 10 March 2015.

22 Madam courtroom officer, could you please read out these offences to us.

23 THE COURT OFFICER: [16:12:31] Thank you, your Honour.

24 Count 1.

25 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction

1 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

2 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
3 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
4 of corruptly influencing a witness, by paying Witness P-397 one million Kenyan
5 shillings and by offering to pay the witness five million Kenyan shillings in order to
6 influence the witness to withdraw as a Prosecution witness, committed from
7 April 2013 to January 2014 and at Eldoret, Kenya.

8 Count 2.

9 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction
10 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

11 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
12 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
13 of corruptly influencing a witness, by offering or paying Witness P-516 a bribe of at
14 least 500,000 Kenyan shillings in order to influence the witness to withdraw as
15 a Prosecution witness, committed in April and May 2013 and at Eldoret, Kenya.

16 Count 3.

17 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction
18 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

19 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
20 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
21 of corruptly influencing a witness, by offering to pay Witness P-613 a bribe and a job
22 offer inducement in order to influence the witness to withdraw as a Prosecution
23 witness, committed from April to September 2013 and, *inter alia*, Eldoret, Kenya.

24 Count 4.

25 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction

1 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

2 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
3 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
4 of corruptly influencing a witness, by offering to pay Witness P-800 a bribery
5 payment of between 1,500,000 and 2,500,000 Kenyan shillings in order to influence
6 the witness to withdraw as a Prosecution witness, committed in or around July 2013
7 and, *inter alia*, in Kenya.

8 Count 5.

9 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction
10 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

11 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
12 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
13 of corruptly influencing a witness, by offering Witness P-495 a bribery payment of
14 two and a half million Kenyan shillings and a job offer inducement in exchange for
15 the witness's withdrawal as a Prosecution witness, committed in or around
16 September 2013 in Kenya.

17 Count 6.

18 Corruptly influencing a witness - Article 70(1)(c) of the Statute read in conjunction
19 with Articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

20 Paul Gicheru is criminally responsible under Article 25(3)(a) as a direct co-perpetrator,
21 or alternatively under Article 25(3)(b) for solicitation and/or inducement, of the crime
22 of corruptly influencing a witness, by offering Witness P-536 a bribery payment of at
23 least one million Kenyan shillings, or at least 1,400,000 Kenyan shillings, in exchange
24 for the witness's withdrawal as a Prosecution witness, committed from May to
25 August 2013.

1 Thank you, your Honour.

2 JUDGE ALAPINI-GANSOU: [16:19:20](Interpretation) Thank you very much,
3 courtroom officer.

4 We shall continue as to the verifications.

5 Mr Gicheru, have you understood the offences with which you are charged?

6 Please stand. Please stand, Mr Gicheru. There we are.

7 We can't see you correctly now, and I would very much like to have to dispense you
8 from rising to your feet on each occasion, because I do need to be able to see you, so if
9 I can't see you correctly, I would suggest that you remain seated. Do you
10 understand?

11 MR GICHERU: [16:20:12] Thank you, Judge, I can do either of the two. But since,
12 Judge, you are not seeing me, I can sit.

13 JUDGE ALAPINI-GANSOU: [16:20:23](Interpretation) Yes, please be seated. Then
14 I can see you properly. Thank you.

15 So I would like to reiterate my question from earlier. Have you understood
16 the offences with which you are charged?

17 MR GICHERU: [16:20:40] Honourable lady judge, I have understood the alleged
18 offences with which I have been charged. I have understood them.

19 JUDGE ALAPINI-GANSOU: [16:21:01](Interpretation) Thank you.

20 And still in the same vein, I would like to make sure that you have been informed of
21 your rights under the Rome Statute and, in particular, Article 67 thereof. Have you
22 been informed of these rights, Mr Gicheru?

23 MR GICHERU: [16:21:27] Honourable lady judge, on 3 November, a representative
24 of the Registry informed me of my rights under Article 67, and on that basis I
25 therefore wish to confirm that those rights have been explained to me. Thank you.

1 JUDGE ALAPINI-GANSOU: [16:21:57](Interpretation) Thank you.
2 But we have to go through the usual formalities and remind you of some of these
3 rights, so -- in an excess of zeal that will not be harmful.
4 So, in any case, you have rights under Article 67 of the Rome Statute, you have
5 the right to be informed promptly and in detail of the nature, cause and content of
6 the charges against you in a language which you fully understand and speak.
7 You therefore have the right to the assistance of a competent interpreter, free of
8 charge, and to such translations as are necessary to meet the requirements of fairness.
9 You have the right to be presumed innocent until your guilt has been established
10 beyond reasonable doubt.
11 The onus is upon the Prosecution to prove your potential guilt. You also have
12 the right not to have imposed upon you any reversal of the burden of proof or any
13 onus of rebuttal.
14 Mr Gicheru, you have the right to adequate time and facilities for the preparation of
15 your defence, and to communicate freely and confidentially with a counsel of your
16 choice, when you have made one.
17 You have the right to be present at your trial, to conduct the defence in person, as
18 you are doing now, a right you are exerting today, or you have the right to legal
19 assistance of your choosing.
20 You have the right to be tried without undue delay.
21 You have the right to remain silent or not to be compelled to testify, or to confess
22 guilt.
23 You have the right to make an unsworn oral or written statement.
24 Other than any other communication pursuant to the Statute, the Prosecution shall, as
25 soon as is practicable, disclose to you evidence which tends to show your innocence,

1 or evidence that might bring into question the credibility of Prosecution evidence.

2 Mr Gicheru, I am addressing you once again. Do you have any observations to
3 make as to the conditions of your surrender to the ICC and the conditions of your
4 detention at the headquarters of the ICC in The Hague since your arrival? Please do
5 not get to your feet because I still want to be able to see you when you answer.

6 Thank you.

7 MR GICHERU: [16:25:59] Thank you, Judge.

8 As to the conditions of surrender, I wish to confirm to the Court that,

9 Honourable Judge, I surrendered myself to this court, to the Dutch authorities first,
10 on 2 November 2020. This surrender was without coercion from anybody, it was
11 voluntary, and I did so at my own expense, Honourable Judge. So it was a
12 voluntary surrender, there was no threat, there was no coercion.

13 On the conditions of detention, Honourable Judge, the conditions, I have been treated
14 quite well. I have no complaint as to the conditions. And the officers in charge of
15 this particular facility and the Dutch authorities were very, very helpful. So I have
16 no complaint whatsoever.

17 Thank you, Judge.

18 JUDGE ALAPINI-GANSOU: [16:27:40](Interpretation) Thank you, Mr Gicheru, for
19 your reply. And we have noted this.

20 Still on the subject of your rights, I would like to look at the question of a potential
21 request for interim release.

22 So, in accordance with Article 60 of the Rome Statute, I must ensure that you have
23 been informed of your right to formulate a request for interim release while attending
24 before the trial.

25 If you were to submit such a request, it would need to be in writing, and

1 the Prosecutor would then be invited to comment on this before the Chamber makes
2 any decision. That's what I would like to say to you about your rights as a suspect
3 before the International Criminal Court.

4 I would now like to examine the question of the confirmation of charges and whether
5 there will be a hearing to that end. We are now firmly convinced that you have been
6 informed of the offences against administration of which you are charged, and
7 the rights granted to you by the Statute for your defence.

8 So, with regard to questions related to procedure of the confirmation of charges, and
9 any hearing to that end, Rule 121(1) of the Rules of Procedure and Evidence state that
10 at the first appearance, the Pre-Trial Chamber shall set the date on which it intends to
11 hold a hearing to confirm the charges.

12 However, here I would like to recall the special procedure which applies to cases
13 relating to offences against the administration of justice, as set out in Article 70
14 of the Statute. To that end, Rule 165(3) of the Rules of Procedure and Evidence state
15 that cases relating to Article 70 of the Statute, and for the purposes of Article 61,
16 the preliminary chamber may make any of the determinations on the basis of written
17 submissions without a hearing, unless the interest of justice otherwise require.

18 The Chamber considers, at present, that given the nature and the scope of this case, it
19 is not necessary to hold a confirmation of charges hearing. Nevertheless, I would
20 like to apply the logic contained in Rule 121(1) of the Rules of Procedure and
21 Evidence, which seek to give an indication of a calendar for the proceedings, notably
22 for the benefit of the suspect. This is why, at this stage, I would like to fix a date for
23 the filing by the Prosecutor of his document setting out a detailed description of
24 the charges and a list of evidence.

25 Do you wish to speak at this stage? If not, you can have the floor later.

1 So, having taken account, amongst other things, of the need to give the parties
2 the time to prepare themselves, the particular circumstances of the current health
3 crisis and the nature and scope of this case as described in the arrest warrant, but also
4 the right of the suspect to be judged without undue delay, I fix the date for the filing
5 of the document containing a detailed description of the charges and a list of
6 the evidence on which the Office of the Prosecutor intends to base the case as
7 12 February 2021. The Defence, if it so desires, may file, in accordance with
8 Rule 121(6) of the Rules of Procedure and Evidence, evidence, as well as a list of this
9 evidence, no later than 26 February 2021.

10 And continuing along this line, the Defence can also - no, excuse me - the parties can
11 then present their written conclusions by 15 March 2021 at the latest, which is 30 days
12 after the filing of the Document Containing the Charges. After that, the Prosecutor
13 will have until 22 March 2021 to present a reply to the written submissions of Defence.
14 And finally, as the law decrees, the Defence will have until 29 March 2021 to reply to
15 the submissions of the Prosecutor.

16 The date for the filing of the Document Containing the Charges could be postponed
17 by the Chamber, depending on how the procedure develops, either on its own
18 initiative or at the request of the Prosecutor or of the Defence. The Chamber will
19 decide on any request submitted in writing and with justification.

20 In order that the procedure goes smoothly, I think it is also important to ask
21 the Prosecutor to file observations on the progress of his investigation, as well as on
22 the disclosure of evidence, as well as questions relating to the protection of witnesses.
23 You should file these observations by 18 November 2020, at the latest.

24 In order to deal with everything at once, I will also deal with the matter of the second
25 suspect in the arrest warrant so that we can see together how we can effect

1 a severance of the proceedings. One of the suspects is here in front of us today, but
2 Mr Philip Kipkoech Bett is still at large. Under Article 64(5) of the Statute, it is
3 possible to direct that there be joinder or severance, as appropriate, in respect of cases
4 against more than one accused, which is why I would like to hear from you, from
5 the parties, Prosecutor, but also from Mr Gicheru, I would like to hear what your
6 observations are relating to a possible severance of the two cases. I suggest that
7 the Prosecutor file any observations on this subject by 20 November 2020, even
8 though you might like to say something about this, shortly. And the Defence, if it so
9 desires, can reply by no later than 26 November 2020. I hope that was all sufficiently
10 clear.

11 So, that's what I want to say on the subject of how the proceedings will take place,
12 point by point, and at this stage I shall -- there was not much that needed to be said,
13 but we need to ensure that certain formalities are satisfied and that we have an
14 indication of how this will proceed.

15 However, before closing the hearing, I understand that the representative of
16 the Prosecution would like to speak, and we can also thereafter give the floor to
17 Mr Gicheru.

18 MR STEYNBERG: [16:39:55] Thank you very much, your Honour.

19 Yes, indeed, I thank you for the opportunity to address the Court. There are actually
20 several issues I would like to briefly address. Starting off perhaps with a matter
21 which I think, out of an abundance of caution again, I should raise in the presence of
22 the Chamber and of the suspect, Mr Gicheru. And that relates, your Honour, to
23 a filing that was submitted by the Office of Public Counsel for the Defence, the OPCD,
24 earlier today, challenging the validity of the constitution of this Chamber and
25 the Single Judge.

1 Now, I note, your Honour, that the filing was dismissed *in limine* by the pretrial
2 division on the basis that it was filed in the wrong -- before the wrong authority, but it
3 has not yet been disposed of on the merits. Now, if and when it is refiled,
4 the Prosecution will respond on the merits. But given that if the submissions of
5 the OPCD turn out to be correct, it may have significant ramifications regarding
6 the validity of these proceedings.

7 Now, in these circumstances, the Prosecution deems it to be desirable that this matter
8 be raised in the presence of the suspect and to invite his submissions on this, if any.

9 In particular, to invite him to agree that he is happy for this matter to be convened
10 before this Chamber, rather than to have the matter postponed until the Chamber can
11 be reconstituted. The Prosecution submits that it is normal for first initial
12 appearances to take place before a single judge and that, as regards the rights of the
13 suspect, it makes very little difference as to whether that single judge has been
14 appointed by the president of the Pre-Trial Chamber, alternatively appointed by
15 the Pre-Trial Chamber that is assigned the case. To the contrary, if the matter were
16 to be delayed, this would in turn likely increase the time of the suspect's pretrial
17 detention which, in light of the view that the Prosecution has taken on the issue of
18 detention, would be contrary to his rights and interests.

19 So may I request, your Honour, that the suspect be asked to confirm that he does
20 not -- he is happy that the matter proceed and that he is -- he will abide by any
21 decisions of this Chamber, regardless of the outcome of those proceedings.

22 Before I yield the floor, your Honour, I would like to mention that I would also like to
23 make certain submissions on the issue of legal representation, and I may briefly touch
24 upon the issue of interim release, but I may, for the -- for the forewarning of the
25 court officer, I may ask that the Chamber go into private session, briefly, to make

1 certain submissions and references to confidential filings.

2 Thank you, your Honour.

3 MR GICHERU: [16:43:51] Has Mr Steynberg handed over the floor to me on the first
4 observation? Okay.

5 JUDGE ALAPINI-GANSOU: [16:44:10](Interpretation) Mr Gicheru, I will give you
6 the floor. Please don't be concerned about that. I will give you the floor. But I
7 would first like to give a quick response to the representative of the Prosecutor to say
8 that, as he explained at the beginning of his statement, the first question he raised
9 relates to the merits of the case and I think, as you put it so well, we are really at
10 a very, very early stage in this and the decision appointing the judge of the Chamber
11 was an administrative decision and it runs until there is any decision to the contrary,
12 until new orders.

13 So, I will give the floor at the appropriate point, but you said you wanted us to move
14 into private session. To what question does that refer?

15 MR STEYNBERG: [16:45:39] Not immediately, your Honour, but in a moment.

16 JUDGE ALAPINI-GANSOU: [16:45:42](Interpretation) Thank you.

17 So not at this juncture.

18 MR STEYNBERG: [16:45:51] No.

19 JUDGE ALAPINI-GANSOU: [16:45:54](Interpretation) Not at this juncture.

20 So, if you have nothing further to say, I would like to ask Mr Gicheru whether he has
21 any comments to make.

22 MR GICHERU: [16:46:06] Honourable Judge, I have comments to make.

23 JUDGE ALAPINI-GANSOU: [16:46:17](Interpretation) Yes, I can hear you,
24 Mr Gicheru.

25 MR GICHERU: [16:46:21] I have comments to make.

1 Honourable Judge, you have touched on the issue of the confirmation of hearing, and
2 also the charges were read out to me. I was not, however, asked, and I wish this to
3 go on record, that I do not intend to admit the charges under Article 65, so I wish to
4 state, for purposes of clarity, that the allegations read out to me ... the allegations read
5 out to me are not true, they are false, all of them, the six of them are false. And,
6 honourable Judge, that is why I think you have given us a timetable for confirmation,
7 which I am quite happy with and which the timetable is in order.

8 On the issue of interim release, Mr Steynberg has requested that he would want
9 the Court to go into a private session, so I will reserve my comments on that.

10 And on the issue of whether the Court should continue, the Pre-Trial Chamber should
11 continue handling the matter in spite of the objection, I agree with the Court. Judge,
12 there is already an order, there is already a ruling by the president of the
13 Pre-Trial Chamber assigning this case to this Court, that order has not been set aside.
14 So, as matters now stand, we are perfectly entitled to proceed before this Court. I
15 agree with your observation that this is an administrative issue and, so long as
16 the order is still there, the right forum is this particular Chamber. Those are
17 the observations I wish to make at this point. And thank you.

18 MR STEYNBERG: [16:49:19] Thank you, Mr Gicheru. Thank you, your Honour.

19 JUDGE ALAPINI-GANSOU: [16:49:23](Interpretation) Thank you, Mr Gicheru.

20 We take note of your observations.

21 MR STEYNBERG: [16:49:32] I apologise for interrupting, your Honour.

22 If I may then address the next issue on my agenda, and that's just to briefly make
23 some observations regarding legal representation.

24 Obviously, Mr Gicheru has a right to represent himself, but I note that in his -- in
25 the Registry's recent filing they indicate that Mr Gicheru had informed them that he

1 intends to, and I quote, "review my position during any subsequent appearances."

2 Unquote.

3 Now, while the Prosecution accepts that Mr Gicheru is a qualified lawyer in his
4 domestic jurisdiction, I think we all in this room appreciate how different
5 the proceedings before this Court can be. And, in particular, your Honour, I'm not
6 sure that the suspect, Mr Gicheru, fully appreciates the enormity and complexity and
7 logistical challenges associated with pretrial proceedings, including the use of IT tools
8 employed by the Court, pretrial filings, many of which have already been instructed
9 today, and also the issues of dealing with disclosure.

10 So, my request, your Honour, is that your Honour may advise the -- Mr Gicheru of
11 the desirability of appointing counsel as soon as possible. And particularly,
12 your Honour, if one is to meet the deadlines already been set by this Court, if there is
13 any significant delay in the appointment of counsel, one can imagine the logistical
14 challenges of dealing with disclosure while an accused may be remote in a different
15 country, several thousand miles away.

16 So, your Honour, I would ask that the accused be advised that it would be in his
17 interest to appoint counsel and, if he chooses not to, the Prosecution may approach
18 the Chamber for an order appointing counsel to assist him, regardless of that choice.
19 But that is a matter to be dealt with on another day.

20 Thank you, your Honour.

21 JUDGE ALAPINI-GANSOU: [16:52:12](Interpretation) Thank you, representative of
22 the Prosecutor.

23 Mr Gicheru, you I think have followed the observations of the representative of
24 the Prosecution. What would you like to say? Do you have any response to these
25 observations?

1 MR GICHERU: [16:52:42] Judge, I appreciate Mr Steynberg's concern and I am
2 grateful to him. The decision -- naturally, I have the right to either represent myself
3 or be represented by counsel. I leave all the options open and, your ladyship, I
4 appreciate the concern. That is an issue I will take up at the appropriate moment.
5 Thank you.

6 JUDGE ALAPINI-GANSOU: [16:53:26](Interpretation) From the exchanges we've
7 had, Mr Gicheru, I believe that the choice of a counsel remains open to you, that's part
8 of the fair and -- fair trial. And I would say that, given the complexity of a case
9 before the International Criminal Court, I would counsel you to choose counsel for
10 yourself, but you do have the right to make this decision yourself and ...

11 (Pause in proceedings)

12 JUDGE ALAPINI-GANSOU: [16:55:22](Interpretation) We are slowly coming
13 towards the end of this initial appearance hearing. But I would, before we close, I
14 would like, if there are any observations, Mr Prosecutor, with regard to matter of
15 the Single Judge appointed, and also your -- any observations you might have relating
16 to representation of the suspect before the ICC, that you put these comments into
17 writing. That will also give Mr Gicheru the time to confirm, or not, his latest
18 comments with regard to being heard by the Single Judge and also on the question of
19 representation. That will give him time to reflect on the subject and decide at an
20 appropriate date.

21 That is what I wanted to suggest. That will enable us to make some progress in
22 these proceedings, particularly because the suspect did surrender voluntarily.
23 I don't think we want things to drag at this stage.

24 MR STEYNBERG: [16:57:17] As the Court pleases, your Honour, I will certainly do
25 so as soon as possible.

1 If I may raise one other issue then before we move on to the question of interim
2 release, I note that the Chamber has ordered the Prosecution to file by 18 November
3 a status report on, *inter alia*, the progress of -- in relation to disclosure, but I would like
4 to just bring to the Chamber's attention that, before disclosure can be safely effected,
5 there are certain procedural matters that need to be attended to. In particular,
6 your Honour, I mention three protocols which the Prosecution would request are
7 finalised prior to the initial disclosure taking place. I can in fact inform the Chamber
8 that the Prosecution already has its first disclosure package ready to go, as soon as
9 possible the relevant protocols are put in place. These three protocols, your Honour,
10 are, firstly, the very technical one, the eCourt protocol. The Prosecution will submit
11 or submits today, as the Chamber pleases, that the most recent protocol filed in
12 ICC-02/05-01/20-116-Anx1 should be adopted.

13 Then the redactions protocols, your Honour, will also need to be put in place, as well
14 as the protocol, importantly, on the handling of confidential information during
15 investigations and contact between the party and participants and witnesses of
16 the other party and participants. So I make those observations and leave that in
17 the hands of the Court for now.

18 Now, yes, I think it's not necessary to address that at the moment.

19 If I may then just ask that we go briefly into private session so I can make certain
20 observations regarding matters which are currently classified in a manner that doesn't
21 permit me to refer to them in public session.

22 JUDGE ALAPINI-GANSOU: [16:59:46](Interpretation) Yes, we can do that.

23 Court officer, could you please take care of this.

24 (Private session at 5.00 p.m.)

25 THE COURT OFFICER: [17:00:12] We are in private session, your Honour.

Initial Appearance

(Private Session)

ICC-01/09-01/15

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Initial Appearance

(Private Session)

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Initial Appearance

(Private Session)

ICC-01/09-01/15

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12 (Open session at 5.06 p.m.)
13 THE COURT OFFICER: [17:06:50] We are back in open session, your Honour.
14 JUDGE ALAPINI-GANSOU: [17:06:59](Interpretation) Thank you very much,
15 madam courtroom officer.
16 Mr Prosecutor, I'd like to give you the floor as to the matter of severance.
17 MR STEYNBERG: [17:07:14] Thank you, your Honour.
18 The Prosecution notes the views of the Chamber on this issue, and the Prosecution
19 has no objection to the severance of this matter. Should the other suspect be arrested
20 in the interim the Prosecution will always have the opportunity to request the matters
21 to be joined, subject of course to the right of the accused to a speedy trial.
22 Unless the Chamber instructs us, we see no reason to file further written submissions
23 on this issue, but of course if your Honour would still prefer us to file anything in
24 writing, we will do so.
25 JUDGE ALAPINI-GANSOU: [17:08:06](Interpretation) That was why I was asking

1 you for your opinion, and filings would be a means of reinforcing the position.

2 (Pause in proceedings)

3 JUDGE ALAPINI-GANSOU: [17:08:43](Interpretation) So, when I am going to
4 schedule a little bit later, you will see that you will be able to make observations in
5 your filings on certain matters of law associated with the presence of Mr Gicheru at
6 the International Criminal Court. You will be able to do that rapidly for us to be able
7 to remain within reasonable time limits.

8 Mr Gicheru, I would like to give you the floor. Do you have anything further to add
9 to the observations you've already made?

10 MR GICHERU: [17:09:20] Only one observation regarding the last issue which
11 counsel Mr Steynberg has dealt with. I similarly agree, as he does, that we can
12 separate the trials. And this is for the basic reason that we do not know when
13 the other accused person will surrender, if he will. And that is my position as of
14 now.

15 And I also agree with the observation by the Court that we can file written
16 observations to firm up our positions.

17 Save for that, I think I do not have any other comment.

18 JUDGE ALAPINI-GANSOU: [17:10:14](Interpretation) I'd like to thank you very
19 much, Mr Gicheru. And I believe that this brings us to the end of the initial
20 appearance hearing in the case against you.

21 I would like at this juncture to thank all the participants in this hearing,
22 the interpreters, the court reporters, the technicians, and all other individuals without
23 whom this hearing would not have been possible.

24 So thank you once again and I wish you a lot of courage during this difficult time that
25 we are living through, this health crisis.

Initial Appearance

(Open Session)

ICC-01/09-01/15

- 1 So, now the hearing is adjourned.
- 2 THE COURT OFFICER: [17:11:19] All rise.
- 3 (The hearing ends in open session at 5.11 p.m.)