

1 International Criminal Court
2 Pre-Trial Chamber III - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo - ICC-02/11-01/11
5 Presiding Judge Silvia Fernández de Gurmendi
6 Status Conference
7 Wednesday, 14 December 2011
8 (The hearing starts in open session at 4.01 p.m.)
9 THE COURT USHER: All rise. The International Criminal Court is now in session.
10 Please be seated.
11 THE COURT OFFICER: Good afternoon, Madam President. This is the situation in the
12 Republic of Côte d'Ivoire, in the case of The Prosecutor versus Laurent Gbagbo, case
13 number ICC-02/11-01/11. Thank you, your Honour.
14 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. I will now
15 ask the Prosecution, the Defence and the Registry to present themselves and their teams.
16 The Prosecution has the floor, please.
17 MR MACDONALD: Thank you, your Honour. The Prosecution today will be
18 represented by Madam Cecil Madec and Sandra Schoeters, and also Mr Reinhold
19 Gallmetzer, and myself Eric Macdonald. Thank you.
20 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. May I ask
21 the Defence to introduce themselves, please.
22 MR ALTIT: (Interpretation) Yes, thank you, Madam President. I have by my side my
23 assistant -- my assistant Jennifer Naouri. Myself Emmanuel Altit, lead counsel.
24 MS DAHURON-JACOBY: (Interpretation) For the Registry this afternoon, Madam
25 President, we have Bibiana Becerra-Suárez, who is legal co-ordinator; Uros

1 Mijuskovic, who is legal officer; and behind me we have Shakhnoza Abdullaeva, who is
2 legal officer within the VWU; and myself Charlotte Dahuron-Jacoby, head of the legal
3 advisory service, or legal administration service.

4 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.
5 (Speaks English) So we have our first status conference today, where we intend to
6 exchange information and try to see what is needed for the further organisation of future
7 proceedings.

8 In light of the nature of this status conference, I would suggest that we all -- that you all
9 remain seated and that you all talk from your seats. I think that will be easier for all of
10 you, to have access to your documents and to your papers, and so I will go into the first
11 item on the views on the modalities of the disclosure regime to be applied by the
12 Chamber.

13 I'm going to follow as an agenda for this afternoon exactly the same -- the same decision
14 that we issued on -- to convene this conference, so I'm going to go in the order, and the
15 first item is that I wanted to have your views, if possible, on the system that we need to
16 implement for disclosure.

17 As you know, and I think I already called your attention to some of the recent decisions of
18 this Court, as you know, there is a different jurisprudence in the Pre-Trial Division on the
19 different practice, I would say, on the system to be applied, and we can choose either of
20 the systems, we can even try to think of a third system, as we don't have yet a standard
21 practice that we all need to apply and we are still looking for the most suitable system to
22 go into an efficient procedure.

23 So I would like to have your views on this, on the system that was -- and I think you
24 all -- I hope you have all read the most recent decisions in Abu Garda - Abu Garda 2, I
25 would say - and Kenya, which I thought they were quite exemplary, good examples of the

1 different alternatives we have, and seek your views on this, including also on some
2 practical aspects of the different systems.

3 There was this -- the format in which the different Chambers have requested the evidence
4 to be presented, basically a list of evidence with some -- with a connection to the DCC or a
5 more in-depth analysis charter, as has been requested in Pre-Trial Chamber II in the
6 Kenya situation in particular.

7 So the floor is open. I would ask the Prosecution to present their views first.

8 MR MACDONALD: Thank you. Thank you, your Honour. (Interpretation) I am
9 going to talk to the Chamber in French. I'm sorry to the interpreters for having changed
10 language.

11 As you noted, Madam President, your Honour, there are two practices in place currently.
12 I would say that there was the practice adopted in the Lubanga case, which was modified
13 somewhat for the Katanga and Ngudjolo trial, at trial stage and also at pre-trial stage, and
14 there was the Bemba approach that was also subsequently adopted in the Kenya situation.
15 Now, of course, these two approaches, when referring to the famous table of the in-depth
16 analysis chart, have a different impact in terms of resources for the Office of the
17 Prosecutor, or the Prosecution, but which also have an impact in terms of the usefulness of
18 this for both the Chamber and the Defence.

19 Now, in order to answer your question quite simply, I come from the Abu Garda school, if
20 you like, even though this has been somewhat amended, if we refer to the exculpatory
21 material under Rule 67, which means that in the Abu Garda case it was requested that a
22 small résumé, or summary, be provided in order to identify the contents of the document
23 under Regulation -- or Rule 77, and also that one indicate the relevance with regard to the
24 exculpatory material to the individual preparing the Defence case.

25 So this is the new item, if you like, that came to light in the Abu Garda case, compared to

1 what happened in the Katanga and Ngudjolo case. Of course the important difference
2 with the Kenya situation is that disclosure is inter partes in nature, so under Rule 77 this
3 material is not disclosed to the Chamber whereas in the Abu Garda there is of course the
4 limited scope of the confirmation of charges.

5 For us in the Office of the Prosecution we believe that it is preferable for us to follow the
6 inter partes disclosure approach, meaning that all exculpatory or exonerating or
7 incriminating evidence there will be disclosure to the Chamber or notification to the
8 Chamber. That means that we are fulfilling our disclosure obligations in terms of
9 exculpatory material.

10 Now, is it relevant when we are faced with an experienced Defence team, in addition not
11 only to notifying them to the fact that the matter is exculpatory under Rule 77, would it be
12 necessary to go on to a further stage to tell them that the Office of the Prosecutor believes
13 that this is exculpatory material falling under Rule 77? Let me explain what I mean by
14 this:

15 The Defence, remaining mute on the subject, is not obliged to disclose to us what their
16 Defence case is with regard to the Office of the Prosecutor's approach. It is an
17 interpretation of what might potentially be exculpatory under Rule 77, but inevitably a
18 very professional and experienced Defence team has to read the document and of course
19 red lights come on when one realises that this is potentially exonerating material under
20 Rule 77. And I'm sure that my learned friend will be reading the documents in its
21 entirety.

22 Now, the concern in Abu Garda was the volume of the materials, exculpatory materials
23 under Rule 77, and this is why it was suggested that a summary of the document be
24 provided, and that its relevance be indicated and the reasons why it is exculpatory, or it
25 was exculpatory, and I believe that in Abu Garda case fewer than ten documents were

1 disclosed in such a manner.

2 Of course, in this -- in the instant case the investigation is ongoing, and were the Chamber

3 to want to choose this solution we will then provide a brief summary of the exonerating

4 document and we will say why the OTP believes that it is exculpatory.

5 Each disclosure, whether exonerating or incriminating, will then be informed. The

6 Chamber will then be informed thereof. We believe that the system in the Kenya case is

7 more onerous in terms of resources. Of course it can be done, but the Chamber, as

8 decided in the Abu Garda case and also in the Lubanga and Katanga cases, needs to base

9 itself on the elements upon which the OTP intends to continue to the confirmation of

10 charges.

11 The exonerating material can be raised by my learned colleague from the Defence and

12 mentioned during the confirmation of charges hearing and at that moment in time the

13 Chamber will have at its disposal the documents in its search for the truth. Of course the

14 burden is different from that at trial phase, the burden during the confirmation of charges

15 phase. Now, that is with regard to disclosure.

16 As far as the tables are concerned, there is an enormous difference between the

17 Kenya/Bemba approach and the Abu Garda approach and Lubanga and Katanga; that is

18 to say in the pre-trial phase.

19 In the Katanga case, at trial, the Chamber requested that we provide a table of the

20 incriminating evidence, which was of course very onerous as it was in the Kenyan case.

21 Notably, in the Kenya case we had 3,000 pages. In the Katanga and Ngudjolo case there

22 were 1,200 pages in this table. A second table was prepared where we were able to

23 reduce the number of pages to 800.

24 It is interesting to know -- interesting to note that Mr Katanga's Defence team found this

25 table completely useless, this 1,200 pages of table. They requested that a far more concise

1 document be produced of the OTP's case, rather than have all these fragments of
2 information within a table of 1,200 to 3,000 pages which fragmented the evidence
3 according to each element of evidence and according to the various documents containing
4 the charges.

5 I must say, your Honour, that we worked on the Katanga case -- at first we worked
6 full-time, a team of ten of us, over a period of two months in order to prepare those 1,200
7 pages, and we had approximately 450 items of evidence. It was an enormous amount of
8 work, and I would refer the Chamber and my learned friend to the submissions in the
9 Katanga and Ngudjolo case provided by Defence counsel for Katanga, that is disclosure
10 1310 and 1377 which are public in nature, and I shall briefly quote paragraph 2 of
11 submission or filing 1310 and I shall read it in French -- in English, pardon me, for our
12 interpreters and stenographers.

13 (Speaks English) "Having reviewed the 1,165 page document produced by the
14 Prosecution, the Defence has reached the conclusion that, while useful in providing notice
15 of the evidence which the Prosecution intends to rely upon, this lengthy and
16 interdependent document does not fulfil the practical purpose of providing the Defence
17 with a single reliable and clear point of reference for the charges against the accused."

18 (Interpretation) So we were at the trial phase here. We were talking at a prior stage, that
19 is the confirmation of charges stage, and we believe that the table as suggested in the Abu
20 Garda case enables a certain amount of flexibility for the Prosecution to provide both to
21 the Defence and the Chamber a detailed document as to its case theory and its various
22 incriminating pieces of evidence; notably also with regard to the crimes -- to the crimes.
23 The resources were mobilised over a number of weeks, or even months, but this also
24 meets the requirements for the Defence counsel, because this is our objective after all, and
25 I can also refer to what the Chamber itself mentioned in the Abu Garda decision, at

1 paragraph 12 of the decision to which you referred, paragraph 12 where it is clearly
2 indicated (Speaks English), "It proved to be fair and efficient and has operated
3 successfully."
4 (Interpretation) So the Abu Garda approach is one that enables the Chamber to refer to
5 the various items of evidence and crimes.
6 Unfortunately we have a model that might not be accessible to our colleagues, but in
7 essence we are referring in the first column to the document containing the charges, to the
8 paragraphs thereof, in the second column we are referring to the evidence providing
9 details of the various reference points and providing details of its contents, and in the
10 third column, which might be optional in nature, we go further and we provide the actual
11 excerpt in support of that paragraph, and then moving on to paragraph -- to column 4 we
12 refer to the elements of each item mentioned.
13 I believe that there is a possibility to refer for some elements in more general terms to
14 various of the crimes - some of the crimes - in order to avoid redundancy of information.
15 For example, we might talk about count number 1, material element; count number 3
16 mens rea, or more specifically co-perpetration whether it be indirect or direct. We can
17 also refer to the common plan and we can provide details which -- to which elements of
18 crime we are referring, but in more general terms than precise terms.
19 Now, the problem here, we understand that the case matrix is at the origin of the problem.
20 We realise this. The objective is to serve the Chamber, is to help the Chamber in drafting
21 its decision, whilst taking into account the interests of all and sundry in the drafting of this
22 table, but the presentation itself, over 300 pages with 400 items of evidence that are
23 fragmented to such a degree that they are repeated so many times that we do not have the
24 global picture of the situation. A document containing the charges of reasonable size is
25 supported by these items of evidence.

1 This is what the Prosecution would like to suggest to the Chamber; notably that we adopt
2 the Abu Garda solution. The Chamber might see how important it is to provide a
3 summary, or not, of the various elements of charges. This might be a detail, but with
4 regard to the table itself - the chart itself - the Prosecution is ready to help the Chamber in
5 this regard and it does serve the Chamber and the Defence in the preparation of its case.
6 We believe that the model could be the Abu Garda model.

7 I might have been somewhat lengthy on the subject, but I do believe that this is important
8 and, of course, what we are looking for is usefulness; the usefulness of a document
9 containing an in-depth analysis chart, as we say in English, and I thank you.

10 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, thank you
11 very much, and of course we are also looking for precisely that, the usefulness of the
12 document, and that was why we are so interested in what we had to say.

13 I would like to thank Mr Macdonald and I would like to give the floor to the Defence.

14 MR ALTIT: (Interpretation) Yes, thank you very much, Madam President.

15 Now, with regard to disclosure, the Defence is of the opinion that the simpler the better in
16 terms of procedure. We don't oppose the Prosecutor's request, namely that the Abu
17 Garda model be the basis of our work here, because notably this would permit a direct
18 exchange between the parties and we think this is an excellent thing.

19 Of course if there were any issues we would be able then to talk to the Judge and I think
20 this would be a sufficient guarantee, but in order to simplify matters, in order to accelerate
21 matters, I think -- and in observing the procedure I think we can adopt this model.

22 THE INTERPRETER: Overlapping of microphones.

23 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, this does
24 make matters a lot easier to us. Of course if you have nothing further to add, we might
25 be able to move toward to the second point?

1 MR ALTIT: (Interpretation) If you don't mind, I do have a second point to raise.
2 Now, with regard to the summaries, the summaries that the Prosecutor was mentioning at
3 an earlier stage, I believe that they are of use and I do believe that it would be very good
4 for us to have a summary of such a nature with regard to the DCC.
5 I would like to recall that the Defence has not yet got the means at its disposal to work in
6 an efficient manner. It's not really the forum in which to mention this, but to date we do
7 not have an office, nor do we have a computer. We do not have access to the electronic
8 system within the Court, so in order to be able to survive and in order to be able to start
9 working as soon as possible in the best possible conditions, because for the time being
10 they are not optimal, we need in order to be able to start our work for the Prosecutor to do
11 everything in his power to provide us with synthesised information by giving us all
12 information that will be able to enable us to gain time. It is not only in our interest, but
13 also in the interest of justice and in the interests of the Prosecution for things to run well,
14 so we are requesting assistance.
15 What does this mean? Now, with regard to the third point raised by the Prosecution, we
16 need, therefore, a chart. This is indispensable. We do not have the means, we do not
17 have a location, we do not have a computer, so how do you expect that upon receiving
18 thousands of pages we are able to manage? It is impossible for us today. It will be
19 impossible for us tomorrow because, even if we do have access to means, we will be
20 extremely limited and we will not be fully operational for some time.
21 So really I am requesting that the Prosecution assist us in order for things to run well. It's
22 not only a question of informing the Chamber. It is a question of exchanging, in the best
23 possible manner, information between the parties for justice to be administered in the best
24 possible conditions.
25 Now, with regard to the tables, we need tables. We need tables that provide the most

1 information possible, and I believe having listened to our -- what he had to say, I believe
2 that the cost is really quite a handicap for us. Of course, we need to be able to benefit
3 from this situation. These are technical concerns.

4 I do understand that the Prosecution wants to move forward. They don't want to waste
5 any time. Of course they will be using a lot of time in producing documents that in fine
6 will be of use, but I believe that the proposal put forward by my learned colleague will be
7 more problematic to us and I believe that we need to come back to the previous solution
8 regarding the tables.

9 Not only am I in agreement with the modalities of disclosure, I believe that simplification
10 is the best for all; but with regard to the tables and the evidence that will be disclosed to
11 us, I believe that it is indispensable for us to have all evidence, items of evidence available.
12 Imagine what will happen when you send the document concerned and those -- or the
13 other documents related to it? We won't be in a position to work completely on this.
14 We won't be in a position. Thank you.

15 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, thank you
16 very much. Mr Macdonald, please.

17 MR MACDONALD: (Interpretation) Very briefly, we're not talking about thousands of
18 documents. That's the first thing. I can reassure my learned friend of that. Let us
19 avoid any possible ambiguity.

20 Perhaps we should go back to this matter at another hearing, but, well, my learned friend
21 has talked about simplification, keeping things simple. We are talking about a chart here,
22 not individual exhibits, hundreds of pages that present the items in such a fragmented
23 manner that we lose ourselves. We can't see the forest for the trees. This is what we're
24 talking about here.

25 On the one hand we could have a document of several hundred pages or, on the other

1 hand, another document of perhaps 100 pages that meets the objectives, namely providing
2 all necessary information to my learned friend so he can prepare adequately with the
3 limited means that he says he has at his disposal.

4 So it's a matter of striking the right balance between the requirements of the Defence and
5 the proper administration of justice. I thank you.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you very
7 much.

8 Maître Altit.

9 MR ALTIT: (Interpretation) Thank you very much. Just to make sure of one thing:
10 Now, my learned friend was speaking of exculpatory material, but I really think that
11 should be disclosed to us as quickly as possible. Now, I haven't quite understood what
12 he was saying in that regard.

13 MR MACDONALD: (Interpretation) I was talking about the chart with all the
14 incriminating materials, and I believe you spoke of a tableau statistique, in French, a
15 summary chart.

16 So I think it's clear, your Honour, that any requirement to provide disclosure means doing
17 so as soon as possible, and that is what the Prosecution has already done with 36
18 documents that were disclosed at the initial appearance of Mr Gbagbo to allow the
19 Defence to begin their work and we shall continue to do so in the days to come.
20 We will provide a great many other documents, but we are not talking about thousands of
21 documents for this entire case.

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you very
23 much. Now, I believe that it is very difficult for Mr Altit to realise exactly what we're
24 talking about without actually physically seeing what we are talking about, what we
25 mean by a chart, an in-depth analysis chart.

1 I've been asked to -- I've asked to see one myself so I can see what these charts are all
2 about, and I think it might be useful at this point to conclude at this point and to ask you
3 to meet and to discuss this between yourselves, and perhaps if you could show some
4 examples of what you mean by these charts I think that might be a more practical
5 approach rather than having a theoretical discussion about something that you really
6 need to look at physically in order to determine whether it is useful or not but I'm rely in
7 your hands. Mr Macdonald.

8 MR MACDONALD: (Interpretation) Certainly, we are quite willing to meet with our
9 learned friends to do that. Now, there is one difficulty: If we are going to put some
10 flesh on the bones of this case, so to speak, we will have to provide examples and these are
11 all -- we believe that all of these things have been submitted on a confidential basis
12 because reference is made to evidence.

13 I could show a sort of a skeleton, so to speak, and show my learned friend what I have in
14 mind while respecting the confidentiality of the various Chambers but I think it would be
15 quite useful because -- so that my learned friend can properly grasp the differences.
16 We're not talking about nuances here; we are talking about actual differences.

17 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.
18 Mr Altit.

19 MR ALTIT: (Interpretation) Yes, we enthusiastically accept this suggestion from the
20 Presiding Judge, and I'm quite sure that my learned friend will find a solution and will be
21 able to give us some examples without breaking confidentiality.

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, thank you. I
23 think it would be sufficient to show a skeleton, so to speak, a skeleton chart so that
24 Defence counsel properly understands what Prosecution has in mind.
25 If you have nothing else to add on this particular point, perhaps we could move on to the

1 next item on the agenda.

2 The Prosecution was asked to provide some specific information about the number of
3 documents, the number of witnesses. Perhaps we could take the questions one-by-one
4 and that way you will have some time to respond to remarks from the Defence, or from
5 myself or from the Registry. Thank you very much, Mr Macdonald. You may proceed.

6 MR MACDONALD: (Interpretation) Paragraph 5(i), the question was "Estimate of
7 overall number of documents to be used."

8 (Speaks English) "Estimate the overall number of documents intended to be used as
9 evidence at the confirmation of charges hearing."

10 At this particular stage, despite the degree of precision requested by the Chamber,
11 speaking through the Single Judge, I think it's clear, your Honour, that at this particular
12 juncture the Prosecution is not in a position to give you an exact number, an exact number
13 of documents because for one simple reason: That our investigations have not been
14 concluded, but we can tell you that the Prosecution does intend to base ourselves with
15 this list of documents provided, we intend to use the most relevant items in a limited
16 fashion so as not to flood the Chamber and the Defence with excessive information.
17 We will truly focus and channel our energy on these items, the items that are most
18 relevant, so as to meet the burden of proof, the burden of proof necessary at this particular
19 stage, confirmation of charges.

20 I'm sorry that I can't be more specific, but at this particular stage that's the information I
21 can provide you with; and of course this depends on other factors, some greater detail can
22 be provided, but generally speaking all the information on the items of incriminating
23 evidence.

24 Since the investigation is still underway and since any information gathered could have
25 an influence on information that we already have in our possession, we may have ten

1 documents, or ten exhibits, and then find another document and we may be in a position
2 to drop nine documents and just have one particular document. So at this time we can't
3 say exactly how many.

4 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you,
5 Mr Macdonald. I do have a message for you from our interpreters: Could you please
6 observe a pause between the English and the French so that they can properly follow.
7 When you change you should always speak slowly, but when you switch languages
8 please do mark a pause.

9 I do have a question for you: Do you have any idea when -- do you have any greater
10 clarity as to the number of documents that you are planning to base yourself on?

11 MR MACDONALD: (Interpretation) I would say certainly -- confirmation of charges
12 is scheduled for 18 June. Early in April, late March or early April we should have a
13 much better idea of how many documents we are intending to use. I realise that we are
14 talking about three months from now. I'm not counting the month of December since the
15 judicial recess will be beginning quite soon. And given the time of year and since the
16 Prosecution cannot travel to Côte d'Ivoire at this particular time, so right now we would
17 say by late March we should have an overall picture and we should be in a position to be
18 much more specific.

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Do
20 you have any --

21 MR ALTIT: (Interpretation) I listened quite carefully, and I fear that it may be quite
22 difficult for us to work in these conditions because if we were to receive all those
23 documents late in March, or early in April, with the very limited means that we have at
24 our disposal, this means our task will be utterly impossible and really is in no way in
25 keeping with the jurisdiction of this Court. That is why we would like to receive the

1 documents that the Prosecution already has.

2 And really we're not saying this, it is the jurisprudence from the Bemba case that requires

3 this. 121(3) has to be interpreted in such a way that Article 67(1) of the Rome Statute

4 which -- stipulates that the information has to be provided to the Defence and sufficient

5 time has to be allocated to the Defence to prepare its case.

6 It seems to me that if we are to resolve this issue there are two things here: First of all,

7 the various items of information, or exhibits that -- or documents, rather, that the

8 Prosecution already has, we see no reason why this information cannot be disclosed.

9 And I reiterate: Non-disclosure would be in violation of the jurisprudence of the Court

10 and the legislation.

11 The Prosecution speaks of documents that they do not yet have in their possession

12 because of the ongoing investigation, but those are two different things. You are talking

13 about hypothetical documents, hypothetical items.

14 I'm talking about information, documents that the Prosecution already has in their

15 possession. I'm calling upon the Chamber to very clearly state that such information

16 should be provided to us as soon as possible, almost immediately. We need to begin our

17 work. Our current conditions are quite difficult. This is really a matter of proper

18 administration of justice.

19 If the Prosecution later receives documents, well, logically he would disclose them to us

20 and to the Chamber but that's really not the issue at hand right now.

21 MR MACDONALD: (No interpretation).

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

23 MR MACDONALD: (Interpretation) Very briefly, perhaps I misspoke or expressed

24 myself poorly, or there seems to be some kind of misunderstanding.

25 The issue here is the number. At this particular point in time the Chamber has asked us

1 if we can estimate the number of documents that you intend to rely upon during
2 confirmation of charges, and I think we are making reference to Rule 121(3). That's one
3 thing.

4 The issue raised by my learned friend is disclosure of items, be they incriminatory or
5 exculpatory. It is quite clear, your Honour, that documents that we can disclose will be
6 disclosed on an ongoing basis. 36 documents were already disclosed, 195 documents are
7 coming quite soon and the Prosecution certainly understands our obligations and the
8 jurisprudence of the Court in this regard. I thank you.

9 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you for
10 that clarification. That was quite clear.

11 MR ALTIT: (Interpretation) Well, these are two different issues, but they are related.
12 When one asks how many documents might be provided and we are told, "Well, we don't
13 know. We will know at some later date," well that later date will have an impact and so
14 really I think this question is quite legitimate.

15 If I could have one moment to confer?

16 (Defence counsel confer)

17 MR ALTIT: (Interpretation) I did want to add something on this point. Now, I don't
18 doubt that the Prosecution shall disclose these items as quickly as possible, but I want to
19 clarify one thing regarding the estimate of the number of documents. I realise that he
20 can't tell us today everything -- about everything that he wishes to use, but he must realise
21 that the more the process is dragged out the more the dynamics of the proceedings will be
22 affected.

23 If we don't have these documents we will not be in a position, and if we don't have a date
24 of disclosure we will not be able to take any particular position and we won't be able to
25 respond to any questions about the amount of time that we might need.

1 So really the Prosecution is leading right now, and the -- and the quicker the Prosecution
2 gives us an estimate, the quicker they provide disclosure, the sooner we will be able to
3 answer questions that we will be receiving from the Bench regarding our estimates.
4 What I mean by that is it is in everyone's interest to move as quickly as possible, and I do
5 believe that there is a foundation here, something that we already have, and I'm speaking
6 of the items that are already in the possession of the Prosecution and I think they need to
7 be disclosed quickly. This will allow us to determine what is what.

8 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Well, if I may resume this, I think
9 we have an exchange. I think it is clear that the Prosecution is requested to do as fast as
10 possible and of course to disclose as soon as possible all the documents that are already in
11 their possession, and we do hope to have an estimate of the global amount of documents
12 as soon as possible and maybe even if you cannot give us a final estimate earlier than
13 March, maybe we could reassess the situation at an earlier stage to see how we are dealing
14 with the documents?

15 Yes, Mr Macdonald.

16 MR MACDONALD: (Interpretation) On that last point, your Honour, if the
17 Prosecution prepares disclosure reports to the Chamber, it is the practice of this team to
18 do so and we would like to continue.

19 Well, the items are set out in the nomenclature of the -- well, the incriminating items, the
20 exculpatory items and 77 material. This is -- the Prosecution may choose to rely on some
21 of this material for the confirmation of charges, so that already is a clue, and so at each
22 particular stage we will make such reports. Usually these reports are prepared when the
23 eCourt system is in place - the eCourt protocol is in place - and so once our colleagues
24 have the necessary tools, namely access to eCourt and so on and so forth, we will be in a
25 position to disclose using the format and we'll use the three different terms. That will

1 already be an indication and that will be done on a rolling basis. The term is "rolling
2 disclosure," and the Defence will not have to wait until late March or early April.

3 We have not yet prepared a report on the 36 documents that have been disclosed already,
4 because the eCourt system has not been ordered yet, although it has been the case in all
5 other cases.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Since the issue of the eCourt has
7 been raised, may I now address myself to the Registry because we will need them
8 to -- they will be requested to file the last version of the eCourt as soon as possible. I
9 don't know if you want to comment on that right now?

10 MS DAHURON-JACOBY: (Interpretation) Indeed, your Honour. The Registry will
11 be filing as quickly as possible, and by the deadline set by the Chamber, a protocol for
12 eCourt. It will be updated, and this will be in consultation with the eCourt user group.

13 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Can we proceed to the second
14 question, which is the number of live witnesses, if any, for the confirmation of charges
15 hearing and the number of witnesses' statements pursuant to Rule 75 and the number of
16 pages of the statements?

17 MR MACDONALD: (Interpretation) The Prosecution does not intend to call any
18 witnesses to the stand, so no witness will be giving testimony in person. We shall be
19 relying on documentary evidence, which of course shall include witness statements.
20 There are two kinds of witness. There are those who come under 55(2) and Rule 112 and
21 there will be transcripts for them all depending on the length of the statement taken, so
22 those statements will be used to describe -- well, not really, it's not really a verbatim
23 report, but rather a statement, and this represents between 250 and 300 pages per
24 interview.

25 Those statements that come under Rule 112, that is to say witnesses that were not

1 informed of their rights, those particular statements average between 20 and 30, perhaps
2 35 pages, using the A4 format, A4 pages. At this particular juncture the Prosecution is
3 not in a position to provide the exact number of witnesses or witness statements that we
4 intend to rely upon, but that number will certainly be between at least ten witnesses and
5 that number may vary somewhere between ten and 12; approximately ten.

6 As to the specific number of pages, I really can't tell you. I've mentioned the approximate
7 lengths of transcripts, but some statements, you see, have not yet been concluded. They
8 have not yet been transcribed, rather. The audio recordings have not been transcribed
9 and cross-checked, and also before disclosure is possible a certain number of measures
10 have to be taken to protect people's -- people and so some redaction may be necessary to
11 protect our colleagues. So that is the situation that we are dealing with right now on this
12 particular day.

13 So there you have it. There's our reply to that particular question. Clearly we will rely
14 upon insider witnesses; witnesses that may come under Rule 112. Their specific
15 names -- well, there may be five, six, seven witnesses. The others don't come under that
16 particular rule. That is what I can tell you at this time.

17 Once again, notification of the Chamber will occur by way of these disclosure reports.
18 They will be filed and the Chamber will have access to them, so when we disclose items to
19 our learned friends a report shall be made. Inevitably, if the Chamber were to decide to
20 monitor the redaction process you will be notified, or we will ask for leave to redact
21 certain witness statements.

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Mr Altit, have you
23 any observations?

24 MR ALTIT: (Interpretation) No particular observations on this point, but if you don't
25 mind I would like to go back to the eCourt issue for a few moments with your leave?

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (No interpretation).

2 THE INTERPRETER: Inaudible.

3 MR ALTIT: (Interpretation) This is a technical point, but this is a very important point
4 for us. The Office of the Prosecution uses Ringtail to disclose. The Defence team
5 currently doesn't have any officers within the premises of the Court, or any computer
6 material, equipment that allows us to have access to Ringtail, and thus our team has no
7 access to these tools used by the Prosecution.

8 Even with Citrix, which only works over the internet, it is not possible to properly read
9 them or download them. Citrix has all kinds of technical difficulties. I won't go into a
10 list of these problems, but we have had a considerable difficulty with that system and
11 consequently the Defence does have one request and this request is that all documents
12 from the Prosecution be forwarded to us in PDF format. This is absolutely necessary so
13 that we can work properly. So, please, in PDF format and, you see, we are very much
14 lacking in resources - means - even if we don't have offices within the Court.

15 Given that we are a very small team, you must realise some people are listening, hearing
16 witnesses. Some of us are working outside of The Hague. We are not in a position to
17 even be in communication with the OTP. So this may seem to be a minor point, but this
18 is absolutely essential to us.

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

20 MR MACDONALD: (Interpretation) On this particular point, given that the Defence
21 team does not have access to the usual computer systems from -- by way of the Registry,
22 we shall disclose documents in PDF format; at least the documents that do not represent
23 any difficulty in terms of confidentiality.

24 I would suggest that my learned friend make a proper filing. We shall respond properly.

25 There are a number of standards that represent the practices of this institution, and what

1 my learned friend has just suggested does not meet this standard.

2 Whether the Chamber adopts the eCourt system protocol or not, in any event, that is what
3 governs disclosure and disclosure reports, reports of disclosure between Prosecution and
4 Defence.

5 This Court is one of the most electronic courts in the world, if not the most electronic
6 Court in the world, so I certainly do want to comply with my learned friend's request.

7 We can provide documents in PDF format until they have access to eCourt and up until
8 my learned friends have access to computers here. And I believe that -- well, I thought
9 that a case manager would be identified, a liaison person between us and them.

10 Now, once the infrastructure is set up, so to speak, by the Registry so that my learned
11 friend can overcome these barriers -- so that he doesn't have to deal with these barriers
12 during his investigations in the field, and that sort of thing. I thank you.

13 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you very
14 much. Whatever the case may be, it is very clear that we need to accelerate the adoption
15 of the eCourt system. And I would like to ask the Registry to present or introduce
16 eCourt to the Chamber at the end of this week. Would it be possible on Friday?

17 MS DAHURON-JACOBY: (Interpretation) Madam President, yes, indeed we were
18 planning for this, and we shall do our utmost, and I think that we will be able to file this
19 protocol for Friday.

20 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Friday, yes.

21 Indeed, Friday, because we do have to speed up the installation of this system. Thank
22 you.

23 (Speaks English) So I will continue in English, on the basis of my agenda in English.

24 I would now ask the Prosecutor to give us an indication on the -- on whether the

25 Prosecutor requests that certain documents and witness statements be disclosed to the

1 Defence in redacted form pursuant to Rule 81(2) or (4) of the Rules and, if so, an estimate
2 to the greatest degree of precision possible of the number of documents and witness
3 statements and the number of pages of those documents and witness statements. Well,
4 we are coming back to the -- to what you already said in a certain way.

5 MR MACDONALD: (Interpretation) The figure which includes transcripts and witness
6 statements is approximately 100 documents. We're talking here also of annexes, that is
7 witness statements and their annexes, and also some other documents, one or two
8 documents in number. So this is, for the most part, interviews with witnesses and
9 annexes to these documents.

10 The redactions will, for the most part, fall under Rule 81(2) in order to protect, if you like,
11 the investigations that are ongoing. There might also be requests for redaction according
12 to Rule 81(4), but to date this category of redaction might be somewhat more limited in
13 scope. So that's the good piece of news, if you like, because by definition redactions
14 under 81(2) means that they can be lifted over time. That's what I can tell you at this
15 juncture.

16 Unfortunately, this might not be the degree of clarification requested by the Chamber but
17 at least it's a start. So there is this question of redactions, and I know that the Prosecution
18 mentioned a sub-category of items that it wanted to raise but I can see that they do not
19 figure on the agenda.

20 Now, with regard to the regime or procedure to be followed in order to submit requests
21 for redactions, whether this be under Rule 67 for incriminating or exculpatory material,
22 maybe this is a point that we can discuss at a later stage but I believe that this is a point
23 that the Prosecution would like to make a number of submissions upon. That is in
24 answer to paragraph 5(i).

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Merci. Thank you very much.

1 Yeah, well, maybe we can go through the list until (v) and then maybe we will come back
2 to any additional suggestions you would like to make regarding redactions and the
3 redaction system.

4 So, at this stage, (interpretation) do you have any comments upon what has just been
5 explained by Maître Macdonald?

6 MR ALTIT: (Interpretation) Yes, I do have a comment, Madam President. I am totally
7 in agreement with my learned friend on this point, and I believe that it would be a good
8 idea for us to have a meeting on this at a later stage because it is a delicate point and
9 maybe we might take some time to think about this together because of course it does not
10 figure on today's agenda.

11 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I do apologise.
12 I do not think I've understood you entirely.

13 THE INTERPRETER: Overlapping microphones. Message from the interpreter:
14 Could the pause please be respected?

15 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) What precisely
16 would you like to talk about during this meeting, this subsequent meeting?

17 MR ALTIT: (Interpretation) I'm talking about here the disclosure. I do understand
18 what you've said, the fact notably that we could talk about this at a later stage, but in view
19 of the delicate nature of the subject, and it's important, I believe that it might be the subject
20 of a meeting at a later stage.

21 MR MACDONALD: (Interpretation) Are you talking about redactions and the regime?
22 You talked about --

23 MR ALTIT: (Interpretation) Yes, I'm talking about redactions as opposed to disclosure.

24 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, redactions,
25 indeed. Yes, maybe we might be able to raise the question, if we have time, and then we

1 might have a meeting on the subject at a later point to go into more detail in order to flush
2 out the various ideas to be brought to the table but of course it is a delicate issue and we
3 need time to prepare.

4 So, now small (iv), (speaks English) "Indication as to whether the Prosecutor obtained
5 documents pursuant to Article 54(3)(e) of the Statute which contain exculpatory material
6 and, if so, whether the Prosecution has tried to obtain the consent of the information
7 provider and details of the responses that you have received, if any."

8 MR MACDONALD: (Interpretation) The Prosecution did not provide any guarantee
9 under Article 54(3)(e) of the Statute, so the answer to that is "No."

10 MR ALTIT: (Interpretation) I do not have any further observations to make, Madam
11 President.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) So we now come
13 to the final point on the agenda with regard to the decision: (Speaks English) It's an
14 indication of the overall amount of materials already identified as covered by Article 67(2)
15 of the Statute and Rule 77 of the Rules and for which in the Prosecutor's view redactions
16 are needed.

17 MR MACDONALD: (Interpretation) There are indeed documents which contain
18 exculpatory material within the witness statements but exculpatory documents, as such,
19 and documents that are uniquely exculpatory, well, the Prosecution does not have a
20 redaction request to make in this regard.

21 But in order to explain what I'm saying here, some documents, according to the eCourt
22 nomenclature, might contain incriminating or exculpatory or Rule 77 material. And in
23 this context were the OTP to disclose an incriminating item, it's considered to be
24 incriminating even if exculpatory material is therein.

25 Now, in the witness statements of those witnesses interviewed there is a mixture of such

1 information and despite the fact that the Prosecutor says that these witnesses are
2 Prosecution witnesses, are incriminating witnesses, they do however contain some
3 exculpatory material.

4 So, yes, with regard to documents that are uniquely exculpatory, we have not noted any
5 documents requiring redactions in this regard. It is clear, of course, that there will be
6 some. It is to be anticipated.

7 And the Prosecution undertakes before this very Chamber, and we want this to be crystal
8 clear, that any request for redaction will be made on a rolling basis but I think we are
9 entering this rather delicate discussion of redaction. I think we might talk about this at a
10 later stage.

11 Do we then submit these requests for redaction, and how and at what stage? I'm sure
12 that the Chamber will impose a time limit by which the OTP will request redactions to be
13 applied. There will be a cut-off date which will certainly be before the 30 days falling
14 under Rule 121(3).

15 Of course we will be in a position, your Honour, to meet any deadlines set by the
16 Chamber but the intent on the part of the Prosecution is to submit these documents in a
17 rolling manner, as they come to light.

18 Of course in terms of exonerating material under Rule 77, we will have to think about this
19 because of course it may be a burden on the Chamber but I think we shall discuss this at a
20 later stage, as requested by my learned friend.

21 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you very
22 much. I have just been asked, once again, to observe a pause between the various
23 speakers. So I shall apply this golden rule myself, this pause.

24 We do not have much time left. We have 15 minutes at our disposal, so I wanted to ask
25 you to make additional comments or any additional comments that you might have with

1 regard to the redactions process, or any other points that you think are important to raise
2 now, but you only have a few minutes to raise these issues. And maybe we might have
3 to convene a further status conference in order to thus discuss these matters further.
4 I would also like to suggest to both the Prosecution and the Defence, because you are
5 going to get together in order to discuss the charts and various solutions in order, I would
6 suggest that you continue with your discussions so that we can come to some form of
7 conclusion when we meet again.
8 Now, because I have the floor, I would like you to possibly give us a joint proposal with
9 regard to the closure procedure adopted by the Chamber subsequent to your meetings.
10 This might be at 11 January, approximately. In such a manner, we will be able to listen to
11 your reactions and we'll be able to make a decision with regard to the system to be
12 adopted by the Chamber. Do you agree?
13 Now, Mr Macdonald, you have 3.5 or three-and-a-half minutes. In fact, you have five
14 minutes in which to express yourself.
15 MR MACDONALD: (Interpretation) There are two points that the Prosecution raised
16 and, after having received a request for clarification, we in an inter partes manner
17 received references to two decisions; notably the redaction process and, secondly, the
18 adoption of protocol or behaviour to be adopted during the investigation process by the
19 various parties and also contact with witnesses on the other side.
20 Now, of course I'd like to use terms that are neutral. Of course it is true that the
21 Prosecution has the burden of disclosure here and in its legitimate exercise of its
22 investigations, which of course means the resource persons underneath -- under their
23 responsibility according to the professional code of conduct before the Court.
24 We do have -- we have learned a number of lessons in various cases before this Court, a
25 number of protocols have been adopted, a number of decisions have been handed down

1 in order to manage the disclosure of information which is of a confidential nature, and in
2 such a legitimate exercise how can the OTP use such information in the conduct of its
3 investigations?

4 I am referring here to the Katanga file, decision 2047, and protocol which adopts the
5 protocol that had been submitted for approval previously which is to be found in filing
6 2007, annex number 1.

7 Also in the Bemba case, at the trial -- at trial stage, the Chamber adopted this same idea of
8 a protocol, referring to the Katanga and Lubanga cases, and if I'm not mistaken we are
9 talking here about decision 819 -- I apologise, 813. This is in the Bemba case.

10 Also in the Lubanga case and subsequently in the Katanga case, in decision 1134 in the
11 Katanga case that is, there was the question of disclosing the reports of investigations.
12 For example, when the Defence wants to enter into contact with a witness met by the OTP,
13 what precisely are the various stages to be followed?

14 I would refer my colleague to this decision, and I believe that here we are talking about a
15 protocol which might have provisions for such rules and that the Chamber might adopt in
16 the future, because of course this all includes protective measures when confidential
17 information is given not only to the Defence team, but especially to the accused person
18 and inevitably to resource persons employed by the Defence team as well, and in so doing
19 this does of course not minimise the risk that when we have seen this under certain
20 circumstances it does increase the risk for some witnesses despite the willing attitude of
21 the Defence team. So I believe that in this meeting, or status conference, that we might
22 convene on the subject of redactions, we could revisit this issue and we might also submit
23 some filings on the subject.

24 Now, with regard to the second point, notably redactions, very briefly, as far as the
25 confirmation of charges is concerned, and were it to go to trial, there comes or came a

1 moment in time in the Katanga case where the exculpatory material under Rule 77, well,
2 the Chamber no longer wanted to receive those requests, which enabled the OTP to
3 disclose to the Defence documents with redactions, and the Defence had time to react to
4 this, either a time limit of five or ten days, and were a challenge to be raised the Defence
5 would then solicit the intervention of the Chamber. I come from a judicial system where
6 this system is also applied to incriminating evidence.

7 So what I understand is that, at the outset, the parties develop a rapport with the Bench.
8 We sort of check each other out a bit, we see how people work, and the Pre-Trial Chamber
9 II, which wanted to come back to a Rule 77 procedure, came back to what had been
10 adopted by PTC I under the very same case and I believe that redactions were limited and
11 for the same reasons and for very specific needs falling under Rule 81(1) or 81(4), and I
12 think that Pre-Trial I also realised over time that, even when there were requests from the
13 Defence, the OTP was able to be in agreement with the Defence in this regard.

14 So this means that we want to be -- we want to avoid being flooded, or inundated, with
15 requests for redaction. We don't want to be the referee over a voluminous number of
16 requests for redactions, and experience has shown over time that the Defence team can see
17 that the redacted information is very limited and they are more than able to
18 understand - read and understand - the contents of a document without knowing, for
19 example, the location, or the name of an individual who is for example a family member
20 of a witness, without knowing that information and that this does in no way infringe their
21 preparation.

22 So, if we want, what we need to talk about in this future meeting is whether there is a
23 means, you know, were the Prosecution to submit certain things to the Chamber and were
24 a problem to arise, then of course we can discuss it directly with the Chamber. That's
25 what I wanted to say.

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Would you like
2 to make any comments now?

3 MR ALTIT: (Interpretation) Yes, thank you, Madam President. My comments will be
4 extremely brief in nature.

5 There are three points that I would like to raise very rapidly; the first two points with
6 reference to what my learned friend just said and a third point with regard to exculpatory
7 evidence.

8 The Defence noted that the OTP will disclose all evidence in his possession that is
9 considered to be exonerating as soon as he has it in his possession.

10 Now, there is an associated matter here. We have not received the request from the
11 Prosecution for an issuance of a warrant of arrest, nor have we received further
12 information from the Chamber in support of this request. We would like to receive this
13 document at the earliest possible time, because this will enable us to ascertain the legality
14 of his detention. It's not as such an exculpatory document, but it is associated or linked.

15 I'd like to come back to the two points raised by my learned friend now. First of all, with
16 regard to redaction, for the Defence it is fundamental that a third party monitor the
17 redaction process, because the disclosure is a principle and redaction an exception, so for
18 the Defence a strict judicial control is indispensable in this regard.

19 Furthermore, in view of the fact that the Prosecutor talked about a procedure that might
20 be simplified, we do not believe -- and we'll come back to this, but we do not believe that
21 the procedure as it has been suggested today by the Prosecution simplifies matters. To
22 the contrary we believe that it complicates matters, but of course we will explain this at a
23 later stage.

24 With regard to protocol and more generally with regard to the question of confidentiality,
25 it is indeed somewhat early to talk about this because it is vast in nature and we need time

1 in order to go into detail.

2 It is early to talk about a protocol, but from the Defence's viewpoint what is
3 applicable -- and we're talking here about principles when -- also when we talk about
4 redactions. The Defence would like that everything that is applied to the Prosecution be
5 also applied to the Defence, that there be no difference. That means that any difference
6 that might be applied jeopardises the equality of arms principle.

7 Now, with regard to confidentiality and the various protocols to be adopted and the
8 capacity of the Defence to actually react out in the field to talk to witnesses, it is
9 fundamental. There must be flexibility. There must be flexibility between the witness
10 and any potential Defence witnesses, because this does depend -- this does define our
11 capacity to react, so we believe that the same principles and the same modalities of action
12 should be applied both to the Defence and to the Prosecution.

13 As to what my learned friend said, I retain that it is the most recent version of the Katanga
14 protocol, which is consistent with the Lubanga protocol, which would be the best place to
15 respond to this issue of equality of arms, but I believe that we shall return to this.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you very --

17 MR ALTIT: (Interpretation) I apologise, just one last point that I'd like to raise.

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We have four
19 minutes.

20 MR ALTIT: (Interpretation) Three seconds with regard to complementary issues. The
21 Defence would like any points to be raised at the next status conference to be submitted in
22 the form of filings, because this will enable each and every party to take position.

23 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Let me -- we have only a few
24 minutes left, so I'll maybe summarise a little bit where we are.

25 Maybe I can go to one of the concerns raised by Mr Altit regarding the documents -- the

1 Prosecution's application for the warrant of arrest. These documents together with the
2 decision of the Chamber will be the subject of a decision to be issued very, very soon,
3 probably this week, so you will have access to them. It is -- now it's in the Chamber's
4 consideration.

5 Now, let me go back to the hope of the Chamber that you will come back with a
6 joint -- probably joint proposal by 11 January on the system of disclosure.

7 Now, I also hope that you will continue, use your contacts to continue having a discussion
8 on the -- yes, I don't know it's for both parties, so I would like to make sure that you all
9 listen. Thank you.

10 Then I would like to both of you continue discussing the system for the redactions
11 because I think it is useful and important to find a system that will allow an expeditious
12 proceeding, without affecting fairness, so I do hope that you will be able to continue this
13 discussion without prejudice of course of having another status conference in January to
14 discuss this issue further, and regard other issues that you might wish to raise including
15 this issue of the protocols or whatever else you want to discuss, and I'm not sure I
16 understood your proposal on the *écriture*?

17 MR ALTIT: (Interpretation) Madam President, just one word on that subject: We
18 would like for things to be very clear and since this is such an important matter that when
19 we are preparing for another meeting or conference, that we prepare the matter in writing.
20 I think that this is preferable and useful for all and sundry.

21 MR MACDONALD: (Interpretation) Just on this point, Madam President, all parties
22 will be filing at the same day, the parties will be filing at the same day, and of course this
23 implies, does it not, that we file, you file. It's not, you know, we'll have a look and see
24 what the Prosecution has to say and then we will wait and see what happens and then
25 come to the hearing. It's not a game of hide and seek.

1 There is no difficulty with the Abu Garda model with regard to disclosure. The only
2 issue is the chart, or table, but we'll come back to this with the Chamber. I do not know
3 whether it is really necessary to come back with filings because then we're debating the
4 issue in writing, you know, then of --

5 THE INTERPRETER: Overlapping of microphones.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Okay. We don't have so much
7 time now, so we want to issue a decision for the next conference. I do understand the
8 need of the eCourt preparation before the conference, the status conference. On the other
9 hand, the status conference has this purpose of getting together to discuss, so we need to
10 have a balance there because if we do it very formal with written proposals only and then
11 the status conference loses a little bit of the purpose.

12 So we tried to have an agenda circulated in advance. We tried to call the attention of
13 everybody on documents that need to be discussed and studied in advance, but I think we
14 also leave to -- we have to give some time, some flexibility for the procedure of status
15 conference because that is the main purpose of them, and of course if you are not ready
16 we will not force you to make a decision on anything and we will convene another
17 conference, but we need to be flexible on this, I think. And I understand that we will
18 have, we see the need for a status conference ex parte with the Defence and the Registry
19 tomorrow to discuss issues related to the preparation and the organisation of the Defence,
20 and we can see already some of the problems you have, so I will issue right now an oral
21 decision before we have no time at all.

22 So, this is an oral decision convening a status conference in camera and ex parte Defence
23 and Registry only. I hereby convene a status conference in camera and ex parte Defence
24 and Registry only for Thursday, 15 December 2011, between 2.30 and 4 p.m. in Courtroom
25 1 to discuss matters relevant to the organisation of the Defence. I recall that the presence

1 of the suspect is not required for the status conference but he may be present if he would
2 like to attend.

3 As regards the Registry, I would like representatives from the Court Management Section,
4 the Information and Technology Section and the Counsel Support Section, to be present
5 during the status conference.

6 Thank you very much. I don't know if we have one minute? Do we have one minute?

7 Yes. Two minutes? Two minutes.

8 Maybe because we have an item on the agenda for the Defence, so maybe you can indicate
9 very briefly whether the Defence anticipates presenting evidence at the confirmation of
10 charges hearing, and if so an estimate of the overall number of documents and witness
11 statements, and two, whether the Defence intends to present live witnesses and foresees
12 the need for protective measures?

13 MR ALTIT: (Interpretation) We have not received anything from the Prosecution so we
14 really are not in a position to give any estimate of what we may present or not present at
15 the confirmation of charges hearings. We're not in a position to say whether we will be
16 presenting live witnesses or not.

17 As to the second question, correction, yes, we will be bringing some witnesses who will
18 need protective measures but we're not in a position to say exactly how many such
19 witnesses we may call. I thank you, your Honour.

20 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much, and may I
21 advise also the Defence to meet with representatives of Victims and Witness Unit, so you
22 can starting understanding a bit better the process and the time-lines for referrals to the
23 victims unit if necessary. So you may wish to start liaising with them and understanding
24 how the system works.

25 So, we have reached the end of our status conference. I really have to thank in particular

1 the interpreters. It has been a difficult hour-and-a-half. I thank you very much for your
2 understanding. We will do better next time, I think, and I thank you all the participants
3 here and I think we can adjourn now and we will probably be consulting the parties for
4 the date of next status conference in January next year. Thank you very much.

5 THE COURT USHER: All rise.

6 (The hearing ends in open session at 5.36 p.m.)