

1 International Criminal Court
2 Trial Chamber I - 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 Geoffrey Henderson, Judge Cuno Tarfusser
6 and Judge Olga Herrera-Carbuccia
7 Status Conference
8 Tuesday, 4 November 2014
9 (The status conference starts in open session at 9.31 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE HENDERSON: Please call the matter.
14 Good morning, everybody.
15 Please call the matter.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Côte d'Ivoire, in the case of The Prosecutor versus Laurent
18 Gbagbo, ICC-02/11-01/11.
19 We are in open session.
20 PRESIDING JUDGE HENDERSON: Thank you.
21 First of all I would like to welcome the parties, the participants - well, Mr Gbagbo is not here,
22 but in his absence Mr Gbagbo - to the first status conference of Trial Chamber I in this case.
23 Since this is a newly reconstituted Trial Chamber I, I will start by introducing the Chamber.
24 On my right is Judge Cuno Tarfusser and on my left is Judge Olga Herrera-Carbuccia and I
25 am Geoffrey Henderson, the Presiding Judge in this case.

1 Before asking the parties to introduce themselves, I will formally note for the record
2 that Mr Gbagbo is absent today. Now, the Defence has provided the Chamber with
3 information of Mr Gbagbo's personal circumstances and have filed a waiver signed by
4 Mr Gbagbo himself in relation to his right to be present here today, and that is filing
5 716.

6 Now, before we start, I'll ask the attorneys to please introduce themselves and their
7 team for the record, but before giving you the floor, I would like to remind that all the
8 speakers, please take your time, speak slowly. It's the house rules. Pause for a few
9 seconds between speakers. And this is really necessary to ensure that we have an
10 accurate transcript and accurate interpretation.

11 I also wish of course to thank in advance the court reporters and transcription services
12 for assisting us today.

13 Mr Prosecutor, you have the floor.

14 MR MACDONALD: Thank you, Mr President, your Honours. I will be introducing the
15 Prosecution team present here this morning. In the back row just behind me you have the
16 case manager, Mrs Sandra Schoeters; to her left you have Krisztina Varga, associate trial
17 lawyer; second row behind me you have Mr Lloyd Stang, trial lawyer; and next to him you
18 have Mrs Maria Berdennikova, associate trial lawyer; to my left, Mrs Florie Huck, who is also
19 an associate trial lawyer; and also myself Eric MacDonald. Thank you.

20 PRESIDING JUDGE HENDERSON: Thank you.

21 Mr Defence.

22 MR ALTIT: (Interpretation) Thank you, your Honour. Your Honour, I'd like to introduce
23 Jennifer Naouri, our legal assistant who is beside me; Barbara Le Guennec, our case manager,
24 behind me; Gaëlle Buchet, our assistant case manager; and Noémie Turgis and Helin Köse,
25 our pro bono assistants. Ms Baroan sends her apologies. She is on mission. And I myself

1 am Emmanuel Altit, Mr Gbagbo's counsel.

2 PRESIDING JUDGE HENDERSON: Thank you.

3 The legal representative for the victim?

4 MS MASSIDDA: Good morning, Mr President, your Honours. The office of public counsel
5 for victims is representing victims participating in this case. With me today at the hearing
6 behind me Ms Ludovica Vetruccio, associate legal officer; at my right, Mr Enrique Carnero
7 Rojo, legal officer; and I am Paolina Massidda, principal counsel.

8 PRESIDING JUDGE HENDERSON: Thank you.

9 Anybody from -- the representative from the Registry?

10 MS DAHURON-JACOBY: (Interpretation) Good morning, your Honour. Representing
11 the Registry today Soraya Brikci, who is representing the VWU; to her right, Isabelle
12 Oseredczuk, VWU; to my right, Jasmine Toumaj, who works with the head of CMS; and I am
13 Charlotte Dahuron, who is head of the Court Management Section.

14 PRESIDING JUDGE HENDERSON: Thank you.

15 At the beginning I would like to say that the purpose of today's status conference is to discuss
16 the steps which must be taken before the trial can commence. The Chamber already has
17 received submissions from the parties and participants, including the Registry, on a number
18 of issues listed in the agenda. Items suggested by the parties were added to the final agenda
19 for today's status conference, which was issued on 30 October 2014.

20 As you will have seen, the commencement date of the trial will be dealt with as the
21 last agenda item. In this connection, I emphasise that according to Article 64(a) -- I
22 beg your pardon, Article 64(8)(a) of the Statute at the commencement of the trial, the
23 Trial Chamber shall read out the confirmed charges and shall afford the accused an
24 opportunity to make his plea, that being an admission of guilt or a plea of not guilty.

25 As the Chamber considers that the trial commences on the first day of trial on the

1 merits and not at this status conference, and in any event Mr Gbagbo is not here this
2 morning as he has been excused, we will read the charges and provide the accused an
3 opportunity to enter plea on that day. Of course, it is open to the accused that he
4 may enter a plea at any time before then if he wishes to do so.

5 Now, before moving on to the agenda items, the Chamber wishes to make some
6 general comments on its expectations for the proceedings and on how it wishes the
7 proceedings to be conducted.

8 There are just ten such observations which I would wish to make at this stage.

9 The first is that in order to promote the fairness and expeditiousness of the proceedings, the
10 Chamber encourages inter partes communication. The parties are free to seize the Chamber
11 of matters that cannot be agreed between them, but they should discuss and attempt in good
12 faith to agree on a procedure before bringing any matter before the Chamber.

13 Two: To assist efficient inter partes communications, the Chamber urges the parties
14 to be civil to each other and besides the interaction in the courtroom, that also extends
15 to communications by email and equally important the language employed for such
16 filings.

17 Three: As to the filings, the Chamber stresses that these should be as concise as
18 possible. Parties and participants need not necessarily exhaust page limits stipulated
19 by the ICC regulations. Even on the limited number of filings made in this case, the
20 Chamber observes that parties and participants should endeavour to perhaps tighten
21 up in that regard.

22 As to the notification of filings, the Chamber has noted that it has already happened that the
23 legal representative of victims was not notified on some confidential filings, without the party
24 providing any justification for them having not been provided. The Chamber is aware of the
25 approach of the Pre-Trial Chamber I, but the Chamber recalls that publicity is really the rule.

1 In case of filings of confidential documents, the Chamber will instruct the parties and
2 participants that from today they should always notify all the parties and participants,
3 including the legal -- including the legal representative of victims, of their filings. If, if they
4 have a good reason not to do so, then pursuant to Regulation 23bis of the Regulations of the
5 Court, the party or the participant submitting the filing should indicate the status of the filing
6 as confidential and ex parte and provide the reason in the filing itself to enable us to make the
7 ultimate decision.

8 Moving on to five: In general, it is the rule that emails to the Chamber should not
9 contain any substantive matters or legal arguments. Such issues and requests
10 should be addressed and made in formal filings. Naturally if a matter requires
11 urgent attention and can only be brought to the Chamber's attention within an
12 actionable time frame by email, by all means this can be done. However, it should
13 be an exception and the Chamber may direct the party concerned to place the matter
14 on the record by way of filing at a later stage.

15 Moving on. Six: All email communications directed to the Chamber should use the
16 Trial Chamber I's communication address, which was already used by the staff of the
17 Chambers to send you emails. Sending your email to this address will automatically
18 copy the message to the legal teams that assist the Chambers.

19 Seven: The Chamber does not need to be included on the inter partes exchanges
20 between the parties and the participants. However, when seizing the Chamber of an
21 issue, all parties and participants should be copied on the email communication with
22 the Chambers unless there is a specific justification for doing otherwise.

23 Eight: With respect to time frames, the Chamber wishes to indicate that it will press
24 the parties and participants to keep a steady pace; a steady pace to these proceedings.
25 The Chamber may therefore shorten response deadlines and will from its side ensure

1 that decisions are made within due course, but it's obvious that to achieve
2 expeditiousness the Chamber needs the assistance of both sides, all sides, from the
3 parties and the participants to the proceedings.

4 Nine: It is also important to mention this at the outset. These proceedings are
5 against Mr Gbagbo in his personal capacity. In those circumstances, this Chamber
6 does not consider the use of the title "President" appropriate in filings in this case as
7 appears to be the practice. The Chamber therefore invites you to - and invites the
8 Gbagbo Defence team - to refrain from using the title.

9 And, finally, the Chamber will of course receive filings in either of the working
10 languages of the Court. However, we wish to notify the parties and participants that
11 the primary working language of this Bench is English. Therefore, all decisions and
12 orders will be issued in English.

13 Right, so that takes care of the general observations. Now I would like to go to the
14 specific items of the agenda this morning.

15 Now, for each item I will first recall the main points raised by the parties and
16 participants in their written submissions and then I will give the parties and the
17 participants the opportunity to discuss these items further by way of their
18 observations.

19 The Chamber - we all - request, however, that you do not repeat the arguments from
20 your filings. I can assure you that we have read them and that we have taken full
21 cognizance of them and that you are to use your limited time judiciously to either
22 expand on those submissions, or to respond directly to the other submissions.

23 Repeating them doesn't really bolster or enhance the written submission.

24 Right. So let's start with item (a): Timing, volume and modalities of disclosure of
25 evidence pursuant to Rule 76 of the Rules.

1 Now, the Prosecution has updated the Chamber on the status of disclosure. It has
2 indicated, among other things, the number of witness statements and other related
3 material that were already provided to the Defence and the witness statements and
4 other material that it still needs to disclose. The Prosecution also mentioned its
5 intention to call expert witnesses and indicated that it is conducting confined further
6 investigations which may lead to further disclosure.

7 The Defence requested that the identity of the witnesses the Prosecution intends to
8 call should be disclosed as soon as possible, in order to have the time to prepare for
9 trial, and that any request by the Prosecution to add a new witness should be made at
10 an early stage of the trial; preparation stage.

11 The Defence also requests the Chamber to set deadlines for disclosure of material the
12 Prosecution already has in its possession, as well as of new items the Prosecution may
13 collect during its ongoing investigation.

14 For this item the Chamber is specifically concerned with Rule 76 items, meaning
15 disclosure relating to witnesses the Prosecution intends to call at the trial. Items
16 disclosed under other provisions will be the subject of a separate agenda item.

17 Before giving the floor to the parties, the Chamber would like to emphasise that it is
18 particularly interested in ensuring that disclosure is completed as accurately and as
19 expeditiously as possible. In this regard, the Chamber is aware of major delays in
20 previous trials due to problems relating to the disclosure of evidence.

21 As was said previously, the Chamber expects that the parties shall try to engage at the
22 earliest opportunity inter partes communication to resolve any such difficulties.

23 In the exceptional circumstance or situation that the parties are unable to achieve
24 agreement on questions relating to disclosure, the Chamber will then resolve any
25 issues that remain.

1 So perhaps I will start with you, Mr MacDonald. Can the Prosecution provide the
2 total number of witnesses it intends to rely on at this stage?

3 MR MACDONALD: Thank you, Mr President.

4 It is not an easy answer or straightforward answer for different reasons. The main
5 reason is, as mentioned, there is a side issue that will be discussed later and in due
6 course is the joinder or possible joinder or not of this case with the case of Mr Charles
7 Blé Goudé, so -- but independently of that I would say that apart from the February
8 incident that was added in the case of Mr Blé Goudé, which leads to a number of
9 additional crime-base witnesses, most of the witnesses are the same in both cases.

10 At the moment we have said in our submission, if I'm not mistaken, 55 witnesses have
11 been disclosed and relied upon at confirmation. From those number - and I'll
12 address first the question of the disclosure of the identity of witnesses - only three
13 witnesses' identity were withheld from the Defence, or were anonymous. Two of
14 those can now be disclosed. One remains at this stage anonymous.

15 We are not in a position at this stage to say to the Chamber if we will rely on this
16 witness at trial. If we are to rely on this witness, obviously his identity will have to
17 be disclosed.

18 Does that mean that as a potential protective measure we would ask for late
19 disclosure? I cannot give you this answer at this stage. That witness, 238 to
20 indicate his witness code, is the only witness at this stage that would -- that remains
21 anonymous and for whom maybe delayed disclosure or certain protective measures
22 would be necessary. There are no other witnesses, even the ones I'm going to talk
23 about now. So those are the 55 witnesses that were disclosed.

24 We have obviously interviewed in the course of the further investigation into the
25 Mr Blé Goudé case additional insider witnesses, or witnesses that are not necessarily

1 crime-base but who provided statements pursuant to Rule 11(xi), so the non-recorded
2 interviews. And we have a number of those, at least 15, that we can disclose as soon
3 as we have guidance as to any -- the redactions process and the authorisation needed
4 or not to seek redactions. I understand we'll discuss that later.

5 So there's a number of issues that impact on the answer of how many witnesses we'll
6 have. Our investigations are ongoing in this case, but also in relation to the Blé
7 Goudé side of the case, and we foresee that potentially at trial we could have as many
8 as between 80 to 100 witnesses.

9 Now, before -- before -- the number is astronomical for this institution, and believe
10 me I did a prior trial with 25 witnesses, so I understand that this may be something
11 that impacts on expeditiousness. We realise that.

12 Now the reason why I'm saying that is, your Honour, you've mentioned we need to
13 sit down and discuss certain issues with our colleagues, but if the chain of custody of
14 items, if this -- if the Defence challenges everything, then the Prosecution has to do
15 what it has to do.

16 There may be also investigative steps that for instance at the moment we need to
17 present five witnesses because DNA is not possible. If DNA is possible, then we
18 slash or we cut, sorry, five witnesses.

19 So at this very moment, your Honour, these are only estimates, but the outer limit
20 could be in that range. Of course we will -- we need to also see how many witnesses
21 need to be called on for crime-base for instance, but again -- and I understand the
22 Chamber's looking for the parties to work together and cooperate as much as possible.
23 We understand that, your Honour.

24 In this institution, contrary possibly to a national system, anyway the one I'm
25 accustomed to, these are mega cases - major cases - where the stakes are really high.

1 Defence have their own interests that do not necessarily meet the ones of the
2 Prosecution. Therefore sometimes this cooperation can be difficult, or impossible.
3 But of course under the forceful watch of the Chamber, I would say, sometimes things
4 can move in the right direction, where challenges that on their face by the Defence are
5 maybe not necessary, and then we can move and then it helps in the number of
6 witnesses that will need to be heard.

7 One thing that the Prosecution though is mindful of is, for having lived the
8 experience, your Honour, before this institution once before in a joint case actually,
9 there may be three witnesses that can come and testify about a fact. The Chamber
10 will be interesting in maybe saying, "Prosecution, do you think three witnesses are
11 necessary? Why don't you call just one?" And then we do that, we call only one,
12 but that one witness on the witness stand, his story may be a little bit different from
13 the story or the statement provided to the Prosecution and then therefore a decision
14 further down the road will be saying, "Well, listen. This witness is not credible, or
15 he's not been corroborated or anything," and we had a number of other witnesses that
16 we could have called to establish the same facts and would corroborate the witness,
17 or ultimately could be better witnesses.

18 So there's -- the Prosecution has the burden to prove beyond a reasonable doubt its
19 case. While in previous cases certainly this Prosecutor maybe did not fight that
20 attempt by the Chamber to expedite the proceedings on the number of witnesses, this
21 time around the Prosecution will remind the Chamber every time that we have the
22 onus and that in two/three years' time we do not know how the evidence will have
23 unfolded.

24 So, in other words, I prefer to provide to the Chamber numbers that reflect what the
25 Prosecution has to do to prove its case beyond a reasonable doubt before

1 compromising as to the number of witnesses that need to be called.

2 Of course it means that once they're in the witness stand we can concentrate on the
3 specific issues that are necessary for this trial and maybe parts of their statements can
4 be admitted into evidence and so on, that has been done also in the past, but what
5 I'm -- in essence my message is it's difficult --

6 PRESIDING JUDGE HENDERSON: I understand. I understand the point.

7 MR MACDONALD: Yes, all right.

8 PRESIDING JUDGE HENDERSON: Yes.

9 MR MACDONALD: Sorry if I'm dragging with it.

10 So in essence I don't know if the Chamber has any questions, but that would be our
11 answer?

12 We are in a position, your Honour, to disclose in a very short time. I just want to
13 mention one thing before addressing or sitting down. In its submission, the Defence
14 mention a request that a 30-day rule be set for the disclosure of such material. I just
15 want to explain the process to the Chamber so that we're clear that this is
16 unfortunately impracticable.

17 First of all, you have investigators that are in the field for a mission that can last from
18 one week to two or three weeks. Now if they do an interview, let's call it an insider
19 interview, which is recorded in the first week, first few days, and then they continue,
20 they don't send the material over to the headquarters.

21 So in other words they'll be in the field for two weeks, after the interview has taken
22 place they come back and they have done other interviews, or collected documents or
23 whatever they've done, and then they come back with the material; the recordings.
24 Then these recordings have to be registered into the Ringtail OTP database and
25 afterwards transcription requests have to be made and the transcriptions have to be

1 done.

2 It takes on average five hours or six hours, if I'm not mistaken, to do one hour of
3 transcript, so five hours listening and stopping and doing in one language.

4 So this may take some time. So interviews like was mentioned, for instance, in the
5 Bosco case, these interviews do last between ten to fifteen hours on average. We
6 have one for instance, Witness 435, that we'll be able to disclose in due course, that is
7 30 hours.

8 So what I mean to say is once we receive the transcripts we need to quality check them, the
9 investigators or the trial team does that; and then we need to register them; then we need to
10 apply proposed redactions to them; then we need to file a request for redactions to the
11 Chamber according to the current regime; and then you have to rule on these proposed
12 redactions. So 30 days in this context, your Honour, for statements and witness statements is,
13 I would say, almost impossible to meet.

14 But we agree for sure with the Defence that we can meet deadlines imposed by the
15 Chamber that are reasonable, that take into consideration all these steps, that take into
16 consideration that we want to be as accurate as possible. We don't want to do
17 mistakes, but this takes time.

18 And the people that you see here today in the courtroom, this is pretty much the trial
19 team that we have, so when we'll be discussing resources, your Honour -- and the
20 Defence may say that, well, the equality of arms -- what you see is what we have; so,
21 in other words, right now we've evaluated and we can come back to that, but there is
22 related to witness statements to be at par with the Blé Goudé case approximately 420
23 documents that need to be disclosed - they're mainly in the form of statements - and
24 we're ready to do that as soon as we have certainty as to the redactions process.

25 We could disclose them as early as next week with all the redactions immediately if

1 we don't need to involve the Chamber. So that's what we have in-house at the
2 moment, and I'll come back later for the other material that we may have that we
3 need to analyse.

4 PRESIDING JUDGE HENDERSON: Thank you. You spoke in your written submissions
5 about further investigations. Can you perhaps indicate how long these investigations you
6 expect them to take?

7 MR MACDONALD: They're ongoing, your Honours. So our intentions is -- well, first of all,
8 of course the Chamber knows that under potentially exonerating evidence --

9 PRESIDING JUDGE HENDERSON: It's ongoing but there is a trial -- we're trying to
10 expedite a trial, so can you give us a realistic estimate?

11 MR MACDONALD: Yeah. It depends when the trial date will be set, but definitely three
12 months -- if the Chamber was to set a deadline three months before the start of the trial to
13 disclose everything we would be ready by then.

14 Now, the point being is they're ongoing, but there are factors, your Honour. It's
15 based on cooperation of the witnesses themselves, the availability of witnesses. We
16 have compliance issues mainly. And I'll give you examples: We've seized certain
17 things. We need to establish now, maybe with more certainty, the chain of custody
18 of these documents. We've seized videos or we've obtained videos from open
19 sources, You Tube for instance, and now we're able to track down who took those
20 videos. We're trying to interview these people, but sometimes they are in different
21 countries because they live somewhere else now. So we -- it takes -- it takes time to
22 do that. And that's what we are doing at the moment.

23 Some witnesses that were not available previously or didn't want to cooperate
24 previously, or whatever, had maybe security concerns before, we're in a position now
25 to meet with them. So it is an ongoing process, to be quite honest, that we'll

1 investigate as much as we can until the end because this is indeed a complicated case.

2 I don't want to overly complicate it, the case, but there is four incidents that we're
3 charging.

4 There is a historical background indeed to this conflict that arose in 2010/2011, and these
5 things have to be explained. So it's in this context, your Honour, but the guarantee that the
6 Prosecution can give the Chamber at this stage is when the Chamber will set a date for trial
7 we request, contrary to the Defence's 90 days as was recently adopted in Bosco case or Kenya
8 cases before, that we'll be able to disclose everything by then.

9 In the meantime, especially in relation to statements, we'll be on a rolling basis disclosing
10 them. So the Chamber can set benchmarks and we're happy to meet those delays, and I'll get
11 back to the first benchmark as to a proposal because in this case - and I'm just saying this now
12 - there is a huge number of video evidence. Why? Society is evolving in that direction.
13 People have mobile phones and they film things.

14 PRESIDING JUDGE HENDERSON: All right, thank you.

15 You had indicated in your submissions that you may be calling a fourth expert. Can
16 you indicate what that fourth expert would be on?

17 MR MACDONALD: I see that we've -- by indicating that we've -- we've created some
18 interest as to -- at this stage, I am reluctant, your Honour, to just give the -- the topic on which
19 the expert would be testifying. It's more related to the -- let's put it this way, the Blé Goudé
20 side of the case, and it would be more of a sociological-type expertise as to the impact of
21 message and speech.

22 PRESIDING JUDGE HENDERSON: All right. Just two more questions before I go to the
23 Defence.

24 Now, I listened to you carefully and you have told us a possible 80 to 100 witnesses. Now,
25 55 plus the 15 perhaps in the Blé Goudé case, if it's confirmed and if it is joined, plus the four

1 possible expert witnesses, that still leaves a gap. How do you arrive at that other number?

2 MR MACDONALD: I arrive at that other number, your Honour, by the compliance issues
3 that we're trying to cover at the moment, be it also additional crime-base witnesses for certain
4 crimes that are charged, also, your Honours, there are additional insider witnesses that we are
5 currently attempting to interview, important ones.

6 And so this is why at this stage, like I said, it is not certain how many of those may be. It
7 depends also on the impact. There are given moments in a case where all of a sudden
8 cooperation is -- seems easier coming from witnesses, or willingness I should say, and when
9 those opportunity arise we do it, we seize the moment.

10 The Chamber needs to understand maybe here that the pro-Gbagbo forces we allege
11 were composed of four groups. So not only are there four incidents, not only is there
12 an historical background, but the groups involved that form the pro-Gbagbo forces
13 are a number of four types of groups: Military, which has its own structure and lines
14 of command and order; the pro-Gbagbo youth that had their own organisation and
15 also exchange or -- of communications or lines of communications; mercenaries
16 coming mainly from Liberia hired by the regime; and also militia groups, militia
17 groups that maybe had different structure but still were part of these forces, this
18 group that committed crimes on civilians.

19 So to understand these four groups you need to have the number of witnesses or the
20 evidence available for the better understanding of the Chamber. That is also what
21 we're working on at the moment.

22 And I'm being very candid with the Chamber, while this case and the transfer took
23 place in November or end of November 2010, it's the -- sorry, 2011, the warrant of
24 arrest was issued after two months of investigation only. Now, we've moved from
25 there. We're three years down the road, but in order to collect the evidence needed

1 to prove its case, the efforts are indeed still ongoing, but we're focused on this and
2 we're not, you know, at the beginning of the investigation - we knew much more - but
3 there are certain lines of Defence that were raised at confirmation and through
4 pleadings that we're also trying to close, we're trying to fill the gaps in certain areas.
5 So that is why I'm saying that ultimately it could lead to as many as that number.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 Mr Altit, do you have any observations, any response to the Prosecution?

8 MR ALTIT: (Interpretation) Yes, thank you, Mr President. I do have a few brief
9 observations before passing the floor to Jennifer Naouri who will respond to Mr MacDonald's
10 comments.

11 Of course we want to cooperate, and this has been the Defence's continued assertion over time.
12 Then of course we need to wait to see whether the charges are confirmed in the Blé Goudé
13 case before talking about a joinder at all. We cannot at this juncture anticipate the Pre-Trial
14 Chamber's decision in the matter and presume that the charges will be confirmed in the Blé
15 Goudé case.

16 If we presume this result, then this would mean that we are basing ourselves on a
17 presumption of guilt, which is not a possibility for us.

18 Now, as for the equality of arms, the Defence would very much like to have the
19 budget that the Prosecution has in the Ivorian case.

20 Now, with regard to witnesses and other issues broached by Mr MacDonald, I will now pass
21 the floor to Madam Naouri with your permission.

22 MS NAOURI: (Interpretation) Thank you, Mr President, your Honours.

23 Now, a number of issues were broached by our learned colleague with regard to the issue of
24 witnesses and I shall try to broach the various points covered by the Prosecution.

25 Now, with regard to investigations, the Prosecution is saying that they are still investigating

1 and that they are gathering new evidence.

2 Now, the volume of this evidence needs to be taken into account with regard to the
3 time given over to the Defence and also with that given to the participation of victims
4 with a view to preparing for the case.

5 Now, as for the cut-off time or cut-off limit, if you like, he's talking about final
6 disclosure. We believe that we cannot fix a cut-off date for investigations which is
7 associated with final disclosures on the part of the Prosecution.

8 The Chamber, the parties need to know how long the investigations are going to last
9 for us, notably the Defence, to be able to anticipate exactly how long we need to
10 analyse these disclosures because, of course, assuming that, the volume of the
11 disclosures is going to have a great impact on the work that we undertake. Now,
12 that's the first point.

13 Also with regard to the disclosure time, now, when the Defence suggests a disclosure
14 time of one month on the basis of a rolling procedure, of course, this is not a month
15 during the process of the Prosecution's investigation. It is not a month of duration
16 during the time that the Prosecution is out getting the evidence, it is a month after the
17 fact that the Prosecution has evidence or a transcript in its hands. Of course, after
18 that, it will be a month to disclose to the Defence. That is something that we wish to
19 specify.

20 With regard to the first question on the agenda, notably the Prosecution witnesses
21 and the number of witnesses, if we take the number indicated, and he says himself
22 that this is quite a high number, a minimum of 70 witnesses, that is 54 plus 15. Now,
23 if we need at least three days, or the Defence needs at least three days to analyse, to
24 cross-reference every witness and the investigation, we would need 210 working days;
25 that is ten months in total. Of course this does not mean that she will request ten

1 months, but it means that work per witness of three days in duration including the
2 investigation leads us to a calculation of 210 working days. And I do believe that
3 this is an important calculation and a basis that can be useful to all of us with regard
4 to the number of witnesses that the Prosecution intends to call and the work that will
5 be ahead for us in the Defence team.

6 Now, also with regard to the Prosecution witnesses, another issue or issues that we would
7 like to broach, the definitive list of witnesses, we would like to look into that, and also we
8 would like to examine -- we would like to be able to examine the definitive list. We would
9 also like to broach the subject of the anonymity of a certain Prosecution witness and also the
10 number of expert witnesses.

11 Firstly, the definitive witness list. The Judges before this Court always require that
12 the Prosecution produce a definitive list of witnesses, and as we indicated in our
13 written filings, we would like to have this list recall a succinct point or points on
14 which each witness shall be testifying, notably whether this or these elements come
15 from hearsay, come from direct testimony, et cetera, and also how long the interview
16 lasted.

17 With regard to the timeline for this definitive list of witnesses, according to each case,
18 the Chamber has always defined a cut-off date for these lists. In Ruto and in
19 Katanga, the Chamber always -- the Chamber asked for the Prosecution to provide
20 this definitive list of witnesses three months before the beginning of trial. However,
21 in the Katanga trial, the Chamber asked for this list six months before the beginning
22 of trial so the Defence had time to prepare its case.

23 In this instance, the Defence is requesting that the definitive list of witnesses be
24 disclosed at the same time as the last disclosure of the Prosecution, a date to be
25 defined, and we believed that the last disclosure, according to what the Prosecution

1 said, will occur three months before the beginning of the trial.

2 We shall return to this, but in regard to the complexity of this case, and the Prosecution has
3 said that there is a lot in the balance here, there is a complicated hierarchical chain, there are a
4 lot of things to be taken into account, and there are 39 incidents with regard to the attack.

5 Three months regarding -- with regard to the complexity of this case we do not believe is
6 realistic.

7 Now --

8 PRESIDING JUDGE HENDERSON: Just a quick question. I mean, I don't want to throw
9 off your submission, but three days, does that include the 55 witnesses that were disclosed
10 during the confirmation hearing? Would you still need three days for those?

11 MS NAOURI: (Interpretation) Yes, indeed. We have included the witnesses who were
12 disclosed -- whose identity was disclosed in the confirmation of charges stage, because the
13 Defence then was establishing or judging the burden of proof as opposed to the merits. We
14 did of course read through the testimony, but we did not do the work that was needed for the
15 trial itself. We need to cross-reference the various testimonies and look at them in
16 conjunction with the information that we obtain through our investigations in order to
17 prepare our cross-examination. We need to re-analyse testimony that has been previously
18 disclosed in order to prepare our defence and this is quite a different burden of proof at trial
19 phase than it is at pre-trial phase.

20 So with regard to the anonymity of Prosecution witnesses, there are not many
21 anonymous witnesses, and we have said what we would like with regard to
22 disclosure of identity in our written filings, but what we would like to say now is that
23 once again we would like for there to be reasonable time frames for the Defence to be
24 able to work in terms of disclosure of identity.

25 Now, with regard to the expert witnesses, we have noted that it is quite hazy with

1 regard to the number of such witnesses to be called, whether there be three or four,
2 and the Prosecution is still hazy with regards to whether investigations are still under
3 way. The Defence would need to be told as soon as possible. We believe that a
4 cut-off date needs to be provided so that we can also approach the experts and broach
5 the subjects that were covered in their expert reports.

6 I thank you, Mr President.

7 PRESIDING JUDGE HENDERSON: I will now move on to item (b), that is whether the
8 Prosecution anticipates issues concerning the protection of witnesses and other persons, the
9 disclosure of identities of witnesses as well as referrals to the Court's witness protection
10 programme.

11 The Prosecution in its written submissions anticipated that there may be ongoing
12 security risks impacting on its investigations and the protection of witnesses and
13 other persons throughout the trial. It further provided an update on the disclosure
14 of witnesses' identities, in particular it referred to one witness, P-238, whose identity
15 was not disclosed during the pre-trial phase pursuant to a decision of Pre-Trial
16 Chamber I.

17 The Prosecution indicated that it intends -- that it intends to meet the witness as soon
18 as is practicable in order to discuss the feasibility of the disclosure of his identity and
19 to report promptly to the Chamber. It further indicated that none of the Prosecution
20 witnesses it intends to rely on for trial are in the ICCPP and that at this time it does
21 not foresee the referral of any of the witnesses to the ICCPP, that is the protection
22 programme.

23 The Prosecution and the Defence also made detailed submissions in relation to the
24 redaction regime that should apply in the present case. They informed the Chamber
25 that they meet -- that they met on 16 October to discuss this issue, among other things,

1 and our understanding is that the Prosecution states that these discussions are still
2 ongoing.

3 Both parties indicated that they will seek in-court protective measures for a number of
4 witnesses. The Registry stated that the victim witness unit remains available to
5 assist the parties and to facilitate any request.

6 The Registry also informed the Chamber that Pre-Trial Chamber III issued a protocol
7 concerning disclosure of the identity of witnesses and handling of confidential information.

8 In relation to familiarisation and special measures for potentially vulnerable
9 witnesses, the Registry highlighted two protocols both filed by the VWU on 16
10 April 2012.

11 Furthermore, in the event the parties and participants call dual status witnesses, the
12 Registry informed the Chamber in order to promote a uniformed practice, it can
13 propose a mechanism for exchange of information on individuals enjoying dual status
14 and that it is ready to file it upon instruction by the parties.

15 The LRV requested to present submissions on this item. In particular, they
16 requested to be informed in advance with regard to protective measures for dual
17 status victims and submitted that a comprehensive mechanism regulating the
18 exchange of information and contact with dual status witnesses be established in due
19 course.

20 Let me invite the Prosecution. Do you have any observations on this?

21 MR MACDONALD: I don't -- I don't have anything to add, your Honour, except to maybe
22 de-dramatise the -- how in written form it may have appeared. There is no security issue at
23 the moment except to resolve the 238 issue. And we don't -- at the moment, we don't foresee
24 any referrals. It should have -- maybe we should have written more accurately that there is
25 no foreseen security issue except the normal ones that are encountered while you interview

1 witnesses and we've been able to deal with those on an ongoing basis. Sometimes it does
2 lead to withholding the disclosure of a statement for a little while until these measures can be
3 put in place but to lead to disclosure.

4 I can reassure you that we do not intend to argue anonymous witnesses at trial,
5 definitely not. So this is not such a case. So far we've been very fortunate. Of
6 course the landscape can change and if it does change -- and usually when it changes,
7 and I submit this from past experience, either national system or actually here, the
8 landscape changes when you get closer to the actual trial date and these are the
9 moments where you encounter problems or actually when the trial has started.

10 Therefore, so far so good.

11 Now, the only other issue is redactions. It's the protocol and this is a separate issue.

12 I don't know if the Chamber wants to hear us now, but that's my answer.

13 PRESIDING JUDGE HENDERSON: Before you take a seat, with respect to Witness P-0238,
14 do we have a possible time -- timeline as to when you would disclose this to the Defence?

15 MR MACDONALD: What the Defence already has though, your Honour, in relation to 238,
16 if I'm not mistaken, it's either a redacted -- actually, I have the answer, but it's either a
17 redacted statement or a summary of it. So it's not as if they don't have -- and which contains
18 any information that could be Rule 77 or potentially exonerating, sorry. So therefore they
19 have already the information that is relevant for their preparation.

20 So -- but to answer the question, your Honour, we would aim - and this is something I'll get
21 back to - for anything that we have currently in our possession, we would recommend, and
22 I'll justify it, by the end of January.

23 PRESIDING JUDGE HENDERSON: End of January. And can you indicate finally how
24 many witnesses do you have that enjoy dual status?

25 MR MACDONALD: The dual status, we have -- we've been in touch actually to confirm this

1 with the victims -- the OPCV, sorry. Currently, if I'm not mistaken, it's either between five or
2 seven. I had the number, your Honour. I can -- I can later on in the hearing, but by heart
3 it's between five or seven which include, if I'm not mistaken, both cases, meaning also the Blé
4 Goudé case. So there's an overlap, but I think it's maybe five in the Gbagbo case and maybe
5 two -- yeah, it's seven. Okay. That's the number.

6 PRESIDING JUDGE HENDERSON: Let's confine ourselves to the Gbagbo case.

7 MR MACDONALD: Five.

8 PRESIDING JUDGE HENDERSON: Five. Right.

9 Mr Altit, the floor is yours.

10 MS NAOURI: (Interpretation) Mr President, with regard to the question of victims who
11 are witnesses, now, firstly, some of the victims in order to be able to testify, they will be doing
12 so orally before the Court. The legal representative said that they were not yet in a position
13 to be able to identify how many victims will be testifying. We heard five to seven. Now, all
14 that we request is that in order to avoid any delays in the proceedings is for us to be able to
15 have the time in order to prepare for our cross-examination, there should be a cut-off date
16 defined by the Chamber by which the legal representative of victims will file the request for
17 these oral interventions. This should be the same date as that date set for the definitive list of
18 Prosecution witnesses.

19 Now, with regard to the protection measures for these witnesses, the legal
20 representative informed the parties and the Chamber that they wanted to be informed
21 in hypothesis that the Prosecution would seek to alter these protection measures.
22 The Defence would like to say that any change in these measures would not be
23 possible without our being priorly informed. We would also like to be able to file
24 written submissions in this regard. Of course, there will be redacted elements, but
25 we hope to be able to make some observations in order for the discussions to be open

1 and fair.

2 Now, with regard to the identity of the victims, we should recall that in both the
3 Bemba and Katanga cases the Chamber categorically dismissed the possibility for
4 these victims to be able to testify anonymously.

5 Now the victims who were called upon to submit their arguments, these should be disclosed
6 as early as possible.

7 Now, with regard to the exchange of information and contacts with regard to these
8 victims or victim witnesses, we believe that it would be a good idea and it would be
9 constructive for us to come with an agreement - that is the parties and
10 participants - on a protocol. A protocol was established at pre-trial phase with
11 regard to contact between Prosecution and Defence and Defence witnesses and
12 Prosecution. I believe that there should be a discussion on the subject for us to reach
13 some form of agreement.

14 Thank you.

15 PRESIDING JUDGE HENDERSON: Thank you. We will be coming to the issue of
16 protocols in due course.

17 The legal representative of the victims?

18 MS MASSIDDA: Thank you, your Honour.

19 Very briefly, two points which were raised now by the Defence. The first one is in
20 relation to the dual status witnesses. Just to clarify, the reference to the five dual
21 status witnesses made by the Prosecution, these are witnesses already interviewed by
22 the Office of the Prosecutor. They are not persons, or individual, who the legal
23 representative will eventually seek to indicate as possible witnesses.

24 The reference in our written submissions to the possibility for the legal representative
25 of victims to call witnesses, or to call victims to appear in person - I'm referring to this

1 point of my submission - while we are unable at this point in time to provide the
2 Chamber with an estimate of the number of possible witnesses or victims who would
3 like to appear in person, however we will be able to provide such estimation in the
4 near future.

5 I think we can anticipate that a maximum of five individuals could be called by the
6 legal representative either as additional witnesses after having heard of course the
7 evidence by the Office of the Prosecutor. We will not call witnesses unless it is
8 necessary to protect the interest of our clients, which means, your Honour, that we
9 will not duplicate in any way the presentation of evidence by the Prosecution.

10 We are inclined at this point in time to seek the appearance in person of three victims
11 not as witnesses, but as persons providing their observations before the Chamber in
12 the same manner as it was ruled in the Bemba case by Trial Chamber III, and in order
13 to respond to the observation by the Defence we could try to apply in this case the
14 same modalities which were applied by Trial Chamber III in the Bemba case for the
15 appearance of victims, which means of course the disclosure to the Defence of any
16 document emanating from these victims, of course the name of these persons and any
17 other requirements which the Chamber will consider useful.

18 A second point in relation to the possible protocol for dual status witnesses. We of
19 course support the idea of consultation between parties and participants - we will be
20 very open to do it - and we also support the Registry's suggestion to use for this
21 purpose the protocol which was filed in the Banda case.

22 PRESIDING JUDGE HENDERSON: We'll be coming to the question of protocols in a while.
23 Yes.

24 MS MASSIDDA: Yes, thank you very much, your Honour.

25 PRESIDING JUDGE HENDERSON: Does the Registry or the VWU have any observations

1 on this point? We will be coming to protocols in a while.

2 MS DAHURON-JACOBY: No, your Honour.

3 PRESIDING JUDGE HENDERSON: Right. Before moving to the next issue, I would like to
4 stress that the Chamber is mindful of the possible different needs that are to be addressed in
5 protocols applicable to pre-trial and those applicable to trial proceedings. In addition, the
6 Chamber considers that where possible achieving some degree of uniformity with regard to
7 protocols used at trial level would be beneficial.

8 The Chamber wishes for the parties to enter at this stage -- and I really would like to
9 encourage it, for you to enter into active discussions on the protocols to be used at the
10 trial.

11 The Chamber wishes you to take the protocols as adopted in the Kenya cases as an
12 inspiration, or as a starting point, or to bring in elements that are included in the
13 protocols used in the Kenya cases.

14 Of course other best practice aspects may be included, but the Chamber feels that
15 these protocols provide at least from our point of view a good starting point for the
16 development of protocols in this case.

17 Do you -- Mr Prosecutor, do you have any comments on that observation?

18 MR MACDONALD: To be quite honest, your Honour, the only protocol I'm interested in
19 discussing is the redaction protocol. All other protocols to the Prosecution we'll adapt to
20 whatever the Chamber decides, but if there is one that, you know, this office wants to get a
21 grip of once and for all is the redactions protocol and to try to for all cases eventually come up
22 with a Blé Goudé approach to redactions, which we find works perfectly fine and we'll get
23 back to that in due course.

24 PRESIDING JUDGE HENDERSON: Thank you.

25 Defence?

1 MS NAOURI: (Interpretation) We do not have any specific remarks on protocols. We
2 would like to discuss that, and redactions are another item on the agenda and we'll make our
3 opinions known at that time. Thank you.

4 PRESIDING JUDGE HENDERSON: The VWU victims?

5 MS MASSIDDA: We don't have any remark, your Honour. We will oblige. Thank you.

6 PRESIDING JUDGE HENDERSON: Registry?

7 MS DAHURON-JACOBY: No.

8 PRESIDING JUDGE HENDERSON: Okay, thank you.

9 Now let's move to item (c): Material already disclosed and intended to be disclosed
10 by the Prosecution pursuant to Article 67(2) of the Statute and Rule 77 of the Rules.
11 The Prosecution has indicated that to date it has disclosed thousands of documents to
12 the Defence and it is currently in the process of disclosing all additional evidence that
13 has been disclosed in what may be considered or described as the related Blé Goudé
14 case.

15 The Prosecution will continue its ongoing review of newly collected evidence and of
16 evidence already in its possession for Article 67(2) and Rule 77 material to ensure
17 timely disclosure.

18 The Defence in its written submissions request that the Prosecution communicate the
19 system it uses to classify the system -- classify the documents it has in its possession
20 to make sure that no document potentially exonerating is forgotten. It requests,
21 among other things, that the Prosecution should inform the Defence as soon as
22 possible of the volume of documents it still intends to disclose.

23 Mr MacDonald, any comments?

24 MR MACDONALD: The Prosecution would like to address maybe issues that were not
25 mentioned in writing. So we stand behind what we've written, that in relation to the related

1 case documents that are independently of the joinder or not have to be disclosed, and we're
2 ready to disclose them, like I said, as soon as there is certainty on the redaction process.
3 Now -- but on that, maybe because I think it's important that I mention it, right now
4 the Prosecution disclosed those in the Blé Goudé case and so the redactions are -- we
5 can get them out very quickly to the Defence, but if we need to seek redactions we
6 need to file a chart for every single document for which we seek redactions, indicate
7 which information is being redacted, under which heading and for which reason, and
8 this we will not be in a position to do and we haven't started that because we feel it's
9 not necessary to do work that may be not necessary to do before we get the guidance
10 of the Chamber. But if we have to do that for the currently 420 documents, we
11 expect that it's going to take at least two to three weeks, if not a month, just to do
12 charts to provide to the Chamber so that the Chamber can see those redactions.
13 So I wanted to make that clear, but if we don't have to do that we can get it out Friday,
14 Monday. It's out. It's disclosed. It's gone to the Defence.

15 PRESIDING JUDGE HENDERSON: Thank you.

16 MR MACDONALD: Now what we have at the moment, your Honour, is approximately 459
17 documents that the review is currently being conducted. So that's a primary review, if you
18 want, being -- documents being reviewed for a first time. And -- so that's one thing. Those
19 are documents.

20 Now, there's a number of documents that we have previously reviewed for purposes
21 of either pursuant to Rule 77 or potentially exonerating that we would like to review
22 again for our own benefit to see if they may be relevant in terms of incriminating
23 evidence, but when the first review was conducted they did not contain any
24 exonerating information.

25 Review is an ongoing process, your Honour. A case evolves. What was reviewed

1 three years ago and deemed not relevant can now be seen as relevant. So even
2 though we try to be as generous as possible, sometimes for different reasons,
3 including human error which is not impossible when you are dealing with 20,000
4 documents, that indeed we find later on that, "Oh, this document could be potentially
5 exonerating or material to the preparation of the Defence."
6 I think so far we've found or disclosed pursuant to two -- Article 70 -- 67(2), sorry,
7 exonerating 256 documents or so, 260, so there are not that many that are exonerating
8 in and themselves, but we've disclosed a large number of documents so far. So the
9 process is ongoing, your Honour, and this is why -- but those are documents.
10 Documents actually are the easy part here.
11 What is more problematic - and this is what I want to raise and this is why I was
12 saying end of January because it includes everything - are videos. Open source
13 media is what is upon us now as a society and different societies. Mobile phones,
14 smartphones with cameras, people at events being recording things. You see it in
15 the Libya situation. You see it, you know, in Syria at the moment. You see it. It is
16 the road - the path - that we're faced with and in this case it also applies. Now the
17 difficulty, your Honour, with videos it's their presentation. It's their analysis. You
18 can review a statement. It's easy. It's 20 pages. You read them. But videos, you
19 don't have necessarily a transcript, right? Because you need -- you need to decide if
20 you want to waste time in having people transcribe one hour of video which takes
21 between six and seven hours to get a transcript. So we watch an hour video, we
22 analyse it and decide how we deal -- to deal with it. So you need to follow the whole
23 video.
24 And at the moment, your Honour, I can tell you that in-house we have approximately
25 164 videos - there may be duplicates that we don't know right now - that we have to

1 review, that we have to review to see if they contain any exonerating information or
2 potentially are material, but also but more importantly to verify their incriminating
3 nature because we know that they more likely contain information we want to rely
4 on.

5 So it's easy to get a video and disclose it. We can disclose those 164 tomorrow, but I
6 don't know to which element of the element-based chart they would go because I
7 have to watch them. So we can disclose them as Rule 77 tomorrow and the Defence
8 has them. So in other words -- but that, I don't think, would be useful for the
9 Defence or the Prosecution.

10 So we're reviewing and we need time to review those. Like I said, we've made an estimate
11 that if they're on average an hour, some are shorter, some may be longer, we're taking an hour,
12 so it's 164 hours. It takes -- so we foresee that all of that, including the documents, including
13 other aspects of the case that are currently in our possession, that in order to avoid possibly a
14 mistaken estimates and coming back with an extension of time if needed, that by the end of
15 January of 2015, so basically in three months, I understand, but we factor in Christmas.

16 PRESIDING JUDGE HENDERSON: All right.

17 MR MACDONALD: I think it's a period. We find -- we feel that we can disclose all of those,
18 that would be material. And also, your Honours, in terms of video, we are -- we know that
19 we're trying to collect every single news bulletin that was presented during the -- so there is
20 ongoing activities in relations to video.

21 PRESIDING JUDGE HENDERSON: Okay. So I get your point, but you're thinking that by
22 the end of January you should be in a position?

23 MR MACDONALD: That's our submission, your Honour. And it may seem long, but we
24 have competing tasks. I mean, within the Office of the Prosecutor, there are submissions,
25 there are filings, there's -- we need to get ready for this, while we're getting ready for a status

1 conference we're not necessarily reviewing documents or videos. So there are competing
2 tasks during those -- this next phase. And while -- you know, we're still investigating. So
3 this is why, your Honour, we're suggesting the deadline of the end of January for what we
4 currently have on this day in our possession.

5 PRESIDING JUDGE HENDERSON: Thank you.

6 Now let me hear from the Defence. Now, hearing the Prosecution, it seems that the
7 issue of redactions and protocols will loom large. Perhaps this may be something
8 that a separate status conference should be devoted to to address this, but first of all
9 do you have any general observations on what the Prosecution have said, first of all,
10 and then secondly, specifically, but concisely, with respect to redactions because,
11 because of what I'm hearing, it would seem as if we may have to have a special status
12 conference to sort that out. Yes.

13 MS NAOURI: (Interpretation) Thank you, Mr President.

14 Regarding redactions, discussions actually took place. We have a position. The Prosecutor
15 has his own position. I do not know whether it would be necessary to organise a status
16 conference specifically on this issue, but in my opinion it is certain that it is going to take a lot
17 of time. There are going to be long debates on that. The Prosecution and the Defence have
18 met. We discussed. We have a fair opinion of each party's position. The Prosecutor has
19 said that it will take time to draw up a chart. It is true and it is necessary, otherwise we will
20 have to go back to the Chamber later on.

21 I would like to propose -- I would like to say that redactions by themselves are against the
22 rights of the Defence. The Chamber -- the Defence really has to have an opinion on that, and
23 the Chamber has to crosscheck to ensure that they are justified. Redactions have to be
24 accepted by our Defence team, but that has no impact right now given that redactions have
25 already been made. We have heard what the Prosecutor has to say, but proprio motu

1 redactions are contrary to the rights of the Defence. There has to be a chart, and this has to
2 be done before so as to save time.

3 That chart has to be filed just like in the Katanga case and I believe there should be a
4 filing systematically for each application for redaction. That is our summary
5 position on the issue of redactions, but it is possible that the discussions with the
6 Prosecution will take time.

7 Regarding disclosures, as mentioned by the Prosecutor, the Defence would like to
8 raise three points. You have said that the first point concerns the elements, the
9 information that the Prosecution has to disclose to us. We have read the

10 Prosecution's submissions on today's hearing. In paragraphs 25 and 38, it appears to
11 us that it has not been disclosed to us everything that the Prosecutor has in their
12 possession. We need to have all the incriminating and exonerating evidence that the
13 Prosecutor has.

14 We have been told that documents under 67 can actually be exonerating documents.

15 We have heard the Prosecutor say that January can be a good deadline. I think that
16 is acceptable, especially as we have learnt and we know that there are hundreds of
17 videos.

18 This means that this would request -- this would require very, very many long hours
19 for the Defence. The Prosecutor has said that there could be transcripts, and this is
20 additional evidence. We are going to have to look at the videos, the co-counsel is not
21 there today, but each member of the Defence team has to look at the videos. So the
22 sooner we have the videos the better so as -- but we will adapt to the work of the
23 Prosecutor.

24 Secondly, the exonerating evidence disclosed under Article 67, we should point out
25 that the redaction protocol endorsed by the PTC states that it is up to the Prosecutor

1 to underline the excerpts, that according to him, are exonerating. But the Prosecutor
2 has said that he no longer can do that because of technical reasons. So there must be
3 a solution in collaboration with the Registry to ensure that this procedure should be
4 followed rather than cast aside for technical reasons.

5 Now, regarding the proposal of the Prosecutor to modify the disclosure protocol with
6 an -- replace it with the Blé Goudé system, there is no system that is totally
7 satisfactory, but the two parties had agreed on that system. And we cannot discuss
8 this matter as if the Blé Goudé confirmation has already taken place.

9 Secondly, another Defence team in another case does not have an impact on this case,
10 so we have to discuss the issues under Article 67 in the Gbagbo case. This is why we
11 believe that the disclosure procedure under Article 67, the current system should be
12 maintained.

13 The last point on disclosures, that is deadlines for the disclosure of exculpatory and
14 incriminating evidence, under 77, the Prosecutor should tell us how long they will
15 continue to investigate what is the volume of documents that we can expect to be
16 disclosed. We know that a final decision may not be taken today, but we do not
17 have a clear idea of the volume of documents. The Prosecutor has said that there are
18 164 videos, but there can even be more, but we need to have an idea of when
19 the -- when the investigations will stop so that we have an idea of the volume of
20 disclosures.

21 This is fundamental. Regarding the materials that they still don't have, we are
22 asking -- that we do not have, we are asking the Chamber to set a deadline for those
23 disclosures.

24 The most important is that disclosure should be carried out on a rolling basis. We
25 proposed two months after the filing of all the final documents, the final attestation, I

1 think one month, one month -- one month, I believe, that is an adequate time for the
2 disclosure to be made to the Defence. I believe there should also be a deadline for
3 the Prosecutor to disclose before the Defence investigations so that we should not be
4 ambushed.

5 Lastly, given the volume of the disclosures so far, the deadline, the Defence needs six
6 months to prepare the trial. That is six months after the last disclosure of the
7 Prosecutor. The three months proposed by the Prosecutor seemed to be too short to
8 us given the volume, the high volume of materials disclosed.

9 Lastly, it would be necessary for the Prosecutor to inform the Chamber and the
10 Defence if they are not able to respect the deadline for their last disclosure because
11 that will have an impact on the commencement date of the trial. So they have to
12 inform the Chamber and the Defence at the earliest possible opportunity. Thank
13 you.

14 MR MACDONALD: With your permission, very briefly, your Honour, on the first question
15 you asked about the hearing, I would prefer personally a hearing to discuss all of these issues
16 because, like you've mentioned, to compound this in 20 pages, or to explain it in writing, it
17 may be a little bit more difficult than orally to be quite honest, and actually, for today's
18 presentation, I already had visual aids that I wanted to show, the different regimes and how
19 they look like, but we don't have obviously the time to do that. But I think a hearing would
20 be a very good suggestion and to discuss such a protocol.

21 And also the modification to Ringtail. Registry would not be of any support or any
22 aid because they're applying the same Ringtail. Eventually, the Ringtail we have
23 will be rolled out to Registry eCourt and also to the Defence Ringtail. So highlights
24 is impossible, but currently we're also providing a -- not only do we highlight, but we
25 summarise in a chart the information that is potentially exonerating or Rule 77. We

1 chew it up - pardon me the expression - for the Defence in one column where we
2 compound and summarise the information of a 20-page statement what exactly may
3 be Rule 77. So they have highlights, they have the summary and they even have
4 why it's Rule 77 or potentially exonerating.

5 So highlights are superfluous in any event, but nevertheless this has to be explained.
6 The Chamber needs to understand these things, and I'm afraid it's very difficult to
7 explain that in writing and it's much easier in an oral hearing.

8 PRESIDING JUDGE HENDERSON: All right. Thank you.

9 Just a moment.

10 (Trial Chamber confers)

11 PRESIDING JUDGE HENDERSON: Okay, I'm keeping a keen eye on the time. It's 11 and
12 we still have some way to go. So let's move to item 9(d): Update on victims' applications
13 and the procedure for allowing victims to participant in the trial proceedings.
14 The Chamber has received detailed submissions from the legal representative of victims on
15 the procedure to authorise victims to participate at trial. The legal representative is opposed
16 to the approach adopted in the Kenya cases. The Prosecution and Defence have not
17 indicated in their submissions, either view, which procedure you think should be followed.
18 However, both of you have proposed to set a deadline for any further victim applications.
19 The Prosecution says at the start of the trial.

20 In its filing the Registry has provided an update on the number of victim applications
21 and on the procedure for allowing victims to participate at trial.

22 The legal representative to the victim, do you wish to add anything further to your written
23 submissions that you have not yet stated in writing?

24 MS MASSIDDA: No, your Honour. I think everything is clear. Unless the Chamber has
25 any question, I will restate simply my written submissions. Thank you.

1 PRESIDING JUDGE HENDERSON: Thank you.

2 Mr Prosecutor?

3 MR MACDONALD: We support option 1, your Honour. That's the only additional
4 information.

5 Yes, essentially, your Honour, in the Bosco case, I understand there was a recent filing, so
6 there were two options mentioned -- sorry. I'm taking everyone by surprise in our position.

7 Sorry, I thought it was -- I'm reading notes. It's not -- it's not our filing.

8 In submission 350 in the Bosco case, I'm sorry, there were two options by Registry
9 that were being proposed, option 1 and option 2. The Prosecution in this case would
10 recommend that option 1 be followed.

11 PRESIDING JUDGE HENDERSON: Option 1. Okay. Thank you.

12 Defence?

13 MS NAOURI: (Interpretation) There are a few points that we'd like to raise regarding
14 applications from victims. Regarding the various arrangements for participation, we read
15 very carefully the filings from the legal representative and the Registry. We are not in favour
16 of the Kenyan approach or the Ntaganda approach.

17 The current procedure in Gbagbo case should be continued. Now, there is one exception, I
18 think there is a consensus regarding collective application. So with the exception of those
19 collective applications, we would prefer the current system to remain in effect.

20 With the Ntaganda approach, the form is not complete enough. There's not any
21 opportunities to make substantive remarks on that particular form. We prefer the
22 Gbagbo system, but with one minor change, and that has to do with the redactions.

23 I beg your pardon, regarding redactions, this is an issue that was not looked at by the
24 Registry or the legal representative of victims, but this is a crucial matter. The
25 victims who wish to present their views on factual allegations sometimes add to the

1 narrative provided by the Prosecution. The Defence must be in a position to analyse
2 these narratives from the victims and determine whether crimes alleged by the victim
3 come within the spatial and geographical parameters of the case. We must also take
4 into account the veracity of these accounts.

5 In this particular case, the Prosecution and the Defence are not on a level playing field
6 because the Prosecution has access to unredacted accounts from the victims and we
7 only have access to redacted versions of the accounts from victims. The principle of
8 equality of arms means that we must have equal rights in this regard.

9 Now, concerning the redactions by the Registry in this case, they are disproportionate.
10 This is quite clear. On several occasions the Defence has raised this point. Now, if
11 under the Statute redactions are needed to protect the dignity, the privacy, the safety
12 of the victim, such redactions should not be prejudicial to the interests of the Defence.
13 For example, redactions such as the place or the date of the crime alleged or the place
14 where the person was injured, those redactions really do not affect the victim in
15 question. There are applicants, people who are asking to take part in the
16 proceedings, who have clearly indicated that they were not opposed to disclosure of
17 their identity to the Defence.

18 In this regard it should be noted that in the Katanga case, the Chamber ruled, and I
19 quote, "The participation section should pay careful attention to applicants who say
20 that they have no trouble with their identity being disclosed and make adjustments to
21 the disclosure system accordingly."

22 In this case, no one seems to be taking this point into consideration. By redacting
23 excessively these applications, the Registry has gone beyond what is reasonable. The
24 consequence of this is that there have been far too many redactions, and the Defence
25 is no longer in a position to analyse and cross-check the accounts or the veracity of

1 what has been said.

2 If we are to have a proper discussion on this matter, perhaps another status
3 conference could be organised to deal with these matters. We believe that the whole
4 issue of victim participation is a very broad issue. For example, what about victims
5 who have been allowed to take part in the Blé Goudé case? We saw that in the
6 submissions from the Registry and the legal representatives that they believe that
7 those people should be automatically allowed to participate in this case as victims,
8 that it should be an automatic right.

9 But we do not believe that this is the case. People who have been admitted -- or
10 allowed, rather, as victims at the pre-trial phase in another case should not be allowed
11 to automatically take part in this case. I believe that a status conference should be
12 devoted just to this particular point.

13 PRESIDING JUDGE HENDERSON: Thank you very much.
14 Registry?

15 MS BRIKCI: Thank you, Mr President.

16 I would like to make two observations, maybe two clarifications, on the issues raised by the
17 Defence. First observation on the information that are mentioned in the simplified
18 application form that were used -- that was used during the Ntaganda phase. These
19 information are the same as the information -- I mean the most important aspects are already
20 in this application. It's just a question of length of information that can be provided by the
21 victims, but the basic information that have -- has to be provided to everybody during the
22 proceedings are there.

23 And the second remark I would like to make is in relation to the redactions. The
24 Registry when making the redactions on applications always adopts a very cautious
25 approach, and we consider that although victims have given their consent to provide

1 their identities to the Defence, this consent, unless they have been given an
2 opportunity to discuss it with the legal representative, is not yet an informed consent.
3 So at the stage of the transmission of the applications, this discussion with the legal
4 representative has not yet occurred, so this is why we adopt an extremely cautious
5 approach.

6 Thank you.

7 PRESIDING JUDGE HENDERSON: Thank you.

8 Yes?

9 MS MASSIDDA: (Speaks English) Thank you, your Honour. (Interpretation) If I could
10 be of assistance, I agree with a number of points that were raised by the Defence relating to
11 redactions. Before making a decision regarding a status conference on victims, I think there
12 is some room for discussion between the Defence and the legal representative of victims and
13 the Registry with a view to coming to an agreement on a less exhaustive redaction system,
14 thus helping with the aim of having an expeditious trial.

15 The Registry has also raised the issue of the victims' volition, their willingness to have
16 their identity disclosed or not. Those discussions were held with all the victims who
17 were given leave to take part in the trial, and I can confirm that not all the victims
18 wish their identities to be disclosed.

19 So the other issues mentioned by the Defence regarding redactions could be discussed
20 amongst ourselves and the Defence. I thank you.

21 PRESIDING JUDGE HENDERSON: Thank you. We'll come back to that before the end of
22 the day.

23 All right, let's move on to item (e) of the agenda: Languages to be used at the trial.
24 The Prosecution and the legal representative for victims have both indicated which
25 languages they expect the witnesses and the victims to testify in, and this would

1 include English, French, Dioula and Bambara.

2 The Defence has indicated that most of the witnesses it expects to call at this stage speak
3 French.

4 The Registry has indicated that it is in the process of finding simultaneous
5 interpreters for languages other than French and English. In the event that this is not
6 possible, the Registry will bring in interpreters to work in consecutive mode which
7 would, however, they have submitted, considerably lengthen the proceedings.

8 Prosecution, do you have anything in addition to your written submissions that you
9 would like to add on this point?

10 MR MACDONALD: No, your Honours, I cannot tell you how many witnesses could be
11 testifying in Dioula. They're essentially crime-base witnesses. We don't have a list of -- I
12 mean a list of witnesses in relation to crime-base witnesses so it may be in the vicinity of five
13 witnesses or so. Most of our witnesses, the vast majority, will be testifying in French, a few
14 possibly in English. I'm thinking of experts, for instance, or an overview witness, like 369,
15 Witness 369, but I mean apart from that, it's all -- 95 per cent in French.

16 PRESIDING JUDGE HENDERSON: Okay, that's helpful.

17 Defence, you have the floor.

18 MS NAOURI: (Interpretation) Thank you, your Honour.

19 Regarding language, no particular observations at this particular stage in our investigations.
20 The French is the primary language of our witnesses and we shall see how language matters
21 unfold.

22 Thank you.

23 PRESIDING JUDGE HENDERSON: Registry?

24 MS DAHURON-JACOBY: (Interpretation) Indeed at this juncture the Registry has
25 identified four field interpreters. As for the hearings, there is some reluctance or a hesitation

1 on the part of interpreters who -- well, conference trained interpreters are reluctant to come
2 work here, so efforts are under way to identify and train candidates by the end of 2014 and to
3 determine whether interpreters can work here at the Court. Why before the end of 2014?
4 It's because if that alternative is not *possible, interpreters will have to be trained in
5 consecutive and that training takes four to six months.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 Now, upon the invitation of the Chamber, the parties suggested a number of issues to
8 discuss at this conference which have been added to the final agenda. The first such
9 issue proposed by the Prosecution was the possible joinder of the Gbagbo and Blé
10 Goudé cases, and this is under item (f) on your agenda, subject of course to the
11 Pre-Trial Chamber's decision on the confirmation.

12 The Prosecution informs the Chamber that it intends, should the charges against
13 Mr Blé Goudé be confirmed, to seek joinder of the two cases.

14 Mr MacDonald, in addition to your written submissions, is there anything you wish
15 to add?

16 MR MACDONALD: No, your Honour.

17 The only thing I can say is that, if charges are confirmed and no matter which charges
18 are confirmed, we will be seeking joinder and we will file that immediately once the
19 case is filed or referred to the Trial Chamber I, which I presume you will be the
20 recipients of that case, and we will file immediately so to avoid any undue delay.

21 And the only thing I want to say is that our suggested beginning of the trial date in
22 September has factored in that possible joinder. That's why we were recommending
23 September.

24 PRESIDING JUDGE HENDERSON: Okay, we'll come to that. Thank you very much.
25 Defence?

1 MS NAOURI: (Interpretation) Regarding a possible joinder, I think it should be mentioned
2 to the Chamber that the Defence has certain time lines in mind and we have not included the
3 possibility of a joinder in that. Our possible time lines does not include that possibility.

4 Let us assume that there is a joinder, it's quite clear that the Defence will file a number
5 of applications subsequent to the decision regarding joinder. It's not possible to set
6 out our position right now because everything shall depend on the decision to
7 confirm or to decline to confirm charges against Blé Goudé.

8 Now because that decision will have an impact on this case and will lead to possible
9 applications and will mean additional time, if charges are confirmed we will have to
10 consider the additional work placed upon the shoulders of the Defence. So there
11 will be more victims, more requests, new witnesses will have to be found to prepare
12 cross-examination under a different perspective if charges are upheld in the Blé
13 Goudé case.

14 In the case of a joinder, discussions regarding the liability of Mr Gbagbo will have to
15 be looked at differently. Let us assume definitive confirmation of the charges. The
16 dates of the Defence would have to be shifted by a number of months; by the number
17 of months that will be needed to come to the definitive ruling on the Blé Goudé case.

18 PRESIDING JUDGE HENDERSON: Thank you, Ms Naouri.

19 The legal representative to the victims, any observations on this point that you have
20 not --

21 MS MASSIDDA: No, your Honour.

22 PRESIDING JUDGE HENDERSON: Thank you.

23 All right. We'll come now to the second issue proposed by the Prosecution, which is
24 the imposition of deadlines to the filing of possible Defence pre-trial challenges, item
25 (g) on the agenda. The Prosecution states that to ensure the proper conduct of the

1 pre-trial proceedings the Chamber should impose a final deadline for all pre-trial
2 applications and challenges.

3 Mr MacDonald, would you care to clarify what is -- what you mean by "pre-trial
4 applications and challenges"?

5 MR MACDONALD: Sorry, your Honours.

6 Yes, Mr President. We've had discussions with the Defence on the 16th. You have
7 an indication right now by the answer that was just provided on the last question. If
8 you look at past history at the pre-trial -- the confirmation hearing, the Defence has
9 been filing a lot of requests, procedural in nature, that delayed the proceedings. I
10 suspect the same will continue at the pre-trial phase. Once you'll set a date for trial,
11 then slowly as the proceedings will be evolving there will be different motions. I am
12 certain -- I don't want to presume, but there will be some.

13 The first one I can tell you that we should expect is the health issue of Mr Gbagbo.

14 Second, that we should also -- is written cooperation with France. Non-disclosure or
15 difficulty to obtain material from the French can lead to a request for a stay of
16 proceedings. Third, resources. The Defence has resources issues. Actually, this
17 should be their first request now. They've raised the issue. They're doing it with
18 Registry. If they don't get satisfaction, they'll be seeking the Chamber's assistance in
19 this.

20 Citrix, they seem to be -- and there's issues with their investigations in the field in CIV.
21 Eventually they may say that there are problems with them, that it impacts on their
22 possibility to investigate, which in fact then also leads to their ability to defend their
23 client which should be maybe a second request for a stay of proceedings.

24 So all in all, your Honour, I think you need to put a deadline so that everything is set
25 so that we can start the trial on the set date and not have last minute submissions that

1 postpone the delays, your Honours. So I'm -- that's why we were raising it now.

2 PRESIDING JUDGE HENDERSON: Okay, I think I understand your submission.

3 Ms Naouri?

4 MS NAOURI: (Interpretation) Concerning procedural applications, our position is as
5 follows: There can be no deadline for such challenges, because everything is going to
6 depend on how the proceedings unfold. Depending on the proceedings, the Defence may
7 have to file a number of applications on the participation of victims, late disclosure by the
8 Prosecution, changes in the presentation of the Prosecutor, requests for redaction, et cetera.
9 It is possible that we may be filing applications and I thank the appicatee -- the
10 Prosecutor for giving examples. We may need to file other kinds of applications.
11 Thus, it's difficult - even impossible - for the Defence to go along with this idea of a
12 deadline because it is all dependent on developments in the proceedings. For
13 example, if the legal representative wishes to file evidence, the Defence will have to
14 respond to such an application.

15 As for the Blé Goudé case, assuming joinder or after confirmation of charges, the
16 Defence will have to decide whether or not various applications need to be filed.
17 The filing of applications by the Defence does not mean wasting time. This is about
18 defending the rights of the accused. We will file applications when necessary and
19 wish to remind the Bench that any pre-trial challenges will be done with a view to
20 defending the interests of our client; of the accused.

21 The Defence will be in a better position to provide details to the Chamber regarding
22 its position as proceedings unfold, but once again we have no crystal ball to gaze into
23 and we cannot agree to the idea of a deadline for any and all pre-trial challenges.

24 PRESIDING JUDGE HENDERSON: Right.

25 (Trial Chamber confers)

1 PRESIDING JUDGE HENDERSON: All right, I'm looking at the time. It's now
2 approaching half-past-11. We are almost completely through the -- what we had set out to
3 do, but we're not quite there yet. So perhaps we could now take the break for a half-an-hour.
4 Just a moment.

5 Okay. We can go on for another ten minutes, sorry.

6 Let's go to the next item. Oh, the legal representative for the victims I didn't hear
7 you on that. I'm so sorry.

8 MS MASSIDDA: Thank you, your Honour.

9 We actually support the position of the Prosecution on this issue of imposition of the
10 deadlines. If I may just make a small comment? It was quite a painful
11 exercise - sorry to use this word - at the pre-trial stage because of the delay caused to
12 some extent by the Defence in filing last minute, and there are issues which should be
13 settled before; even before the start of the trial. We fully understand that some
14 requests can only be filed after or in the course of a trial, but there are some issues
15 that need to be established and be firm by the start of the trial.

16 Thank you.

17 PRESIDING JUDGE HENDERSON: Thank you.

18 Right. Let's go to the issue -- another issue is by the Prosecution, which is the
19 imposition of -- I beg your pardon, which is the -- no, in fact this is not a Prosecution
20 alone issue. Both sides suggested discussing the filing of additional documents,
21 such as an elements-based chart and in-depth analysis chart and/or a pre-trial brief
22 which is at item (h) on the agenda.

23 The Prosecution would also like to revisit the necessity of the elements-based chart,
24 EBC, in accordance with the Single Judge's decision of 24 January 2012.

25 The Defence submits that the Prosecution should file a pre-trial brief explaining its

1 case with reference to the witnesses it intends to call and the other evidence it intends
2 to rely upon. This document should be communicated sufficiently in advance at the
3 same date of the deadline for disclosure.

4 The Chamber understands that the Defence wishes to receive a pre-trial brief in
5 addition to the list of evidence above-mentioned; that is the IDAC chart already used
6 during the pre-trial phase and the elements-based chart also mentioned before.

7 Mr MacDonald, any observations on that?

8 MR MACDONALD: Yes, your Honour, and I will not be finished in four minutes. On the
9 computer clock it's until 11.30. You have four minutes left. I can start. I can tell you what
10 our position may be.

11 PRESIDING JUDGE HENDERSON: In a nutshell, yes.

12 MR MACDONALD: In a nutshell is we have provided the ultimate tool never provided
13 before in this institution, which is a hyperlink DCC and it is 166 pages long in this case.
14 Every factual allegation is sourced. You click on the link, it brings you to eCourt and you
15 can see the piece of evidence if our sourcing is accurate.

16 Now in the Blé Goudé case, which is the DCC has been updated to 127 pages without
17 footnotes - with footnotes it's 240 pages or almost - that is very detailed. So, yes, we
18 object to an elements-based chart and, yes, we object to an IDAC because we're at trial
19 and at trial witnesses come, witnesses change their stories. Documents that on their
20 face say something may say something else when the witness that drafted it comes
21 and testifies about it.

22 Therefore element-based charts, or what we've -- no one mentioned IDACs, which is
23 being resuscitated with the Court's agenda, has never -- is good maybe for pre-trial
24 phase, but at trial we respectfully submit that it is not very helpful.

25 And I want to argue in more detail this point, because it is such a resource intensive

1 exercise that has to be counterbalanced with the need. Who needs this and what for?
2 When you already have a very clear confirmation decision, the last five pages
3 describes the facts and circumstances of the case and the legal characterisation of
4 those facts, and you have a DCC that we are willing to update with any new evidence
5 and provide it three months in advance with the last disclosure, with the list of
6 evidence, with everything else, three weeks before while we're -- three months before
7 while we're also -- while we're disclosing indicating what is potentially exonerating;
8 potentially exonerating. I mean at one point in time the Prosecution is doing things,
9 preparing the Defence case and not its own case.

10 PRESIDING JUDGE HENDERSON: All right. Well, this perhaps is a good point to stop.
11 It's been -- it's now 11.30. We will take the mid-morning break for 30 minutes.

12 THE COURT USHER: All rise.

13 (Recess taken at 11.30 a.m.)

14 (Upon resuming in open session at 12.00 p.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 PRESIDING JUDGE HENDERSON: Right, good morning again.

18 So we continue the status conference. Just as a matter of housekeeping, what we will
19 do this morning is we will -- when the status conference comes to an end, rather than
20 stop and take a break again we will continue straight into the detention phase and
21 then when there's an ex parte stage we will then take the break.

22 So we had stopped at the point when we were dealing with the deadline, or the
23 Prosecution had suggested a deadline -- just a moment.

24 MR MACDONALD: The IDAC, your Honour.

25 PRESIDING JUDGE HENDERSON: Yes, the IDAC. Yes, on the IDAC. Yes, the famous

1 IDAC. Yes, Mr MacDonald.

2 MR MACDONALD: Yes. Listen, your Honour, I --

3 PRESIDING JUDGE HENDERSON: That you couldn't do in four minutes.

4 MR MACDONALD: I just want to -- I just -- listen, I know there's an agenda. I know the
5 Chamber is trying to get through this agenda. What we want to avoid is having a ruling
6 while the parties do not necessarily have a full opportunity to address these matter. So -- but
7 I understand the Chamber will not decide without the parties having a chance to be heard.

8 PRESIDING JUDGE HENDERSON: Absolutely.

9 MR MACDONALD: But -- in full. So this is -- we need to strike a balance, so that's why
10 there are a number of issues. It's also our first status conference of possibly many, but -- and
11 we're also starting to know each other, I mean as professionals, and how we work. So I'd
12 like to slow down a bit and have an opportunity on this point to explain maybe a little bit in
13 more detail our position and just to also be clear.

14 In the early phases of this institution, there was -- Chambers requested what is called
15 in-depth analysis charts. So you had, for instance, the first time such charts were
16 asked were in -- I think the first time was actually pre-trial in Bemba, then at trial in
17 Katanga and Ngudjolo and then later on pre-trial in Kenya, and those were at times
18 where and at moments also where confirmation decisions where you had maybe
19 more -- let's -- I want to be diplomatic here, confirmation decisions written in such a
20 way that maybe the facts and circumstances confirmed and their legal
21 characterisation was not as clear as, for instance, we submit in the Gbagbo case.

22 If you look at the Gbagbo decision -- and it goes to notice, your Honour. It goes to
23 Defence preparation. It goes to Defence investigations. If you look at the
24 confirmation decision 656, starting page 127, paragraph 267 onwards, you have by the
25 heading itself the facts that are confirmed and a few pages later, paragraph 278, the

1 legal characterisation of these facts - mainly the four counts - and in the counts
2 themselves the modes of liability or responsibility under which these charges are
3 being confirmed. So that I would say is our playground. This is what has been
4 confirmed.

5 Now, if you look at our Document Containing the Charges, your Honour, the first
6 DCC to be filed with footnotes and within those footnotes you have links that you
7 click on that bring you to the eCourt, which is the Ringtail but for the Court purposes
8 it is called eCourt, where you have the incriminating evidence.

9 PRESIDING JUDGE HENDERSON: Just a moment.

10 (Pause in proceedings).

11 PRESIDING JUDGE HENDERSON: Yes, Mr MacDonald. Just you are on your legs so you
12 may not have observed, but there is a problem with the transcription which is not being
13 displayed in real time, but it is being worked on and we can continue. So please proceed.

14 MR MACDONALD: Thank you.

15 Now, if you take for instance - and I'll refer to what I know - the Katanga/Ngudjolo
16 case, the decision for the confirmation of charges was 212 pages and you didn't
17 necessarily have such defined facts and circumstances and charges linked to these
18 facts.

19 Now, when we file our Document Containing the Charges, like I said, every single
20 fact is supported by evidence in the document itself. So it's a document that is very
21 user-friendly, that you read I wouldn't say like a story, but you read the narratives
22 and it's sourced. You click. You can go and verify the evidence.

23 Now, I'm going to go back to the Kenya cases because this is where the question of an
24 in-depth analysis chart, we moved away from that and then it became an
25 element-based chart, a more simplified way, because in Kenya pre-trial the in-depth

1 analysis chart was 6,675 pages long and that's -- I don't know how one can use such a
2 document, personally. The one in Katanga had 1,200 pages. It was not
3 user-friendly. The Chamber said "Cut it." We brought it down to 800 pages, but
4 still it was not a user-friendly document.

5 So in Kenya it was argued and that was the Prosecution's position, and I'll briefly read
6 the four reasons why we believe an IDAC or an element-based chart is not necessary.
7 It is because at the pre-trial stage - at the pre-trial stage - I would say we're closer to a
8 dossier as in civil law systems. Statements are frozen. They're set. They're on
9 paper. Everything is on paper. There are no witnesses.

10 But at trial, as you know very well, your Honour, it's not the case. Witnesses come.
11 The first thing they do is put their hands on the Bible and right there and then this
12 may have an impact on which way they'll testify here before you, contrary to what
13 they said to the Prosecution. Their versions change because of time for whatever
14 reason.

15 Therefore the information as analysed and presented in an IDAC changes; changes by
16 the sheer courtroom. It changes after cross-examination by the Defence. So what is
17 maybe very convenient at the pre-trial stage because the evidence is set, it's not -- you
18 cannot change it, then that makes maybe better sense. It's also at the beginning of a
19 case, but even then that was at a time where we were not providing DCCs that are
20 footnoted and hyperlinked to the evidence.

21 The second -- one of the second arguments also is that with time at trial this document
22 that you do before trial becomes meaningless because of the changes in witness
23 testimony, even in the document themselves that maybe discussed and nuances are
24 brought in relation to those documents.

25 We have provided the information already in the DCC, so the information is there.

1 The Defence also has the decision. The user-friendliness is also not a good argument,
2 and also the time and resources that will be necessary for the Prosecution to provide
3 such a document are simply huge.

4 So I'm talking here about an IDAC. At best, because we can tweak it electronically,
5 in light of our Document Containing the Charges, we can continue doing an
6 element-based chart, but even then that document is not useful, we submit, because
7 one document all we have to do is source it to one element, but like we say there's a
8 caveat.

9 One document - one statement - goes to many different elements of the charges. It
10 goes to the background of the case. It goes to the, you know, chapeau elements.
11 Then it goes to the crimes themselves: Murder. Then it goes to possibly, you know,
12 the common plan because all of a sudden the witness heard the assailants saying
13 something, "I'm doing this under the orders of X." So one piece of evidence can go to
14 different elements. Hence, your document grows and grows and grows.

15 What I think this document may be relevant for - when I say "I," the Prosecution, I
16 speak for this team - may be different for the Chamber. It may be different for the
17 Defence. You may see relevance as to one of the elements on something we didn't
18 even think about. So in other words it is the Prosecution's mindset view of its own
19 case, but we're providing that already in the DCC with the facts and circumstances
20 and the evidence linked to those facts.

21 The Defence has to do its own work also. They need to read the evidence. They
22 need to make their own analysis. We're not there to make it for them. We're
23 already providing disclosure where we're indicating the relevance of these documents.
24 There's the initial idea. This is why we're disclosing it to you, this is why we believe
25 it is relevant, but make up your own mind.

1 So, in essence, your Honour, I'll stop here because I've been speaking too long, but I
2 think the Chamber understands that we're willing to accommodate, but it has to be
3 useful and also because I come back to that, resources. While the Defence will say,
4 yes, we don't -- we have the means, the money, whatever, we have an onus that no
5 one has in this room: We have to prove our case beyond a reasonable doubt, which
6 is a very big threshold. Therefore, yes, we may have a little bit more resources
7 because the Defence doesn't have that onus, they have no onus.
8 So, therefore, I think we need to really seriously consider and balance all of that and that is
9 why we're submitting, your Honour, that we're willing to provide an updated DCC in the
10 same format that has been provided with the links, with the evidence before the beginning of
11 the trial and also at the same time if need be in a separate document, I wouldn't call it
12 necessarily a trial brief, but any information of a legal nature or legal -- a legal document, legal
13 pleadings as to legal issue.
14 But I think in essence in that way the Chamber and the Defence are very well-informed.
15 They are currently well-informed and this is why I am surprised when we're hearing that we
16 need X number of months to investigate. They've had 2,500 documents as incriminating
17 disclosed to them so far. They have a DCC of 166 pages. They have a confirmation decision
18 of 125 pages. They know the facts and circumstances. At one point I think the Defence is in
19 a position to know this case and to start investigating now and not wait while they receive
20 everything from the Prosecution.

21 Thank you.

22 PRESIDING JUDGE HENDERSON: Thank you.

23 Ms Naouri, or Mr Altit, you have the floor.

24 MS NAOURI: (Interpretation) Now, with regard to the filing of additional documents, we
25 heard the Prosecution explain to us that a DCC with hyperlinks is the best possible tool that

1 has been allowed us by technology and that it has to date been the only such tool necessary.
2 Now, first of all, we must not mix up decisions containing the charges and the confirmation of
3 charges. Now, if those hyperlinks are of use to us, however, they do aid the attempt in
4 ascertaining which evidence is underpinning such things; however, they do not cover all of
5 the evidence brought by the Prosecution and everything that the Prosecution is mentioning in
6 terms of incriminating evidence must be opened to the usage of the Chamber in order for us
7 to be able to ascertain precisely what charges have been levelled against President Gbagbo.
8 That is the Prosecution's duty. Today we are at the trial phase. We are not at the pre-trial
9 phase.

10 PRESIDING JUDGE HENDERSON: Ms Naouri, the Chamber really invites
11 you -- Mr Gbagbo is here in his personal capacity, yes?

12 MS NAOURI: (Interpretation) Yes, I have noted that.

13 It is the Prosecution's duty today, and this has been recalled by the Prosecution itself, that
14 they have the onus, that the onus is upon them to prove beyond any reasonable doubt. At
15 the pre-trial stage it was to establish whether there was any reasonable doubt -- any reason to
16 believe.

17 Now, so, of course, the onus upon the Prosecution will be different and will be far more
18 specific at trial phase than it was at pre-trial phase, so we have a table with the constituent
19 elements, we have the DCC and we have the hyperlinks. Those three documents have given
20 us satisfaction, of course.

21 Now, with regard to the documents, with regard to the incriminating evidence, the Judges
22 have always requested that the Prosecution give us an entire list of the evidence upon which
23 they will be basing their case during the trial.

24 Now, in the Katanga case, the trial phase underscored the fact that it was upon -- the onus
25 was upon the Prosecution to present all the charges levelled against the accused and that was

1 the raison d'être for this table.

2 Now, the Prosecution said that IDAC at the time was not really a tool that would
3 allow for a fair trial and the Trial Chamber did deem that IDAC was a necessary tool
4 that would enable the Chamber and the parties and participants to ascertain the
5 Prosecution's case, whatever the sources or the resources needed to draw up the table.
6 Now, a month after the final disclosure of its evidence, the Prosecution was going to
7 then produce an IDAC.

8 Secondly, the filing of a pre-trial brief. Now, the Defence requests that in keeping with
9 previous practice this pre-trial brief be filed; notably, containing its -- the evidence upon
10 which it will be basing each of its charges.

11 Now, in the Ruto, the Prosecution was talking about and it deemed that this pre-trial
12 brief would enable it to inform the accused of the charges levelled against him. This
13 document made sure that there was no prejudice in the Defence's preparatory work.
14 We are not asking for the Prosecution to work for us, we are asking him to present his
15 case clearly, and for that there are tools that he can use and the use has been
16 established by the Court in the past.

17 Now, in the Ntaganda case --

18 PRESIDING JUDGE HENDERSON: Just a moment, I want to understand -- I would like to
19 understand you clearly. Are you saying that you, the Defence, does not understand the
20 charges or the charges are not clear?

21 MS NAOURI: (Interpretation) We understand the charges perfectly as they exist today as
22 they have been confirmed by the decision of the Pre-Trial Chamber. Of course we
23 understand the charges as they exist today. The Prosecution said that these are constantly
24 changing, that witnesses can change, that the case can evolve. And we have seen before this
25 very Court that often in the pre-trial phase the Prosecution case have changes, the

1 presentation of his case and the elements have changes, and what is more, the Defence teams
2 at such times were then forced to present written submissions in that matter.

3 Now, how are we going to move forward? How are we going to identify what
4 changes might come into presence, into existence? Now, the tools that exist today
5 and specifically IDAC, which was used in the pre-trial phase, will enable this. If we
6 have understood the charges, it is because we have been using this tool --

7 THE INTERPRETER: Message from the English booth: Could counsel please be requested
8 to slow down?

9 MS NAOURI: (Interpretation) -- with regard to the pre-trial brief itself.

10 With regard to the pre-trial brief in the Ntaganda case, it was with the Prosecutor, it
11 was the Office of the Prosecutor itself that suggested that in addition to a DCC -- an
12 amended DCC, a pre-trial brief be filed. In the Ntaganda case, according to what the
13 Prosecutor said himself, this pre-trial brief is a useful tool for the Chamber and for the
14 Defence, notably because it enables the Prosecution to develop legal -- specific legal
15 points and it also allows for a clearer disclosure to the accused of the Prosecution case.
16 So if we respect the consistent approach on the part of the Prosecution office, an
17 amended DCC and a pre-trial brief really are consistent with clearly informing the
18 Defence of the charges at hand and any possible evolution in the case, and we submit
19 that this pre-trial brief should be filed sufficiently upfront, for example, one month
20 after the last disclosure.

21 Now, finally, with regard to the table of the constituent elements of the crimes, the
22 Prosecution and Defence reached an agreement at pre-trial phase that the OTP would
23 provide it with another further document which was the constituent elements of the
24 crimes table. This table summarises all the charges and gives an overview of each
25 charge with all the relevant documents, all the documents cited by the Prosecution.

1 And as we said, in the DCC only the documents in support of a narrative or the charges -- and
2 as he said, this DCC is the narrative, it is the presentation of his case, which means that at the
3 end of each idea we will find as a footnote some evidence but not all of the Prosecution
4 evidence. Now, of course this will be in support of the charges levelled against our client.

5 Now, the constituent elements table is distinct from the IDAC in that the IDAC does
6 not make mention of the factual elements -- or the charges. I apologise. The IDAC,
7 by view of the fact that it concentrates on the constituent elements of the crimes, this
8 is the advantage of the table itself.

9 The Prosecution does no longer seem to be in agreement with the idea of disclosing this to the
10 Chamber. This is, however, essential. It is possible to discuss the possibility of constituting
11 this table by an amended DCC on the condition that each incriminating element be disclosed
12 and described. This by each element of crime, we will then be able to discuss, replacing the
13 constituent elements of crimes table by an amended DCC, as discussed by the Prosecution.
14 So this could be the subject of a discussion between the Prosecution and Defence. We would
15 like to emphasise the essential nature of these documents which allow, it is true, that -- which
16 shall facilitate the preparatory work of the Defence team, but also save time for all those
17 involved because to date all these documents have been highly satisfactory in this case and in
18 the work before the Court in general.

19 So the Defence suggests that these documents be disclosed one month after the final
20 disclosure of the Prosecution. We should recall that the standard of proof is higher at the
21 trial phase than it is at the pre-trial phase and the Prosecution must bring a full case, and the
22 Defence --

23 MR MACDONALD: If you allow me, your Honour --

24 MS NAOURI: (Interpretation) -- and the accused must be fully aware --

25 MR MACDONALD: -- just very one quick response --

1 THE INTERPRETER: I apologise, the interpretation has not finished and there is
2 overlapping of microphones.

3 PRESIDING JUDGE HENDERSON: Mr MacDonald, we need to keep it clean so that
4 when -- first of all, allow the translation to be completed and then I would allow you to speak,
5 all right?

6 Yes, proceed.

7 MR MACDONALD: I just want to clarify one thing: First of all, there is no IDAC in this
8 case. It's called an element-based chart, what we've done. So let's call a spade a spade.
9 Second, we have provided a list of evidence, but this list of evidence is not only presented as a
10 stand-alone document, as the Statute orders it, but every document of this list of evidence
11 we've integrated in the DCC by footnoting it, so every document on our list of evidence at
12 confirmation was sourced at least once in the DCC. Some statements are source where we
13 felt they supported the factual allegation mentioned.

14 Now, the Bosco Ntaganda case - I say the Bosco case, that's his first
15 name - Mr Ntaganda, the Ntaganda case, is very different because the DCC that was
16 provided to the Defence in that case was not footnoted and sourced to hyperlinked, so
17 that is why the Prosecution's position - and I know very well because I was part of
18 those discussions - was to provide and suggest an amended DCC and a pre-trial brief,
19 but here the DCC is a factual document and contains the legal -- the modes of liability
20 associated to it.

21 We don't discuss legal issues in a DCC. We're willing to have discussion -- discuss legal
22 issues in a separate document if need be, but we've already invested a lot of time and energy
23 in a document that provides everything to the Chamber for -- in preparation of the trial and
24 obviously to the Defence at the same time.

25 PRESIDING JUDGE HENDERSON: Okay, thank you.

1 We will now go to the -- an issue raised by or proposed by the Defence and that is the
2 possibility of a site visit, item (i) on the agenda.

3 The Defence submits that organising a site visit before the beginning of the trial on the merits
4 and a site visit after the presentation of the Defence case will help the Chamber, the Judges, to
5 get a clearer understanding of the events and will allow us to better assess the credibility of
6 the witnesses.

7 Mr Altit, Ms Naouri, is there anything in addition to your written submissions that
8 you wish to address us on?

9 MS NAOURI: (Interpretation) Regarding the site visit, the only clarification we would
10 need is when this can take place. We included that in our written submissions. We believe
11 it will be good for everyone to familiarise themselves with the reality, that is a visit before
12 commencement of a trial and another visit after the completion of the presentation of the cases
13 of the two parties.

14 The date of the visit would of course depend on the date of commencement of trial.
15 There is an approximate date that has been mentioned, but we believe that a site visit
16 could take place one month before the beginning of trial. That would make it
17 November 2015 based on the Defence estimate.

18 PRESIDING JUDGE HENDERSON: So therefore it is the request of the Defence that there be
19 two site visits?

20 MS NAOURI: (Interpretation) I beg your pardon?

21 PRESIDING JUDGE HENDERSON: Yes. So just so that we understand, the Defence would
22 like the Chamber to arrange two site visits?

23 MS NAOURI: (Interpretation) That is correct. We would like to have one visit before
24 commencement of trial and one at the end of the trial.

25 PRESIDING JUDGE HENDERSON: Mr MacDonald?

1 MR MACDONALD: We totally agree with a site visit if the Chamber deems it necessary.

2 Now, I just want to mention the following: I don't think it's -- it all depends

3 obviously on the start date of the trial, but I just want to remind the Chamber of the

4 following also in relation to it impacts on the date of the trial. There are elections in

5 October 2015 in Côte d'Ivoire. Now, this is a case about election violence. I think

6 we should avoid and factor that in very carefully.

7 Now, we believe that maybe it would be appropriate to start the beginning of the trial

8 and then the Chamber can appreciate a little bit more the landscape from the

9 witnesses and then it is maybe a little bit more meaningful to have an on-site visit

10 during the Prosecution's case. So at the beginning maybe overview witnesses or

11 general witnesses are better, you're able to appreciate the country a little bit better,

12 and then we go on-site before the real witnesses where, you know, such site visits or

13 the testimony thereof becomes more important and to see the sites. Then it becomes

14 relevant for the Chamber to go.

15 Now, afterwards the -- I don't know why two, but if ever after trial there's a need for

16 the Chamber to go back then that possibility is always available, minding the costs

17 involved of such an adventure, but I -- in relation to the principle we are totally in

18 agreement that if the Chamber deems it appropriate there should be one. Definitely

19 it will help you understand the testimony of the witnesses much better. I am certain

20 of that and convinced of it.

21 PRESIDING JUDGE HENDERSON: Thank you.

22 Victims?

23 MS MASSIDDA: Thank you, Mr President.

24 We are also supportive of the Defence request for site visit. We would be inclined

25 for a site visit after the start of the Prosecution case, along the line of what

1 Mr MacDonald has just espoused to you, keeping in mind of course the situation in
2 the field, the elections which are set to be next year in October, but we will support
3 the site visit because it's also important for the victims to see the proximity of the
4 Chamber towards victims directly in Ivory Coast. This is something that victims
5 have been looking for since the beginning of this procedure.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 The Registry, any observations?

8 MS DAHURON-JACOBY: (Interpretation) I would simply want to point out that the
9 Registry of course will provide assistance for any site visit that might be decided, and there
10 will be feasibility studies regarding security and other issues and that would be provided
11 obviously to the Chamber.

12 PRESIDING JUDGE HENDERSON: Thank you.

13 This is the penultimate item on the agenda: The Defence also suggested to discuss
14 the eCourt protocol and, in particular, the impact on Defence resources and possible
15 changes thereto.

16 So this is a matter which the Defence I'll hear you on first.

17 MS NAOURI: (Interpretation) Regarding the eCourt protocol, the Defence has already
18 made its observations in the written submissions. As the proceedings go on, we will ask the
19 Registry to do what is necessary so that the eCourt protocol should be compatible with the
20 requirements of the parties as we have mentioned to include the legal representative also.

21 PRESIDING JUDGE HENDERSON: Thank you.

22 Any observations, Mr Prosecutor?

23 MR MACDONALD: We will discuss it with Defence, but I don't know what that means. I
24 have no idea what that means. There is an eCourt protocol. That is -- the last one adopted
25 by this institution was in the Blé Goudé case. It's almost the same as in the Gbagbo case.

1 There are a few tweaks, mainly of importance for this case the video presentation, but I don't
2 know adéquation with the Defence. I mean, for me it is the Defence that has to apply the
3 eCourt and not the other way around. Amendments are always possible. It has to go
4 through a process. But at this stage we can discuss it with the Defence, we're open to discuss
5 it, but maybe some little precisions would be needed.

6 (Trial Chamber confers)

7 PRESIDING JUDGE HENDERSON: Well, the two of you would be encouraged to -- to have
8 good discussions, but I will hear from the victims on this and then the Registry.
9 The victims first.

10 MS MASSIDDA: Your Honour, thank you.

11 I'm also a little bit confused. If we can maybe have some more explanation from the
12 Defence we will of course be open to seek any amendments if needed to the eCourt
13 protocol, but at this point in time it's a little bit difficult for us to really understand the
14 Defence point.

15 PRESIDING JUDGE HENDERSON: Thank you.

16 Is this similar with the Registry?

17 MS DAHURON-JACOBY: (Interpretation) Regarding the eCourt protocol, we would like
18 to recall that there is a protocol that has been in application ever since the pre-trial phase.
19 The amendments could be technical; that is to provide new solutions with technology that did
20 not exist before. The Court has evolved to the point of adding only objective or descriptive
21 metadata, not subjective, and if the parties agree on modifications those modifications would
22 have to be submitted to the eCourt user group which brings together representatives of all the
23 parties, the Chamber and the sections of the Registry concerned. They study the
24 sustainability of any such proposals and make recommendations to the Chamber.
25 Thank you.

1 PRESIDING JUDGE HENDERSON: Well, then, the Defence is encouraged to engage in
2 discussions with the other parties and participants on this matter and involve us only when it
3 is necessary.

4 Now we come to the last, the final, the most crucial item on the agenda, the
5 commencement of the trial date.

6 The Prosecution had proposed September of next year, 2015, as -- and that was a
7 realistic start date, and they said that they arrived at this in consideration of the
8 possible joinder of the Blé Goudé case should Blé Goudé be confirmed; (2) further
9 focused investigations; and (3) transcription of a number of articles and interviews.

10 The Defence considers that, because among other things of the complexity of the case,
11 it would need at least until November of next year and they in their submissions
12 referred to the conduct of investigations and that the commencement date of the trial
13 also depends on the resources at their disposal.

14 The legal representative of victims has submitted that the trial should start as soon as
15 possible, although it noted that should the charges against Mr Blé Goudé be
16 confirmed his trial might be joined to that of Mr Gbagbo.

17 So having just reminded you of these submissions, Defence do you have any
18 observations on this?

19 MS NAOURI: (Interpretation) We have a certain number of observations. This is a
20 particularly complex trial. About 7,000 documents have been disclosed, more than 34,000
21 pages and about 100 hours of video. We have learnt that the Prosecutor is preparing to
22 disclose about another 100 hours of videos and that requires a 100 hours to view them and to
23 read the transcripts. The Prosecutor has said that they continue to investigate and so the
24 volume of the new materials have to be taken into consideration. The Prosecutor intends to
25 disclose a certain number of documents already disclosed in the Blé Goudé case. All that has

1 an impact on the date of commencement.

2 The Prosecutor has also said that they wish to call about 70 witnesses. This volume
3 of work is considerable, taking into account the resources of the Defence. That is
4 why we would like to take into consideration the complexity of the case, the difficulty
5 with regard to resources of the Defence, the number of witnesses to be called by the
6 Prosecution and so on and so forth.

7 Regarding the complexity there is need to investigate a war that has taken more than
8 ten years, and in its DCC the Prosecutor mentioned 39 incidents and these took place
9 within the context of a conflict taking rebel forces -- rebel mercenaries, government
10 forces, ONUCI, that is the United Nations contingent, and the government forces. So
11 the allegations of the Prosecutor involve not only a certain number of incidents, but
12 incidents that took place at various locations and at various times.

13 So each of the elements provided by the Prosecutor has to be examined and analysed.
14 There has to be research, materials have to be gathered, analysed, testimonies
15 gathered in order to prepare cross-examinations. The Defence has to examine the
16 political and strategic context within which the events took place. You will therefore
17 see that the task is enormous.

18 That complexity was mentioned both by the Prosecutor and the Pre-Trial Chamber on
19 several occasions, so it would be impossible to establish a schedule today with that
20 taken into consideration, that complexity.

21 We have a word also to say about the difficulty of Defence investigations. The
22 stakes are very high and this is why sometimes it is particularly difficult to contact
23 certain potential witnesses who are in hiding, and so the Defence needs time to
24 prepare the trial. We need to interview people in order to prepare our
25 cross-examinations.

1 Mention has been made of elections. Today the current government is not
2 cooperative necessarily with the Defence and the people who are accepting to speak
3 to us are taking risks. This is a reality. Defence witnesses are more at risk than the
4 Prosecution witnesses. The investigations are difficult and so we do not want to put
5 people willing to participate in -- at risk, so that will have an impact on our
6 investigations.

7 Regarding the number of Prosecution witnesses, they have said that they will call at
8 least 70 witnesses. And as we have said if it takes us three days per witness to
9 cross-check the statements of every witness and investigate, this will amount to 210
10 working days. That is six months of work. It is on the basis of that information that
11 we came up with the following schedule.

12 We believe that a realistic date of commencement of trial to us, that is, we have
13 provided that to you, that is not taking into account the possibility of a joinder. The
14 fact is that there should be a deadline for the filing of applications for the
15 participation of victims and the disclosure of those applications to the Defence. We
16 have already said that we need to avoid what happened in the Bemba case, for
17 example, because in the middle of the proceedings about 400 applications for
18 participation of victims was disclosed -- were disclosed to the Defence, so there has to
19 be a deadline for that and our estimate for that is 1 February 2015. We also need
20 time to process those applications, three months, and this leads us to 30 April 2015.

21 We have been told the approximate number of applications that can be disclosed to us,
22 so we required three months.

23 Regarding applications for redactions, within 15 days of the filing of a document, the
24 Prosecutor has to apply for redaction for -- from the Chamber and the deadline
25 should be 1 May 2015.

1 Regarding the disclosure by the Prosecution of all incriminating and exonerating
2 materials, we believe that it should be done in a rolling manner and the deadline
3 should be 30 May 2015.

4 Regarding the disclosure of the identities of all witnesses and the list of evidence we
5 believe that the deadline should be 31 May 2015.

6 Regarding the disclosure by the Prosecution of supplementary documents, we believe
7 that the deadline should be 30 June 2015, that is one month after the last disclosure by
8 the Prosecutor of his evidence.

9 We have already said regarding the site visits that we believe that two visits are
10 necessary in November 2015; that is late November and early December 2015. We
11 believe that at this stage that would be an average time frame for the Court because
12 the normal thing, the average duration is usually one year between the initial
13 appearance and the beginning of the trial.

14 In the Ruto case it was 15 months and in the Gbagbo case, the case has not yet started,
15 and the initial appearance and first status conference took place more than two years
16 ago, so the date of commencement should take that into consideration and the date of
17 late November, early December 2015 seems to be very realistic to us. Thank you.

18 PRESIDING JUDGE HENDERSON: Thank you.

19 The representative for the victims?

20 MS MASSIDDA: Mr President, I think that Mr MacDonald would like to add something.

21 MR MACDONALD: We haven't had an opportunity to provide our position so far.

22 Your Honour, you started with the Defence.

23 PRESIDING JUDGE HENDERSON: Yes, I beg your pardon.

24 Yes, Mr MacDonald, let me hear from you.

25 MR MACDONALD: Thank you, your Honour.

1 I just want to come back on the issue of the joinder has been addressed, it's an "if," but
2 our proposal is in light of that. Now, if there was no confirmation of charges or
3 anything, we're ready to start the trial earlier than that, and we think that, you know,
4 possibly in June, beginning of July would be reasonable.

5 Now, I understand here that the Defence is asking for much more time. It is the
6 Defence that is asking that. The Defence has to decide which rights they want to
7 exercise. The right to a speedy trial is also a right that they have, but they seem to be
8 renouncing that. Faced with competing rights they want to exercise, they need to
9 choose, and by their submission they are making that choice. I just want to note that.
10 I also want to note that the Defence has had the confirmation decision since early June.
11 They've had the amended DCC since January, over ten months ago. Their
12 investigations I hope have been ongoing since then, or at least the confirmation
13 decision. That's four months ago. They've had the evidence of 55 potential
14 incriminating witnesses. 55 already. We're adding another 15, possibly ten or
15 maybe a bit more, and we'll disclose them in due course, but nevertheless they've had
16 the evidence related to 55 witnesses, some of whom have been more than one
17 interviews. I'm thinking of P-9, for instance. They've had transcripts of three
18 interviews. So they've had a lot of material. They've had over -- sorry, they've had
19 over 2,520 incriminating documents identified to them, out of which 1,600. We've
20 already disclosed the Blé Goudé Rule 77 or potentially exonerating evidence recently
21 in October. We provided disclosure reports to the Chamber; to the Trial Chamber.
22 What they're missing is the incriminating evidence. So the point being, your Honour,
23 is that I understand the Defence needs time to prepare, but you'll have to gauge the
24 reasonableness of this time.

25 Now, independently of the joinder of the cases, your Honour, history has

1 demonstrated that usually trial dates are pushed back. There is an initial date that is
2 set and then later on a second one. Now, one requesting September or suggesting
3 September as a trial date -- we want to start in September, and we will make
4 everything in our -- in our capabilities to meet that deadline. If ever there were any
5 issues we will raise them promptly with the Chamber. But the bottom line is that
6 while the Prosecution's investigations may be ongoing, and this is I'm sure a concern
7 of the Chamber, the vast majority of the evidence has been disclosed, and what will
8 be collected is what I call compliance evidence related to presentation of evidence and
9 disclosure of evidence -- I mean, in the -- but there will be, yes, insider witnesses that
10 we haven't had an opportunity to question yet. There will be review of documents
11 which we didn't have access to. For instance, we've only had recently access to a
12 volume of videos, a database. Before we've been asking and requesting, it is only
13 very recently that access was granted. So we're doing our utmost to investigate
14 promptly. So this is why we believe that September is reasonable.

15 Now, also, your Honours, one option is -- and I just want to come back, Katanga was
16 four months, by the way. It was not six months. What happened is that in Katanga
17 there was a first status conference in November 2008, almost like this one, and the
18 Trial Chamber did not set a date for trial. They did set disclosure deadlines and they
19 waited.

20 Maybe we should wait to see if the charges are confirmed or not before setting a date
21 for trial, but having already in mind September being a reasonable date. The reason
22 why I'm saying this is if ever the cases were to be joined, we need to know the
23 position of the Defence of Mr Blé Goudé, which he's not here to talk and speak. He
24 may have a different view. He may want to have a speedy trial after the cases are
25 joined and you'll have then different competing rights being expressed.

1 So one option, your Honour, could be to reserve setting a date for trial 'til December,
2 15 December we expect the confirmation decision, I think at the latest, and then
3 afterwards the request will be filed and so on and then we can see. But right now we
4 take the undertaking that for every single document that we have in our possession
5 we'll disclose by the end of January, and if ever there were any issues we'll come back
6 to the Chamber before that with a Reg 35, if need be -- a Regulation 35 request or
7 informing the Chamber of our difficulties. So at least that will be set and also we
8 take the undertaking to disclose as promptly as possible. I still believe that 30 days
9 is not necessarily practicable. Of course for documents that don't need to be
10 redacted or anything, we move those out immediately as soon as we can.
11 But all in all I think there is maybe a middle ground in the meantime that the
12 Chamber can adopt, meaning oversight as to disclosure, control over disclosure and
13 so on, while reserving its decision on when to set a date for trial, but in the meantime
14 also the Defence have to file the request they need to file and they're in a position to
15 file now. There's no reason to wait for certain requests. Most likely there's no
16 reason to wait.

17 PRESIDING JUDGE HENDERSON: Thank you.

18 I should tell you that the Chamber accepts that a best practice is trial date certainty
19 and that when we do set a date it should be fixed unless something -- barring
20 something serious. It does not do the system any credibility if we do otherwise.

21 All right. The victims' representatives, I had jumped the gun before, but I would like
22 to hear you now.

23 MS MASSIDDA: Thank you, your Honour.

24 Well, while victims would prefer tomorrow as starting date for the trial, they understand, of
25 course, that some preparation is needed. It is something which has been discussed with

1 victims in the field before this hearing and we think that at this point in time without
2 considering a possible joinder, a start date in June 2015 is feasible and reasonable.

3 If the Blé Goudé case is -- the charges against Mr Blé Goudé will be confirmed, then
4 we think in case of a joinder September 2015 is a reasonable and feasible date.

5 One small observation in relation to the application for victims, the set -- the fact of
6 setting a date for the end of the submission of application, if I understand correctly,
7 the Defence is suggesting 1 February 2015 as the end date for receiving any
8 application form.

9 Now, while I might be sympathetic towards the Defence in setting a date before the
10 start of a trial, I think that we cannot avoid what is in the Rules and Regulations,
11 meaning the possibility for victims to present their applications when they wish in the
12 proceeding.

13 It is true that Regulation 86(3) request to the extent possible the filing of applications
14 as soon as possible and before the start of a stage of a proceedings in which victims
15 want to participate. However, I don't think that 1 February should be the end date.

16 If we want to set a deadline, I would suggest two months before the start of a trial.

17 Otherwise we will de facto impede for nine or ten months, considering the Defence
18 calendar, the possibility for victims to apply for participation.

19 Thank you.

20 PRESIDING JUDGE HENDERSON: Thank you.

21 Well, that would have allowed us to cover all of the items on the agenda. Let me just -- just
22 one moment. (Trial Chamber confers)

23 HEARING ON DETENTION starts at 1.00 p.m.

24 PRESIDING JUDGE HENDERSON: All right. At this stage then if we can seamlessly move
25 into the next phase of the proceedings.

1 So I would just want to formerly place on the record that we are now moving into the
2 Rule 118(3) stage of the proceedings and this deals with the detention of Mr Gbagbo
3 pursuant to Rule 118(3) of the Rules of Procedure and Evidence.

4 And just again for the record we will just formally note Mr Gbagbo's absence, he having
5 signed a waiver in relation to his right to be present here today.

6 So the purpose of this afternoon's hearing is to discuss Mr Gbagbo's detention.

7 As you are aware in our order of 7 October, the Chamber indicated that it would hold
8 on 9 October 2014 a hearing pursuant to Rule 118(3) of the Rules. Having granted a
9 request from the Defence for postponement, the Chamber set today as the new date
10 for the hearing on detention.

11 In addition to the requirement to hold a hearing on detention each year under Rule
12 118(3), the Chamber is mindful that the 120-day review period for pre-trial detention,
13 pursuant to Rule 118(2) of the Rules is also imminent.

14 The Chamber notes that parties and participants have already filed written
15 submissions in light of this forthcoming review of Mr Gbagbo's detention. However,
16 the Chamber considers it appropriate to hear any complementary submissions on the
17 issue of changed circumstances today, as well as any other detention matters that are
18 necessary to bring to the Chamber's attention.

19 The Chamber notes that in its written submissions the Prosecution submitted that
20 there has been no change in circumstances since Pre-Trial Chamber I's sixth decision
21 on the review of detention. The Prosecution contends that the relevant grounds
22 justifying continued detention, pursuant to Article 58 of the Statute, namely (1)(a) and
23 (1)(b)(i) and (ii) continue to be met.

24 The Prosecution filed additional material attesting, in its view, to the existence of a network of
25 Mr Gbagbo's supporters operating from outside Côte d'Ivoire. The Prosecution also filed

1 last Friday a notice of its intention to rely on additional material for this hearing which the
2 Chamber has taken notice of.

3 The legal representative also submitted in its written filing that Mr Gbagbo must
4 continue to be detained since, in its view, there have been no changed circumstances
5 since the last review of detention.

6 The legal representative further submits, amongst other things, that the risk of
7 non-appearance at trial increases as the proceedings advance.

8 Now, as for the Defence, the Defence indicated in its written submissions that a
9 number of changed circumstances have transpired which, in the view of the Defence,
10 should lead to a reconsideration of the grounds justifying the continued detention of
11 Mr Gbagbo and that these include the national reconciliation process, Mr Gbagbo's
12 assurance that he will appear before the Trial Chamber, the lack of a network of
13 supporters, the absence of financial means at the disposal of Mr Gbagbo and the fact
14 that the Prosecution's investigations ought now to be completed.

15 Now, before moving to the oral submissions, the Chamber wishes to clarify that it
16 will take into account both -- as was the case before -- written and oral submissions
17 before making its decision pursuant to Article 60(3) of the Statute. However, as the
18 Chamber has fully considered your written submissions, we do request that you do
19 not repeat them in this hearing and that you use your -- the remaining time that we
20 have judiciously to either expand on those submissions or to respond directly to the
21 others' submissions.

22 Now, the structure of this part of the hearing I will now take you through. First I
23 will give the floor to the Defence team of Mr Gbagbo who may make observations
24 that focus on the existence and impact of any changed circumstances since the
25 previous ruling on detention as well as any other detention matters that are necessary

1 to bring to the Chamber's attention. The Defence will also have the opportunity
2 before the end of the hearing to respond last.

3 I will subsequently give the floor to the Prosecution and then to the legal
4 representative of victims to supplement their observations and the observations on
5 the existence and impact of any changed circumstances since the previous ruling on
6 detention or any other detention matters that are necessary to bring to the Chamber's
7 attention.

8 We will then invite the Registry to make submissions on any issues that fall within its
9 mandate, if any, and if need be the parties and participants will be granted time to
10 respond to the arguments raised by their counterparts. As mentioned a short while
11 ago, the Defence will be given the opportunity to make their submissions last, to
12 respond.

13 Now, to all parties and participants, if you wish to address certain matters in private
14 session, please inform the Chamber so that we can go into private session.

15 The Chamber will also convene an ex parte Registry and Defence only session at the
16 end of this hearing to discuss certain matters concerning Mr Gbagbo's detention.

17 Accordingly, at the end of this current session, we will adjourn for half-an-hour in
18 order to -- well, we will adjourn to -- depending what time it falls, if it's lunch, we will
19 probably take the one hour so that they can switch the transcript and tape and
20 recommence with the Registry and Defence only.

21 Now, in the last phase, we didn't do too well in that -- I think all of us were a bit
22 guilty of overlapping, to use Mr MacDonald's phrase, as we get to know each other,
23 so that we need to really take our time and speak and be considerate of the
24 interpreters as well as those who are transcribing, so we need to take our time, all
25 right?

1 Are there any questions from the floor before we start on that?

2 MR MACDONALD: Just a timing issue, your Honour. We only, I believe, have 15 minutes
3 left. That's all I note. So if -- I'm not sure if we'll have enough time to discuss the detention
4 hearing because the Defence will be speaking first, I don't know how long they take -- they're
5 going to take and so on. That's the only issue.

6 And the Prosecution's case will be answered or presented by Mr Lloyd Stang.

7 PRESIDING JUDGE HENDERSON: If we run out of time, subject to what I'm told, my
8 understanding -- my understanding is we'll take the lunch-break and we will continue
9 thereafter.

10 (Pause in proceedings)

11 PRESIDING JUDGE HENDERSON: Right.

12 So I will now give the floor to the Defence to make submissions on the detention of
13 Mr Gbagbo.

14 MR ALTIT: (Interpretation) Thank you, Mr President.

15 Mr President, I believe that I need approximately 20 minutes or, you know, a lengthy
16 quarter-of-an-hour. Is that okay?

17 PRESIDING JUDGE HENDERSON: Yes, you have your 20 minutes.

18 MR ALTIT: (Interpretation) I thank you, Mr President.

19 Mr President, your Honours, the drafters of the Statute decide that there could not be
20 any provisional detention unless the true risk of flight could be located, the risk of the
21 protection of witnesses, and of course it is up to the Prosecution to prove these risks.

22 I would recall rapidly what the Judges said in the Bemba case that the Prosecutor must
23 provide information to the Chamber to ensure, to prove that continued detention is justified
24 and they said if it is true that the Prosecution has not managed to, once again, establish facts
25 that have been established in the fact, he must be, however, establish that there has been a

1 change in circumstance or no change in circumstance.

2 On each reassessment of detention, periodical reassessment of detention, the Prosecution
3 must present conclusions indicating whether there has been any evolution of circumstances
4 that previously motivated a detention -- a decision to maintain in detention and must also call
5 to the attention of the Chamber any other relevant information that is linked to the detention
6 or release of the accused.

7 Now, what the Prosecution is doing here is repeat for the eighth time arguments that
8 underpinned the original request for warrant of arrest. And it is important to note
9 that these arguments have been gradually eroded of all strength by virtue of their
10 repeated reassessments.

11 The Prosecution has repeatedly claimed since the outset that President Gbagbo has
12 the means to flee and hide and a network of close people devoted to assisting him in
13 his fight.

14 It has been proven that President Gbagbo has no hidden wealth; for example, the alleged
15 hidden accounts that the Prosecution has placed great importance on two years ago. The
16 great wealth that would have helped President Gbagbo in his flight do not exist -- or does not
17 exist.

18 As for the network, the so-called organised hierarchical structure that allegedly has access to
19 armed contingents to launch attacks in Côte d'Ivoire, this does not exist either. This is now
20 commonly accepted by all specialists. Naturally, tens of thousands of Ivorians have had to
21 flee the political violence and the violent acts, and for many of them, notably in the west of the
22 country, they were forced to flee the violent appropriation of their land by foreigners
23 supported by the armed contingents who brought Alassane Ouattara to power. These
24 people have sought refuge in neighbouring countries.

25 Of course many of them wanted to go home and retrieve the possessions that were stolen

1 from them. Of course many of them hold the new Ivorian authorities responsible for their
2 fate. Is this sufficient to label them as members of an organised network? Of course not.
3 Can the misfortune of these refugees serve as an argument for the continued detention of
4 President Gbagbo? Of course not.

5 Three years is a long time, Mr President, three years of provisional detention in addition to
6 three months of provisional detention in Côte d'Ivoire in the conditions that are familiar to
7 you. Very extremely difficult circumstances.

8 You will have noted that when the Prosecution is called upon to give details of the
9 alleged network things become hazy. He bases his position on the reports of five
10 experts: One Swiss, a specialist in customs; a South African expert, who is a
11 university lecturer; an election specialist, and a Jamaican financial analyst; and also an
12 Italian expert who specialised in diamonds; and a United Nations officer specialised
13 in regional affairs.

14 Of course these experts have neither the qualifications, nor the experience, to be able
15 to assess the security situation in Côte d'Ivoire, or examine the causes of the
16 instability, and in order to draft the report they have worked on the basis of
17 documents that were given to them by the Ivorian authorities, which are particularly
18 suspicious in nature in the sense that they do not cross-examine or cross-reference the
19 various reports by the specialists of the region.

20 In reading those reports, it is simple to note the experts' biased position, their lack of
21 distance and the fact that they do not have the necessary information to make a
22 balanced security diagnosis.

23 With regard to the alleged attacks at the Liberian border, it is now admitted by all specialists
24 that these incidents -- these were incidents that pitted indigenous peasants seeking to retrieve
25 their land against new Burkinabé settlers who had taken possession of this very land.

1 In more general terms, with regard to the alleged attacks, it is clear that the experts are happy
2 to merely repeat what they have heard or read and that they have not conducted any
3 investigations of their own; for example, with regard to the Grabo attack, that occurred on 23
4 February 2014, it is interesting to note that it has not been ascribed to the pro-Gbagbo camp by
5 the Ivorian authorities, whereas an investigation was open to the attacks, no member of the
6 FPI or any alleged pro-Gbagbo individual has been arrested or implicated.

7 The residents' testimony shows, and this was presented in the Ivorian press, shows the true
8 nature of the attack. It is an act of banditry as there are many in Côte d'Ivoire. It is, of
9 course, easier for the Ivorian authorities to hold President Gbagbo responsible without
10 demonstrating or providing evidence of the plethora of ills present in Côte d'Ivoire rather
11 than address the problem.

12 The superficial nature of the work completed by these experts, the total absence of
13 concrete elements in support of their allegations, the lack of investigation, all of this
14 reduces their allegations to dust, allegations which cannot be accepted before a court
15 if no true investigations have been completed.

16 What is more, the Prosecution does not talk about the various working sessions that
17 he allegedly held or the experts. It is up to the Prosecution to shed light on the fact
18 as to whether he did or did not meet with these experts, and if so how can he say that
19 he is basing himself on a report containing elements of information that he might
20 himself have transmitted to the experts, at least with regard to the security situation?

21 I would like to inform the Judges of this Chamber that this already occurred two years ago
22 when the Prosecution relied on a report drafted by experts and these experts, in fact, had
23 obtained the information from the Prosecution itself. So, I would follow up by saying that
24 the Prosecution would probably be able to explain itself in this regard.

25 The Prosecution is so aware of the lack of any structured network that he perpetuates

1 the confusion between the existence of this imaginary network and the FPI, the party
2 created by President Gbagbo and, more generally, his supporters.
3 He states clearly that it is not enough for anybody to express positive sentiment
4 towards President Gbagbo and his politics, for them to be ipso facto, considered as a
5 potential criminal. However, this position is not sustainable and by no means
6 constitutes an argument. Representatives of the international community seeking
7 stability in Côte d'Ivoire are continually encouraging the authorities to open a true
8 dialogue with the FPI - the FPI - largest opposition party.
9 You will note that whether it be the French, the Americans, the Chinese, or the
10 Germans, or those who are in constant dialogue with the FPI leaders are in
11 disagreement with the Prosecution; they consider the FPI to be a respectable party.
12 And the Prosecution is so aware of this that he attempts to make a distinction
13 between hardliners and moderates within the FPI. He claims that the hardliners are
14 the dangerous entities after all, but how? For whom? Such a distinction makes no
15 sense. And how are the diverging approaches within one and the same party of
16 interest to the Prosecution? And how can he be a censor of the Ivorian political life?
17 It is, therefore, clear that the Prosecution is trying all means in a desperate bid to present a
18 group of President Gbagbo supporters that, if need be, he could substitute for the infamous
19 missing network.
20 In reality, the Prosecution is opposed in principle to the release of President Gbagbo.
21 His reasoning speaks volumes. In the light of his comments, it would seem to suffice
22 for Ivorians to voice their support for Gbagbo, for there be -- for there to be a distinct
23 risk of flight and obstruction of investigations. However, the Prosecution himself
24 acknowledges that approximately half of the Ivorian population claims their support
25 for President Gbagbo. There will always be Ivorians in support of President Gbagbo

1 and, as such, according to the Prosecution, there will always be an alleged network
2 and it will continue to be impossible to release President Gbagbo.

3 The risk of flight is inexistent -- or, nonexistent for a number of reasons: First and
4 foremost because President Gbagbo does not have any means of fleeing and also
5 because he does not wish to. President Gbagbo, as a promoter of democracy and a
6 multi-party system in Côte d'Ivoire, wants to give his version for history sake. He is
7 making the most of this trial to reveal the truth and explain to the Chamber who is
8 behind the destabilisation of the country and why they acted in such a way. And
9 where would he go after all? We are talking here of a world-renowned head of state.

10 The Prosecution's reasoning with regard to possible obstructions to investigations is
11 as unfounded as that regarding the risk flight and rests solely upon the alleged
12 existence of a network which, as we have seen, does not exist.

13 Along the way we have let established jurisprudential criteria fall by the wayside. In the
14 Bemba case, the Appeals Chamber found that there must be a nexus between the person in
15 detention and the risk of obstruction, which means that this risk must stem from the person
16 within detention.

17 At no point in time has the Prosecution shown or proven the existence of any risk.

18 President Gbagbo has no reason to want to obstruct proceedings before the Court. He has
19 repeatedly said he wants to tell the Court what really happened in Côte d'Ivoire for the sake
20 of promoting reconciliation. And what is more, the Prosecution has never claimed any
21 problem associated with the threat of obstruction. How, therefore, can he continue to allege
22 that the provisional release of President Gbagbo would imperil investigations that are
23 virtually completed at this stage of the proceedings?

24 Now, with regard to the change of circumstance. Even if these risks might have
25 existed in the past, they -- we must admit today no longer exist, and why is that?

1 Because the environment is changed. There is now a national reconciliation tide, as
2 such, the provisional release of President Gbagbo would no longer be a risk but, on
3 the contrary, a necessary step towards reconciliation then because a provisional
4 release would enable also for the preparation of elections in 2015, and would allow
5 the Ivorian society a means towards true reconciliation.

6 The Prosecution is surprised that the party be -- that the party be officially placed
7 under the auspices of President Gbagbo. In our mind -- or, to our mind this is rather
8 a positive sign as this shows his legitimacy and that it is founded on his capacity to
9 take part in a democratic political game within his own party.

10 This also goes to show how President Gbagbo remains a popular figure in Côte d'Ivoire, as
11 the Prosecution has indeed acknowledged and how indeed his provisional release would be a
12 strong sign in favour of reconciliation.

13 Now, let us come back to the criteria. Not only has the Prosecution failed to show
14 any such criteria, but also has he failed to show that there has been any change in
15 circumstance because his arguments are what they are. Quite simply, gratuitous
16 affirmations that have no solid foundation; they are affirmations that are in fact
17 pretexts to avoid an inevitable release.

18 Now, the Prosecution has made a rule of the provisional detention and sees provisional
19 release as only a theoretical option that is inapplicable in the current case, and he is not the
20 only person to show this position. The legal representative of victims deems that the
21 severity of the charges suffice to -- suffice for continued detention. For her, the gravity of the
22 charges are an obstacle.

23 However, the European Court of Human Right has regularly recalled that the gravity
24 of the charges cannot underpin, so the three years after transferring President Gbagbo
25 to The Hague the Prosecution continues to allege that these charges justify his

1 continued detention, and even when the Pre-Trial Chamber deemed at the time that
2 there was not sufficient evidence to commit him to trial.

3 Mr President, if we follow the logic of the filings, there is a presumption of guilt
4 applicable to all accused referred to the Court. Aside from the fact that this is a very
5 personal interpretation of the Statute under the provisions of human rights law,
6 admitting as valid simple, unfounded claims, without solid reasoning, would be
7 paramount to a denial of the very basis of our system organised around one principle
8 alone, that of the presumption of innocence.

9 PRESIDING JUDGE HENDERSON: Thank you, Mr Altit.

10 Now is a convenient time to stop. It is now 13.30.

11 We will continue at -- we will resume the hearing at 3 this afternoon, at which stage I
12 will hear from Mr MacDonald and the others, victims' representatives.

13 So we'll take the break and we will resume at 3 -- I beg your pardon, 1500 hours.

14 THE COURT USHER: All rise.

15 (Recess taken at 1.31 p.m.)

16 (Upon resuming in open session at 3.02 p.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 PRESIDING JUDGE HENDERSON: Good afternoon.

20 We will continue the review that we had begun, but for the record we would just like
21 to give the floor to the Registry just to announce on the record the appearances.

22 MS DAHURON-JACOBY: (Interpretation) Thank you, your Honour. Ever since
23 the 11.30 break there have been a few changes. Ms Oseredczuk has left the room and
24 Mr Dahirou Sant-Anna has joined us representing the detention centre.

25 PRESIDING JUDGE HENDERSON: Thank you.

1 Now we are on a tight rein in terms of time, Mr MacDonald and everybody else,
2 because we will have to go into an ex parte hearing subsequently which requires us to
3 not sit for 30 minutes. So we have a time constraint. So with that in mind,
4 Mr MacDonald, I'd like to hear you, and of course you can -- or your colleague, give
5 me the benefit of your focused and concise submissions.

6 MR STANG: Yes, thank you very much, Mr President. Mr President, Honourable
7 Judges, my name is Lloyd Stang and I will be presenting the submissions on behalf of
8 the Prosecution at this detention review hearing.

9 I had already noted your like comments earlier -- from earlier, Mr President, and I've
10 already put a slash right through the first part of my presentation. So I will try to
11 keep it as concise as possible.

12 I had some comments about the law, but I want to -- I'm going to jump right over that
13 because there's a considerable body of law already on the case file that is available to
14 you. The one exception is an area that was raised by the Defence which is the
15 Prosecution's obligations at these types of hearings and we would consider these
16 obligations very similar for whether it's under Rule 118(2) or (3). Of course this
17 obligation is stated in paragraph 4 of our submission, and we submit that it is not as
18 the Defence suggests in paragraph 114 of its written submission.

19 They seem to be submitting that the Prosecution must always provide new evidence
20 and always prove everything again at each review. This we disagree with and the
21 case law supports us in that regard. Of course if the Prosecution is aware of
22 information or is in possession of evidence that is relevant to a change in
23 circumstance, or even a possible change in circumstance, or any new circumstance
24 that could impact those original factors underlying the initial decision, the
25 Prosecution must properly inform the Chamber and the Defence about this

1 information or evidence.

2 There is no requirement to reprove the findings of relevant facts and circumstances
3 that were already found by the Chamber in the initial decision. The Prosecution in
4 this case has consistently complied with its obligation to make submissions as to these
5 changes in circumstances and bring to the attention of the Chamber and the Defence
6 any relevant information, be it favourable or not to either party.

7 Notably, at a previous hearing under Rule -- at the previous hearing under Rule
8 118(3), which was held on October 9 last year, it was the Prosecution that advised the
9 Chamber -- the Pre-Trial Chamber that the United Nations had recently re-evaluated
10 threat levels as being lower, such that Abidjan duty station could be considered a
11 family station, thus marking an improvement in the security conditions in Abidjan.

12 The Prosecution at that hearing also acknowledged that, in general terms, the security
13 situation in Côte d'Ivoire had improved and, of course, it was following that hearing
14 that the Pre-Trial Chamber issued the fourth decision on the review of detention,
15 wherein it decided that the criteria 58(1)(b)(iii) no longer applied. So that is just a
16 key example of -- the Prosecution is aware of its obligation and does fulfil them.

17 Now, with respect to some further evidence that is presented on this hearing I think I
18 have -- it's been filed on the record, I have some submissions about it but, taking your
19 comments to heart, Mr President, I'm going to skip over those, other than to highlight
20 to you that I was going to quote from paragraph 11 of the group of experts' report
21 that was annexed to the filing of October 31 with the additional material, and I was
22 also going to highlight for the Chamber the annex 29 to the group of experts' report,
23 which is a letter from a certain Damana Pickass who is a staunch supporter of
24 Mr Gbagbo and he was a commissioner for the Independent Electoral Commission in
25 2010. He is a former FESCI leader and was a member of the galaxie patriotique.

1 And just very notably near the end of his letter he says, and I quote in French,
2 (Interpretation) "Facing all of this, we have no other alternative than to begin street
3 fighting straight on no matter what may happen." end quote, (Speaks English) which
4 in my submission is clearly a call to use violence in response to a list of grievances
5 that Mr Pickass had set out in his letter.

6 Now, to get to the crux of the matter, as you have indicated, Mr President, are there
7 any changes in the circumstances?

8 The Prosecution submits that the short answer to this question is no. There are no
9 changes in the relevant circumstances. Of course if there were, then the Chamber
10 would have to examine those changes further and determine their impact, if any, on
11 the underlying factors of the original decision to keep Mr Gbagbo in custody.

12 A very key central aspect of the alleged change in circumstances, if I can put it that
13 way by the Defence, is their submissions in writing and today orally about the
14 network of supporters that was found to exist. Very specifically they challenged the
15 existence of this network of supporters, but the previous finding of the Pre-Trial
16 Chamber is that there is one and the evidence presented then supported that finding.

17 The Defence presents no evidence whatsoever that would call into question the
18 evidentiary basis upon which that finding was made, nor do they point to any
19 evidence that the network has diminished in any way. Thus there is no change in
20 circumstance or evidence that would be favourable to the Defence's position.

21 At paragraph 56 of the Defence written submissions they complain that the
22 Prosecution has not demonstrated that there is currently a network of supporters.
23 Here again, in our submission, the Defence approaches the question in wrong way.
24 The Prosecution is not obligated to repeatedly reprove the existence of the network of
25 supporters. If we have information or evidence that the network was diminishing,

1 for example, we would be obligated to provide that evidence to the Chamber and to
2 the Defence. And if we had it, we would.

3 In the present situation, the evidence we are able to present was attached and
4 annexed to our filing of October 20 and in the annexes to the October 31 additional
5 material.

6 This evidence continues to demonstrate that the network continues to exist and that
7 the network of supporters continues to be strong. Here I would refer again to -- the
8 Chamber specifically to the media articles in annex 1 in the material we filed on
9 31 October, which essentially documents the arrest and charging of Lida Kouassi with
10 crimes against state security in Côte d'Ivoire.

11 This is relevant in that he was a minister previously in Gbagbo's -- Mr Gbagbo's
12 previous government and would be a part of his network of supporters and a part
13 that would appear to be -- now be charged with illegally acting against the current
14 government. So this -- this is how that is relevant.

15 Also relevant in the same area are very recent media reports, and in some sense this
16 was alluded to by my colleague, Mr Altit, that pro-Gbagbo supporters, including his
17 son, are advocating for Mr Gbagbo to become president of the FPI party in Côte
18 d'Ivoire.

19 And they have indeed filed the necessary paperwork to establish his candidacy as
20 a -- for president of the party. And, again, we were aware of this being an issue on
21 October 31, but the media reports were unclear as to whether that was going to
22 actually happen so we did not include them in our filing, but it appearance from very
23 recent reports that he has, indeed, put in his candidacy to be president of the party.
24 Now, contrary to what the Defence may suggest, the Prosecutor does not make any
25 comment about the wisdom of Mr Gbagbo's supporters trying to keep him involved

1 in national politics. However, we submit the circumstance is relevant because it
2 goes to show the high degree of support and influence that continues to be available
3 from his network of supporters.

4 This was, indeed, confirmed by the Appeals Chamber in its decision dealing with the
5 appeal of the initial detention decision in this case, and the appeal decision is case
6 document 278, where at paragraph 59 the Appeals Chamber wrote, and I quote, "The
7 existence of a political party that supports the detained person is a factor that is
8 relevant to the determination of whether the continued detention appears necessary
9 under Article 58(1)(b)(i) of the Statute because such support could indeed facilitate
10 absconding." End quote.

11 In their submissions as well, the written submissions in particular, Mr President,
12 Honourable Judges, there were some specific comments made in some paragraphs
13 which I really need to address and I will do them as quickly as I can.

14 At paragraph 58 of their written submissions, the Defence submits that the Pre-Trial
15 Chamber and the Prosecution seem to consider the FPI as a criminal organisation.

16 The Prosecution has never said this and, frankly, it is a misrepresentation of what the
17 Pre-Trial Chamber has said about the FPI.

18 What the Pre-Trial Chamber does say about the FPI is set out, or a significant amount
19 about what they say is set out, in paragraphs 30 and 31 of the sixth review decision
20 which is document 668 in the case file. These comments include the following, or
21 include that the legality of prominence of the party does exclude the possibility that
22 its members might provide means to Mr Gbagbo to abscond or interfere, and that
23 there was no new information to indicate that the FPI was no longer supporting
24 Mr Gbagbo, or that a larger support network of which the FPI is but one constituent
25 does not exist.

1 Nowhere in any of the filings does the Pre-Trial Chamber represent the FPI as a
2 criminal organisation or even suggest that and neither does the Prosecution quite
3 frankly.

4 At paragraph 60 of the written submissions of the Defence, the Defence accuses the
5 Prosecution and the Pre-Trial Chamber of siding with one political camp against
6 another. This accusation is false, baseless and irresponsible.

7 At paragraph 52 of the Defence written submissions, and this coincides with verbal
8 submissions made before the lunch-break by Defence counsel, the Defence alleges
9 that the Office of the Prosecutor conspires with the group of experts by feeding
10 evidence to the group of experts which the group then relies on for its reports, which
11 the Prosecution then relies on in proceedings before the Court, and that the reports
12 appear more credible because they cite things based on reliable sources which the
13 Defence alleges the reliable source is the Prosecution office.

14 This accusation frankly is scurrilous. It is a scurrilous submission by the Defence.
15 It is false and it is completely unsupported by any sort of evidence. And what
16 makes it worse is that this accusation is not newly presented by the Defence; they
17 made the same argument using remarkably similar wording in their written
18 submissions on their appeal of the third detention review decision. This would be
19 document 485 in the case file.

20 And in that submission by the Defence, at paragraph 58, you will find the written
21 comments that are remarkably similar to the comments in paragraph 52 of the written
22 submissions before this Chamber.

23 That argument was then made by the Defence and it was dismissed by the Appeals
24 Chamber, which indicated in its decision which is document 548 in the court
25 record -- in case record, at paragraph 82, and I quote the Appeals Chamber, "In

1 relation to his fifth ground of appeal, the Appeals Chamber finds that Mr Gbagbo
2 fails to provide any concrete evidence establishing collusion between the Prosecutor
3 and the group of experts and that his allegations are speculative at best. Since this
4 argument has been dismissed once already by the Appeals Chamber and comes again
5 before this Chamber without any supporting evidence whatsoever, it is our
6 submission that this Chamber ought to simply dismiss that argument outright."

7 Financial resources is an issue that is addressed in the Defence submissions. The
8 Prosecution unfortunately has no new information to provide to the Chamber about
9 specific bank accounts; therefore, there is no change in circumstances. However we
10 would like to highlight, as previously addressed in other review decisions, the key
11 factor is not specifically where Mr Gbagbo's resources would come from, but that
12 those resources do exist in particular from his network of supporters.

13 And, as we had pointed out in our submissions on the fifth review of detention, at
14 that time there was a significant unfreezing of assets of a large number of Gbagbo
15 supporters, thus freeing up a body of money that might well be a potential resource
16 for him if he were to be released.

17 Another potential change in circumstances addressed or commented on by the
18 Defence in their written submissions was the passage of time and it seemed to -- they
19 worked it in with the gravity of the charges as well, but they do seem to assert again
20 that the passage of time is unto itself a change in circumstances, but again the Defence
21 fails to specify which factual findings of the Pre-Trial Chamber's detention decision
22 have become obsolete with time. And I didn't invent that phrase. I'm paraphrasing
23 one of the prior pre-trial decisions.

24 At paragraph 111 of the Defence written submissions, the following argument is
25 made - and I believe counsel actually referred to that specific paragraph in his

1 submissions, but I'm going to paraphrase it as simply as I can - that the argument is
2 more time in pre-trial custody means that there would be less time to serve in an
3 actual jail sentence, if one is eventually imposed, therefore lowering the risk of
4 absconding.

5 At first blush it sounds logical, but my response would be that this might be quite
6 applicable for minor offences, as can be found in national jurisdictions, or for where
7 you're in a situation that the pre-trial detention is nearing the point of equaling the
8 likely final jail sentence. However this principle logically would have very little
9 effect where the charges are extremely serious, as they are here, and where conviction
10 on one or more charges would indeed result in a lengthy jail sentence still to be
11 served.

12 Moreover, this argument does not negate or materially affect the circumstance relied
13 on in previous decisions that serious charges, with a likely lengthy prison sentence
14 upon conviction, is indeed a relevant factor to consider. The Pre-Trial Chamber
15 considered it and the Appeals Chamber confirmed that that was appropriate, and
16 again I'm referring to the appeal decision which is document 278 in the case file at
17 paragraph 54 of that decision.

18 That factor continues to apply today, so there is no change of circumstances with
19 respect to the severity of the charges or the gravity, and there is no change with
20 respect to the passage of time, or caused by the passage of time, primarily because the
21 Defence does not explain - again as I said earlier - which material, which factors,
22 which findings, are affected and how.

23 The Defence presents as a change of circumstances that Mr Gbagbo would give his
24 personal assurances not to flee and wishes to participate in the judicial process. This
25 is a repeated argument. It's been presented before, it's been considered before, so it

1 is not a new argument. It is not a new change in circumstances.

2 The issue of the confirmation of charges was raised in Defence submissions in
3 paragraphs 82 to 86 of the written submissions. They discussed the possible effect of
4 the confirmation of charges and whether or not this is a change in circumstance.

5 Well, succinctly this is not a new change since the sixth review decision simply
6 because the Pre-Trial Chamber was aware of it and held at paragraph 41 of the sixth
7 decision on review, and I quote, "In the view of the Single Judge and as held in other
8 cases before this Court, the confirmation of charges against Mr Gbagbo has, if
9 anything, increased the risk of absconding." End of quote.

10 The only new aspect of this is that the appeals process has been completed and the
11 confirmation decision is final and thus the Trial Chamber was constituted, which was
12 not the case at the sixth decision. So this is not a change in circumstances.

13 The Defence speaks of reconciliation in Côte d'Ivoire and they go at great lengths to
14 talk about this. Paragraphs 9 to 40 of their written submission are devoted to this.

15 And they tried to convince the Chamber that the activities of the FPI, and in particular
16 its efforts towards national reconciliation, is somehow a change in circumstances, but
17 it simply is not. That has been the case basically for all the previous detention
18 decisions. The Defence has argued that this somehow amounts to a change of
19 circumstances now. It is not and, frankly, this is as it should be. I mean the fact
20 that the FPI engages in legitimate political activities and is a key stakeholder in the
21 reconciliation process may well be laudable, but it is also entirely political. Political
22 considerations which the Defence repeatedly tries to introduce must not be
23 entertained. Simply put, political considerations should not be relevant to the
24 detention review which is a judicial process.

25 Just a couple of comments that I hadn't scripted ahead of time, Honourable Judges, in

1 response to the Defence's verbal submissions where they specifically bring again an
2 attack - and I don't think I'm using that word loosely - against the group of experts
3 and against their expertise.

4 The bottom line is that the group of experts provide evidence, they do investigations,
5 their reports are set out, their methodology is described and evidence of reports that
6 has been before the Chambers and has been relied upon. If the Defence has contrary
7 evidence, other experts that call into question the findings of the group of experts,
8 bring it. Show the Chamber.

9 Again here the evidence, and all the opportunity to provide evidence to the Chamber
10 on this, the only thing attached to their filing was media reports. 20 media articles.
11 We can't be too critical because we sometimes attach media articles as well, but for
12 limited purposes, and we also attach other substantive evidence for the Chamber to
13 consider when it's appropriate.

14 Now, the last partial part of my comments - and there's only a few minutes, two or
15 three minutes left, Mr President - I wanted to make a couple of comments on
16 conditional release, but the first of those comments I would be asking the Chamber to
17 go into partial closed session. Some of the items I wish to refer are confidential in
18 nature.

19 PRESIDING JUDGE HENDERSON: (Microphone not activated)

20 MR STANG: Partial private, yes.

21 PRESIDING JUDGE HENDERSON: You wish a private session now?

22 MR STANG: Sorry, sorry. Private session, yes, please.

23 (Trial Chamber confers)

24 PRESIDING JUDGE HENDERSON: Okay, so I will order. Let there be a private
25 session now. I so order.

Hearing on detention

(Private Session)

ICC-02/11-01/11

1 (Private session at 3.28 p.m.)

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12 Page 91 redacted – Private session

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1 (Redacted)

2 (Open session at 3.30 p.m.)

3 THE COURT OFFICER: We're in open session, Mr President.

4 PRESIDING JUDGE HENDERSON: Thank you.

5 MR STANG: Thank you, Mr President.

6 Just continuing with another minute of comments about the possibility of conditional
7 release. If an application under Rule 119 was to be heard by the Chamber for any
8 reason that's not directly related to Article 58 of the Rome Statute, such as
9 Mr Gbagbo's health for example, we would encourage the Chamber to adopt the
10 same approach as is set out by the Pre-Trial Chamber in paragraphs 43 to 48 of the
11 sixth review decision, being document 668, which approach we note does take -- as
12 did the Pre-Trial Chamber noted that it would be in compliance with Rule 119(3).
13 And we would also add that, to properly prepare for such an application or
14 consideration by the Chamber, we would require advance notice of all material that
15 the Chamber deems appropriate. Of course we would like to review all material that
16 might be considered by the Chamber in considering the issue of a possible conditional
17 release, and we would need to have that material sufficiently in a time -- in advance
18 to prepare properly for such a hearing if it is to be held at any point in time in the
19 future.

20 Those are all of my submissions, Mr President.

21 PRESIDING JUDGE HENDERSON: Thank you.

22 Right. The Chamber appreciates both you and Mr Altit's submissions. Before
23 providing for the time for the responses, I would like to ask the Registry if it considers
24 it necessary to make any submissions?

25 I have my eye on the clock, I'm so sorry. The legal representative for victims?

1 MS MASSIDDA: Thank you very much, your Honour.

2 We don't have any further submissions and we will restate our written submission
3 and we consider that conditions remain for justifying the detention of Mr Gbagbo.

4 PRESIDING JUDGE HENDERSON: Now, please, my error is not to be interpreted
5 as in any way disregarding your submissions, because we have had the benefit of
6 them before us and we have read them before we came here this morning.

7 MS MASSIDDA: Thank you very much, your Honour.

8 PRESIDING JUDGE HENDERSON: Okay.

9 Right. The Registry, I was in error. I had begun to invite you to make any
10 comments, bearing in mind that we are going into an ex parte session shortly. So is
11 there anything arising in this proceedings that you may wish to lend your expertise
12 to?

13 MR SANT-ANNA: (Interpretation) Thank you, Mr President.

14 At this point of the proceedings, the Registry has no particular observation to make.
15 Thank you.

16 PRESIDING JUDGE HENDERSON: Okay. Thank you.

17 So I will then allow the Prosecution and the legal representative to make any further
18 comments if it's necessary. It's very academic.

19 Well then, Mr Altit, is there anything that you wish to say in reply to the Prosecution's
20 submission?

21 MR ALTIT: (Interpretation) We have nothing to add, your Honour. Thank you.

22 PRESIDING JUDGE HENDERSON: Well, lawyers not having much to say, this is
23 something to be encouraged.

24 Okay. Well, then that brings, attorneys, an end to this portion of the proceedings, it
25 concludes this portion.

1 I wish to assure you, Mr Altit and the Prosecution, that we will take into very careful
2 consideration your full submissions and that we will issue our decision on the
3 detention in due course, but in any event before the -- well, by 11 November 2014.

4 We will now adjourn for 30 minutes to prepare for the ex parte Registry and Defence
5 only part of this hearing.

6 I would like to thank everybody very much for the assistance that they provided the
7 Court in terms of their written submissions and in their efforts to be tight and concise.
8 It was much appreciated.

9 All right. So we shall rise for 30 minutes.

10 THE COURT USHER: All rise.

11 (The hearing ends in open session at 3.36 p.m.)

12 CORRECTION REPORT

13 The Court Interpretation and Translation Section has made the following correction
14 in the transcript:

15 *Page 41 line 4

16 " that alternative is not necessary..." is corrected by " that alternative is not
17 possible...".