

1 International Criminal Court  
2 Trial Chamber X  
3 Situation: Republic of Mali  
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag  
5 Mahmoud - ICC-01/12-01/18  
6 Single Judge Kimberly Prost  
7 Status Conference - Courtroom 1  
8 Wednesday, 6 April 2022  
9 (The hearing starts in open session at 4.02 p.m.)  
10 THE COURT USHER: [16:02:17] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 SINGLE JUDGE PROST: [16:02:44] Good afternoon.  
14 Court officer, could you call the case, please.  
15 THE COURT OFFICER: [16:02:50] Good afternoon, Madam President.  
16 Situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan Ag  
17 Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.  
18 And for the record, we are in open session.  
19 SINGLE JUDGE PROST: [16:03:07] Thank you very much.  
20 Good afternoon, and welcome back to the courtroom, everyone.  
21 I will first ask for the appearances.  
22 Mr Dutertre, Prosecution.  
23 MR DUTERTRE: [16:03:20](Interpretation) Good morning, your Honour. The  
24 Prosecution is delighted to be in the courtroom with the participants to the  
25 proceedings after this break in our hearings.

1 So the Prosecution today is represented by Madam Sardachti, who is just behind me.

2 We also have Mr Garcia to my right, and myself, Gilles Dutertre.

3 Thank you very much, your Honour.

4 SINGLE JUDGE PROST: [16:03:52] Thank you, Mr Dutertre.

5 Ms Taylor.

6 MS TAYLOR: [16:03:56] Good afternoon, your Honour. Good afternoon to

7 everyone in the courtroom. And the Defence is obviously very excited to be here

8 by -- as demonstrated by how many of us are here today.

9 The Defence for Mr Al Hassan is represented today by Maître Mohamed Youssef,

10 Maître Mélissa Beaulieu Lussier, by Maître Cécile Lecolle, Ms Leila Abid,

11 Ms Diletta Marchesi, Ms Haneen Ghali and Mr Shan Patel. Thank you very much.

12 SINGLE JUDGE PROST: [16:04:24] Thank you very much, Ms Taylor.

13 Legal Representative of Victims.

14 MR KASSONGO: [16:04:37](Interpretation) Good afternoon, your Honour and my

15 friends in the courtroom.

16 So the LRVs today are represented today by Mrs Anouk Kermiche, who is just sitting

17 behind me. We also have Carla Boglioli -- Carla Boglioli, I'm going to get there in the

18 end. I muddled up the pronunciation of her name. We also have Mrs Biyéké

19 Dipanga, who's sitting next to her. We have Mr Fidel Luvengika, who is my

20 colleague, and myself, of course, Mayombo Kassongo. Thank you very much,

21 your Honour.

22 SINGLE JUDGE PROST: [16:05:23] Thank you very much.

23 And the Registry, please.

24 MS OSEREDCZUK: [16:05:31] (Interpretation) Isabelle Oseredczuk here represents

25 aid for victims and witnesses. Thank you very much.

1 SINGLE JUDGE PROST: [16:05:38] Thank you all.

2 This is a status conference convened at the initiative of the Chamber to assist in the  
3 preparation, as well as the efficient conduct of the Defence presentation of evidence.

4 I recall, as we all know, the Defence case is scheduled to start on 9 May.

5 As we have a limited amount of time today, I'll move directly to the first item on the  
6 agenda, which relates to Defence disclosure, including statements and other matters.

7 The Defence disclosure of course was ordered with a deadline of 25 March, but an  
8 extension was granted for additional signed statements that might be necessary

9 without a fixed date, as the Chamber is very much of the view that as much use as  
10 possible should be made of Rule 68.

11 I understand that some statements have been disclosed, and we have seen those, and  
12 the process is ongoing. So I'd like to start off by hearing from you, Ms Taylor, on the  
13 status of the disclosure and, in particular, the progress with respect to signed  
14 statements.

15 Ms Taylor, you have the floor.

16 MS TAYLOR: [16:06:49] Thank you very much, your Honour.

17 The Defence is working assiduously, and this is a priority on our part to try to  
18 complete this process. There's matters I can't go into in open session, but I would  
19 like to assure the Chamber that we are actively working on this on an hourly basis to  
20 be able to get them to the parties as soon as possible, and this will be done on a rolling  
21 basis. As soon as we get things, we will obviously check for any security issues, but  
22 once that's been verified, we will disclose, as verified by the fact that we I believe this  
23 morning disclosed a statement that we'd only just received.

24 In terms of disclosure, we obviously added additional items which were approved by  
25 the Chamber because they were of the Arabic variety, and we've just filed an

1 amended list.

2 We are also constantly reviewing what we have disclosed to make sure if there's  
3 anything that we've either inadvertently missed out, or if there's any redactions that  
4 can be lifted, we will lift them. And some of these redactions did depend on us  
5 contacting individuals that we could not contact by the deadline. But, as again  
6 reflected by one of our recent disclosures, as soon as we were able to contact that  
7 individual, we lifted the redactions in the statement.

8 So I would like to assure the Chamber and the parties that we are constantly  
9 reviewing what we have disclosed to see if anything more can be disclosed that  
10 would be responsive to our obligations.

11 SINGLE JUDGE PROST: [16:08:16] Thank you, Ms Taylor.

12 Just before you sit down, and I'm very encouraged to hear that, and certainly the  
13 Chamber has seen, from the material that's passing through, the efforts that are  
14 ongoing and we have no concerns about that.

15 Realistically, appreciating we have to set a balance here between sufficient time for  
16 the Prosecution in terms of the disclosure of material and your efforts that have to be  
17 undertaken, any idea of what, from your perspective, would be a time frame for the  
18 completion of the signed statements, in particular?

19 MS TAYLOR: [16:08:57] We were working towards 14 April and -- but there is -- I  
20 can already envisage there's one individual who we're experiencing logistical issues  
21 with, and we will in due course apprise the Chamber of any difficulties we face in this  
22 regard. Again, it's not an issue I can go into in an *inter partes* environment, but we  
23 are certainly working towards that time frame so that we can obviously disclose them  
24 as soon as possible and before the start of the trial and preferably by that deadline.  
25 That's what we're working towards. Thank you.

1 SINGLE JUDGE PROST: [16:09:35] Thank you very much, Ms Taylor. It's very  
2 helpful.

3 Mr Dutertre, do you have any comments on this subject area of the disclosure from  
4 your perspective? Please, you have the floor.

5 MR DUTERTRE: [16:09:48](Interpretation) Thank you very much, your Honour.

6 So to take things in short order, 13 witnesses for which signed statements have been  
7 announced. Where things stand now, we can say that we've received statements for  
8 three witnesses. I would like to clarify for P-46, they're more like -- well, not  
9 statements per se, but they are more attestations. But we won't get into the detail of  
10 that quite yet.

11 Now, going to redactions, this remains *inter partes* and we'll go to the Chamber if we  
12 need to seek adjudication. I'm not going to waste time with that.

13 In terms of dates, yes, we do need a date, we can understand full well that there may  
14 be an exception, that things can be done -- of course there are constraints, but I think  
15 the Chamber had envisaged 14 April. To push back a date to -- and push back the  
16 commencement of -- of things, I think is a bit late in the day, particularly when you  
17 think about preparing.

18 But also this links into what witnesses will be appearing physically, which ones will  
19 be 68(2)(b), and of course this will impact considerably on the Prosecution's  
20 preparation, to know which witnesses ultimately are going to appear. And it's from  
21 that perspective that that may be a sticking point for us because we don't have much  
22 time, we don't have unlimited resources, we need to know what witnesses need to be  
23 prioritised and which ones are going to be coming physically before your Honours, be  
24 it 68(3) or viva voce entirely, your Honour. Thank you very much.

25 SINGLE JUDGE PROST: [16:11:25] Thank you as well, Mr Dutertre. And certainly

1 the Chamber is very live to the fact that the Prosecution needs this information, as  
2 does the Chamber in terms of planning, as does the Defence as well in terms of  
3 preparing the schedules. This is in the beginning phase, so obviously, we have to  
4 work through this, but hopefully once we are through this initial phase, we'll be able  
5 to do that, deal with that scheduling in a -- in a more organised fashion.

6 So having heard -- and that's very encouraging, Ms Taylor, in terms of the date that  
7 you're aiming for.

8 Having heard from the parties on this, I believe I -- we should set the date as  
9 forecasted for 14 April as the deadline for the disclosure of the remaining signed  
10 statements.

11 However, this does not prejudice bringing a specific request, as you identified you  
12 may have a particular problem, or as well other requests which may arise during the  
13 course of the proceedings. For example, under Regulation 35 and Article 68 for the  
14 late disclosure and submission of newly obtained statements that could then be  
15 introduced under Rule 68. So for those that we are expecting to receive, we will set  
16 the date of 14 April as forecasted and then we will proceed accordingly, taking into  
17 account that there could be the necessity for some, some exceptions.

18 And I encourage the parties, it's already been raised, to please continue to liaise - I  
19 know that's been going on - and attempt as far as possible to resolve any disclosure  
20 issues, you have been doing a good job on that so far, on an *inter partes* basis, that's the  
21 most efficient, and only -- of course I'm available to come -- for you to come to me as  
22 single judge, but I encourage you to continue with the work -- collegial work on  
23 trying to arrive at agreements on these matters between the parties.

24 So, if there is nothing more on that particular issues, we can then proceed to the  
25 second item, which is the content of the Defence's list of witnesses and especially this

1 issue which has already been flagged about the use of prior recorded testimonies.

2 As indicated, the Chamber is very pleased with the, the emphasis being placed on the  
3 use of Rule 68 procedure for many of the Defence witnesses. And it's in accord with  
4 the directions that the Chamber has given.

5 There's a number of points I wanted to address under this topic, so I think the easiest  
6 way is if we take it point by point so we don't get a muddle of issues.

7 So let's start with Rule 68(2). I note that some of the prior recorded testimonies  
8 proposed to be submitted under Rule 68(2) have been disclosed already and they're  
9 ready then for submission by way of application. By my count, there's five witnesses:

10 P-0511, P-0516, P-0539, P-0553, P-0554. Because of the potential impact on the  
11 witness schedule and timeline, the Chamber wishes to consider these as early as  
12 possible.

13 So, Ms Taylor, I'd like to hear from you on this, whether you think it's possible for the  
14 Defence to submit these particular -- the ones I've mentioned, 68(2) applications in a  
15 consolidated request, and could that be done before the evidentiary hearings begin on  
16 9 May.

17 I'd appreciate -- and I won't, I won't hold you to this, Ms Taylor, but I would  
18 appreciate hearing from you as to the possibility of that, because as you can  
19 understand, it significantly then affects for all of us the scheduling.

20 MS TAYLOR: [16:15:49] Certainly, your Honour. And to answer this question,  
21 perhaps it might also assist for me to address another issue which will impact on our  
22 workload.

23 So I know I'm jumping ahead of things, but we had intended to start with Defence  
24 experts and that was because it would make it a lot easier in terms of the logistics that  
25 we are facing with our fact witnesses in terms of trying to arrange their travel. So we

1 have had discussions with Victims and Witnesses Section, and I think it was agreed  
2 that starting with the Defence experts would be the best or most practical way to  
3 commence the proceedings.

4 And in line with that, my intention was actually to file a consolidated application,  
5 which addresses both Rule 68(3) and our request to obtain the Chamber's  
6 authorisation to submit expert -- or to hear what -- experts by the earlier deadline.

7 So I was intending to file that, I would believe, I think it would be either the end of  
8 this week or the beginning of -- the very beginning of next week. In that way, you  
9 could make an early ruling on these issues.

10 We are obviously at the same time finalising statements and preparing our trial brief.  
11 So it will be an intense two weeks.

12 Now in terms of when we can then fit in another application while preparing for the  
13 commencement of the trial, that may also depend on the scheduling of witnesses and  
14 how intense the first month is in terms of us having to prepare for an intense month  
15 at the same time as prepare other quite complicated applications at the same time.

16 Now, I know I'm again jumping ahead of myself, but I do believe it's fair to alert the  
17 Chamber that we are experiencing some difficulties in the month of May in the sense  
18 of that there is limited court time and that does make it quite complicated to schedule  
19 people in there because of, as well, the quarantine rules in bringing people to the  
20 Netherlands, that they have to arrive, have a PCR two days before actually entering  
21 the courtroom. So with experts, that does make it a little bit more complicated, given  
22 that there's more limited court days. So there might be -- we're trying to fill any gaps,  
23 but if there is a gap at the beginning, then that would obviously make it a lot easier  
24 for us to focus our resources on submitting the Rule 68(2) application. So there  
25 would be a silver lining to that cloud, so to speak.



1 So we could in those circumstances obviously then focus on finalising and submitting  
2 the Rule 68(2) application before the start of trial.

3 SINGLE JUDGE PROST: [16:18:24] And I trust that the applications you would be  
4 bringing with reference to the experts would be a -- because you've indicated in your  
5 list would be the 68(3) applications as well for the experts, because that will also affect  
6 timing and scheduling in the courtroom for the month of May.

7 MS TAYLOR: [16:18:40] Yes, certainly. That's why we wanted to get that in as  
8 early as possible and make that one joint application.

9 SINGLE JUDGE PROST: [16:18:48] All right. Thank you for that information.

10 Mr Dutertre, do you have any comments on this particular topic? I think it really is  
11 very much a question of how the Defence is approaching and managing, but if you  
12 had any -- any particular comments.

13 MR DUTERTRE: [16:19:05](Interpretation) No, your Honour. No particular  
14 comment. But, of course, in order to organise ourselves on our side, the quicker the  
15 better.

16 SINGLE JUDGE PROST: [16:19:16] Thank you.

17 Well, Ms Taylor, I appreciate that information and the situation with respect to  
18 prioritising the expert reports. Given we have until 30 April, I would like to set the  
19 deadline for those five witnesses I mentioned for 30 April. But of course, if you  
20 encounter a significant problem, given all that you've outlined, you could always  
21 approach the Chamber, but I think it would be good to organise it and have a -- have  
22 a target date, so I'm going to set that today. And again, just for the record, so we're  
23 clear, p-0511, 0516, 0539, 0553, 0554 for 30 April.

24 And we welcome very much your plan to submit the consolidated request regarding  
25 the experts. That will also facilitate scheduling very much. So the Chamber's

1 happy with that arrangement.

2 And as to the remainder of the 68(2) applications, what I will say today is, at the  
3 earliest opportunity, if you can then provide those statements. They will have to be  
4 disclosed obviously by -- by the date that we've indicated and then those applications,  
5 the sooner -- ideally, the sooner the Chamber can adjudicate, that's going to help us  
6 with the -- with the scheduling. But I'll leave it -- I'll leave it at that to do so as soon  
7 as practical, especially given all of the other constraints that you have.

8 Unless there's anything further on Rule 68(2), I'm going to change, turn to Rule 68(3).

9 And there's a few points on this.

10 I may be accused of piling on here, Ms Taylor, to I'll try and just draw out some  
11 information from you.

12 So the Chamber instructed the Defence, of course, to file these applications at least  
13 30 days before the appearance of the relevant witness. And from what you've just  
14 told me, the consolidated application, if you're planning to call the experts in May,  
15 that will be -- that will be easily facilitated. But I can see going forward how this is  
16 going to get increasingly complicated.

17 So I'd like to just hear you, let's put aside the month of May, but going forward, do  
18 you think you will be able to submit these applications at an earlier stage rather than  
19 continuing with the 30-day requirement in order to facilitate scheduling and the  
20 logistics involved? So what I'd like to hear you on is the -- is the comments you  
21 might have on that, on the -- on the issue of filing your 68(3) applications.

22 MS TAYLOR: [16:22:30] Thank you very much.

23 Well, taking things in a more granular perspective, if we look, for example, at the  
24 month of June, us filing that 30 days earlier -- earlier than the 30-day period might be  
25 complicated because we would have the contemporaneous Rule 68(2) application

1 due.

2 SINGLE JUDGE PROST: [16:22:51] Yes, I understand I'm piling on. I did -- I did  
3 recognise that so --

4 MS TAYLOR: [16:22:56] So I would say for June, I would say a cautious, I would  
5 think that would be difficult. Moving towards July and then obviously when we're  
6 getting towards periods after July, we have the advantage of the judicial recess and  
7 having more breathing space, which would facilitate earlier submissions. So I would  
8 say we could almost have like a pyramid scheme where we have a more strict  
9 approach, which obviously will be opening out as we have more breathing space, so  
10 to speak. And we will obviously -- then we can go ahead of the 30-day period.

11 SINGLE JUDGE PROST: [16:23:29] Thank you very much, Ms Taylor. That's very  
12 helpful. And I think I will leave -- I understand your comments, and in light of the  
13 additional information, so we will leave it as stands, but it's a matter we may come  
14 back to at a future -- at a future point to see if we can encourage that. But for the  
15 moment, we can leave it as is, especially in light of the situation for May.

16 MS TAYLOR: [16:23:54] Certainly. And obviously it's in our interest as well to get  
17 them in early so we can schedule in a more accurate manner.

18 SINGLE JUDGE PROST: Exactly.

19 MS TAYLOR: [16:23:56] So we are happier to do that when we can. Thank you.

20 SINGLE JUDGE PROST: [16:24:01] Thank you very much.

21 Just on this topic, Mr Duterte, I wanted to hear you on this issue. Obviously,  
22 Rule 68(3) applications have an individual component to them that they have to be  
23 assessed individually. And the Chamber of course will do that as we receive the  
24 applications.

25 But as you know, the Chamber has been encouraging very much the use of Rule 68(3).

1 And while obviously you're not going to give me your particular positions on  
2 particular applications, I would appreciate hearing the Prosecution's perspective in  
3 principle on the use of Rule 68(3), taking into account that it does allow for the  
4 Defence to present their case fully but quite efficiently in terms of court time, and of  
5 course it leaves the Prosecution with the right to cross-examine. And knowing the  
6 Chamber's interest in Rule 68(3), I would appreciate hearing just your views on the  
7 use of it in general.

8 MR DUTERTRE: [16:25:12](Interpretation) I would say that generally speaking,  
9 your Honour, that -- that you're speaking to somebody who is already convinced of  
10 its worth. The expeditiousness of trial is a crucial matter and that we've been talking  
11 about since the cows come home really. It's a good way to expedite the proceedings,  
12 but it really depends on a case-by-case basis, but we have an umbrella approval of  
13 that process.

14 Now, what I can say though is that -- that the times put forward by the Defence, if a  
15 witness is called under 68(3), well, are very generous. We've got several hours  
16 where we got -- you know, whereas we've got 68(3). This is something I think we  
17 need to talk about because they have a 68(3) and they have several hours for in-chief,  
18 which defeats the purpose, in my view.

19 Having said that, one further point. It's a bit confusing, I heard my friend talking  
20 about June as the benchmark. I don't know whether the intention is to have  
21 witnesses starting with -- in May with the experts and then -- or June is the starting  
22 point. With the translation, I think I may have lost the thread on what my learned  
23 friend was saying.

24 SINGLE JUDGE PROST: [16:26:32] Well, my understanding was, and Ms Taylor can  
25 certainly correct me, but my understanding was she had indicated they intended to

1 try and schedule all of the experts for the month of May and then would be  
2 proceeding with other witnesses, if they're all -- if they're all done, in the month of  
3 June. And it's for the month of June that then the individual 30-day -- 30-day rule  
4 would still continue to apply.

5 That was what I understood, but Ms Taylor, you could correct that if that is not the  
6 case.

7 MS TAYLOR: [16:27:04] Thank you, certainly. I think the experts will go into June.  
8 I think my point was more about the 30-day deadline for Rule 68(3) in the sense that  
9 our first application will cover all of May and, if necessary, if they go into June, and  
10 then I was speaking about a June deadline being the next Rule 68(3) deadline, which  
11 would coincide with when we're filing the Rule 68(2) application. That was my  
12 point. Thank you.

13 SINGLE JUDGE PROST: [16:27:33] Thank you, Ms Taylor. That was how I  
14 understand it.

15 Mr Duterte, does that clarify that matter for you?

16 MR DUTERTRE: [16:27:41](Interpretation) Absolutely, your Honour.

17 SINGLE JUDGE PROST: [16:27:42] Thank you. And thank you for the comments.  
18 It was precisely what I was looking for, was a general indication as to the umbrella,  
19 that you've adopted the umbrella of that.

20 And, Ms Taylor, I think that's an important matter to bear in mind. Obviously It  
21 depends on each individual case, but it could also assist in terms of shortening of the  
22 nature of the applications if the principle of the use of the rule is agreed amongst, not  
23 only the Chamber, the parties as well.

24 So I just clarify that issue. Of course, we will indeed apply an individual  
25 consideration then to each of the applications.

1 And I note your point about the time frames, Mr Dutertre, as requested. I'm not  
2 going to deal with that specific -- I will deal with that specifically in a few minutes,  
3 although not conclusively, but that is an issue of course that the Chamber is live to  
4 and so we will have some -- some brief discussion of that today.

5 So moving from there, I have one final point on 68(3), and this is not for immediate  
6 determination, again because I do wish to avoid adding to what is already a heavy  
7 burden. So this could be subject to a -- future applications. But I fully understand  
8 that the Defence is in the best position to assess, having reviewed the witness -- to  
9 assess the case, how to present it, the Chamber totally respects that. But having  
10 reviewed the witness list and summaries, we've gone through them in detail, it  
11 appears to the Chamber that there may be a few other witnesses which could be  
12 considered for the purposes of Rule 68(3).

13 I would simply like to flag those to you today for consideration. They would not fall,  
14 obviously, within the existing deadlines, but I thought it would be helpful to just flag  
15 them and you could take a look and consider. As I say, you know the witnesses  
16 better. So I'll just give you -- there's only four, but the four that we would identify  
17 for consideration would be P-0627, P-0528, P-0540, and P-0611.

18 As I say, Ms Taylor, you don't need to respond today unless you had some particular  
19 comments you wanted to make, but these were ones we had identified just for you to  
20 consider. But you certainly may have the floor.

21 MS TAYLOR: [16:30:46] Certainly, your Honour. If it is of any assistance, we  
22 would be very happy to use Rule 68(3) with more witnesses. For some individuals it  
23 did come down to logistics, so if we do have that door open that we can come back to  
24 the Chamber and disclose witness statements if the logistical window opens, then  
25 certainly we would be happy to use Rule 68(3) with those individuals. Thank you.

1 SINGLE JUDGE PROST: [16:31:15] Thank you very much, Ms Taylor. And I'm  
2 glad then that it's received in the sense it's meant, which is yes, the Chamber would  
3 like to leave that door open, again, because we believe it's in the interests of all parties  
4 to proceed efficiently. So bear that in mind and the Chamber is open to those  
5 additional applications, should the logistics be -- and I can understand that it's  
6 difficult at this time with the deadlines, especially.

7 Finally, the final topic, not for the day, but under this particular agenda item, and it is  
8 what's been alluded to by Mr Dutertre, we have carefully looked at the witness list  
9 and the estimates provided for the examinations-in-chief regarding viva voce and in  
10 particular regarding 68(3) witnesses.

11 Again, I appreciate the Defence is well placed to know their case and the Chamber, of  
12 course, will refrain from intervening in the calling of the case, in the manner of calling  
13 of the case without good reason, but at the same time, we do see the value of 68(3) in  
14 being a significant shortening of the examination-in-chief and we do also wish to  
15 avoid basically splitting as between viva voce and the use of Rule 68(3).

16 So based on the summaries and -- and statements received, we consider that perhaps  
17 one more review would be helpful before -- of those estimates and so I would ask you,  
18 and I would like to set a time frame for that. And again, if the time frame can't be  
19 met, this is something that's helpful to the Chamber, so we'll certainly be prepared to  
20 extend it, but if possible, consider presenting a revised list with some revised  
21 estimates by 25 April. And if that -- as I say, if you're running into difficulties, but  
22 simply if you could take a look at the list now as you advance more and see if there's  
23 any that you could reduce some of those estimates, it would be appreciated by the  
24 Chamber. And if you need more time to complete it, please simply you can bring  
25 that to the Chamber's attention.

1 Similarly, Mr Dutertre, we would like to receive, if possible, some preliminary  
2 estimates from the Prosecution in terms of the time for cross-examination, in  
3 particular in relation to possible Rule 68(3) witnesses. Now, I know, of course, that  
4 you only have partial information, but there may be some things that are quite  
5 obvious to you already possibly.

6 And I would -- I did want to flag to you that the Chamber will look at the issue afresh  
7 of time frames for Prosecution cross-examination of 68(3) witnesses because it will not  
8 necessarily follow the same pattern as in the case of a Defence cross-examination of a  
9 Prosecution witness for reasons I think which are -- which are obvious.

10 So we will have to be looking at that issue. So any rough estimates you might have,  
11 perhaps as well on some of the viva voce witnesses where the nature of the evidence  
12 is such that you see, you know, you can shorten or have a short cross, any  
13 information you're able to provide us with, again, by the same time frame, by 25 April,  
14 with a filing, that would be much appreciated by the Chamber.

15 And in this area, again, I encourage the parties to continue their liaison because there  
16 may be things, points on which you can reach an agreement that this is not an issue or  
17 that is not an issue, thereby reducing the time needed for cross-examination. So  
18 if -- that would be appreciated, from both Prosecution and Defence, some additional  
19 information for our planning.

20 Finally, and this may be something, Ms Taylor, that's very difficult for you to provide  
21 at this stage, but it's very -- it's not very clear to the Chamber at this point how long in  
22 total the Defence's presentation of evidence will be. And I understand it's very much  
23 dependent on the 68(3) and 68(2) rulings. But I just wanted to give you the  
24 opportunity to indicate, if you had any, I'll use my lingo, any ballpark idea that you  
25 were able to convey to the Chamber, appreciating that may not be -- may not be



1 possible at this stage.

2 Ms Taylor, you have the floor.

3 MS TAYLOR: [16:36:33] I'm afraid that's not possible. I can assure the Chamber  
4 that our client is very much in favour of having a speedy trial, so we are working  
5 towards that. But there are significant logistical issues that we do need to address  
6 and we are in the process of addressing those and with a view to have as speedy a  
7 trial as is possible in a manner that's consistent with his fair trial rights. Thank you.

8 SINGLE JUDGE PROST: [16:36:58] Thank you very much, Ms Taylor.

9 One must try in these matters, but we hope that as matters progress, it will become  
10 clearer I think for the parties and of course for the Chamber. So thank you for that  
11 information.

12 And this leads on now well to our last agenda item, which is the scheduling of  
13 Defence witnesses, order of appearance and related issues.

14 As you are all aware, we expect the first monthly list this Friday, 8 April. And  
15 you've already given some indication, Ms Taylor, I think it's much clearer now. But I  
16 would like -- I assume that preparations are proceeding accordingly and that there  
17 have already been discussions between the parties, or perhaps not? We have some  
18 more information now, I would like to encourage that, and with the Registry, as to  
19 what the order of witnesses will be for the month of May.

20 Ms Taylor, do you have -- can you provide us with some comments on that?

21 MS TAYLOR: [16:38:08] Thank you very much.

22 Our difficulty has very much been the specific ordering and trying -- as I mentioned  
23 earlier, trying to slot very busy people into very tight time frames. So while we have  
24 had the wish to call them all as soon as possible, we have had difficulties, as I'd  
25 mentioned earlier, with that first week. The current order would be -- again, we are

1 trying to -- to finalise this, and we hope to do so today or tomorrow. Obviously,  
2 before Friday. And at the earliest point we do do so, we will notify everyone. But  
3 at this point, it will be D28-P-500, then D28-P-501, then D28-P-20, then D28-P-25, and  
4 then D28-P-502. There might be some slight changing, but it should be that. Thank  
5 you.

6 SINGLE JUDGE PROST: [16:39:24] Thank you, Ms Taylor. That at least gives some  
7 indication that will be helpful for the Chamber and for the Prosecution. And,  
8 obviously, we will have more information on Friday. And, of course, we would  
9 encourage that, looking then at the order as we proceed, the earlier the possibilities  
10 things can be disclosed and shared, especially informally with the Prosecution and  
11 Registry, the better. I do appreciate, of course, the logistical challenges for the  
12 Defence, so best efforts would be appreciated.

13 Mr Dutertre, do you have any, any comments on that? You now have an indication  
14 for May, and we will have the list on Friday. So I think we've advanced in the -- in  
15 the last hour in terms of what the schedule will look like.

16 MR DUTERTRE: [16:40:19](Interpretation) Absolutely, your Honour. I would like  
17 to seize the opportunity to say that the Prosecutor should be very focused on its  
18 questioning and will not lose any time.

19 Regarding the preparation of witnesses, in the past -- before the Prosecution's case, in  
20 the past, the Prosecution presented blocks of witnesses, and we would like to have the  
21 same thing for the months of June and July from the Defence, because that would  
22 simplify our work. We think it would be helpful, and it will not be a great difficulty,  
23 that is, going beyond finalising one block. We need to have an idea for the next  
24 months.

25 SINGLE JUDGE PROST: [16:41:28] Thank you, Mr Dutertre.

1 So, Ms Taylor, if you could take that on board. I understand the Prosecution's  
2 position. And it was basically the point I was making, which is as far -- I appreciate  
3 we're now at the beginning, which is the hardest period because of all of the things  
4 that have to be accomplished, but going forward, I think it would be very useful as far  
5 as possible to be able to provide those. But we're obviously not sitting in blocks  
6 because we're sitting straight through, it's been the circumstance of this trial, but to  
7 the greatest extent possible, the more the number of witnesses can be provided in  
8 advance to the Prosecution and the potential order - things always arise that there  
9 may have to be switches, we all know that - I think the better. But I get the sense  
10 that this is understood. And that going into the next phase, that will be easier to  
11 accomplish. Thank you.

12 There is now a specific issue which was raised by the Defence, which I would like to  
13 address, which relates to scheduling. And that is, you asked, Ms Taylor, to make  
14 representations on the sitting schedule in light of the time difference with Bamako.  
15 So the Chamber would be -- or I would be interested in hearing today, I will  
16 obviously discuss with my colleagues, the issue that you wanted to raise on that  
17 matter.

18 MS TAYLOR: [16:43:04] Thank you very much.

19 As things stand, there's a two-hour difference between The Hague and Bamako.  
20 Now, when the witnesses arrive, they don't obviously just arrive five minutes before.  
21 They have to travel in traffic. They have to be there at a certain point in time  
22 beforehand to go through security. So a 7.30 starting date can mean them leaving  
23 their house at 6 o'clock in the morning.  
24 Now, for witnesses who might be, for example, of an advanced age or a vulnerable  
25 situation or for prolonged testimony, that can have an impact on the quality of their

1 testimony. So we have understood that perhaps in other cases that they have  
2 adjusted the sitting hours to take into account time difference to be able to mitigate  
3 the hardship on the witnesses.

4 Obviously, it's no problem for us to start at 9.30, but I am very conscious of the fact it's  
5 also not just the witnesses, it's the interpreters. It's everyone in the field office who is  
6 impacted by this.

7 So, obviously, I would prefer to have the day finished earlier, but I think, looking at  
8 the grander picture, I think the ones in the field are the ones more impacted, and they  
9 play an essential role. And the more we can do to facilitate the best evidence from  
10 the perspective of both the witnesses but also the interpreters and everyone who is  
11 engaged in that process, I think that would be to the benefit of all. Thank you.

12 SINGLE JUDGE PROST: [16:44:22] Well, thank you very much for that, Ms Taylor.

13 I would like -- I understand the point that you're making, and there has been some  
14 discussion of this. There's a number of factors that the Chamber would have to  
15 consider, but I would like to hear from the Registry on this particular point, if you're  
16 ready to make representations on this issue today, or alternatively, we can ask you to  
17 follow up. But initially I'd like to give you the floor, please, to -- for any comments  
18 that you might have, especially as Ms Taylor's pointed to, the perspective for the  
19 witnesses from the VWU and the field office.

20 So, please, you have the floor.

21 MS OSEREDCZUK: [16:45:14] (Interpretation) Thank you.

22 We have consulted in the Registry, and we have seen that we can organise this  
23 witness appearance in the morning, taking into account the welfare of the witnesses.  
24 But at the technical level, there is no problem with beginning the hearings at 7.30 in  
25 the morning.

1 SINGLE JUDGE PROST: [16:45:44] Okay. Thank you very much. That is -- it's  
2 good to know that the possibility exists and logistically it can be arranged from your  
3 perspective.

4 Nonetheless, Ms Taylor, the Chamber will consider your comments, which were also  
5 directed to the issue of the particular witnesses, the vulnerable witnesses, and the  
6 impact on their wellbeing. So we will take your comments into account and there  
7 may be other issues we have to discuss in terms of scheduling as well. So we will  
8 come back on this issue in -- in due course. Thank you.

9 I believe those were all the issue -- I have one more issue that has been raised by the  
10 Prosecution, but any other issues on scheduling that anyone has to raise?

11 I don't see anyone looking to take the floor.

12 Oh, Ms Taylor.

13 MS TAYLOR: [16:46:44] I don't have an issue to raise right now, but perhaps in  
14 terms of the Prosecution's request to have blocks, et cetera, it might be helpful before  
15 the start of the trial to have an *ex parte* hearing with VWS to discuss certain logistical  
16 issues. We are obviously working with the Registry to liaise certain -- to address and  
17 find solutions, but I am raising that and flagging that in case it requires the Chamber  
18 to be aware of the specific nature of the logistical issues. Thank you.

19 SINGLE JUDGE PROST: [16:47:17] Thank you, Ms Taylor.

20 Certainly I appreciate you raising that and certainly if there is need for *ex parte* status  
21 conference, we can certainly make arrangements for that. In fact, one of the points I  
22 was going to make before the closing, but I'll take this opportunity, is also to say  
23 before the start of the trial, we can have another status conference if any of the parties  
24 feel it would be useful, and the Chamber would also take advantage to convene one if  
25 we felt it was necessary because I believe it's very helpful in advancing matters. So

1 bear that in mind, be it an *inter partes* or *ex parte*. If the parties feel it's necessary, the  
2 Chamber is certainly open to that. There's still a period of time after -- after the  
3 recess, before we start, where that could be beneficial. So I leave that thought with  
4 you.

5 Finally, this is just a reminder, Ms Taylor, the Prosecution has raised the issue of any  
6 possible Rule 74 counsel, and I would just like to remind you of the need to liaise with  
7 the Counsel Support Services unit as soon as possible with respect to the appointment  
8 of Rule 74 counsel - they're -- you know, they take some time to do this as well - for  
9 any of the witnesses whose evidence obviously is potentially incriminating. It may  
10 be that it's dependent on your order, I appreciate that, but I just wanted, and I thank  
11 the Prosecution for flagging it, just to remind that some lead time on that would be  
12 very -- would be very helpful.

13 MS TAYLOR: [16:48:59] Just on that point, if I may, because I understood that the  
14 Prosecution had raised this issue within the perspective of Rule 68(2), and it's my  
15 understanding that Rule 74 assurances don't apply to voluntary statements, they  
16 apply to in-court testimony. So we obviously will liaise and ensure the presence of  
17 Rule 74 counsel for witnesses who appear before the Court, but I refer in particular to  
18 a decision in the Ongwen case, that's Decision 1096, paragraph 7, which clarifies that  
19 Rule 74 is very much directed to testimony that's compelled from a witness rather  
20 than a voluntary statement.

21 SINGLE JUDGE PROST: [16:49:45] Yes, thank you, Ms Taylor. I had -- I  
22 understand the Prosecution's comment to be a general one, not tied to the Rule 68 at  
23 all, but I may have been incorrect in that.

24 Mr Dutertre.

25 MR DUTERTRE: [16:49:59](Interpretation) Yes, your Honour, it is a general

1 comment, because self-incrimination applies to everyone. And the consequences are  
2 the same, whether it is voluntary statements or in-court testimony under 74. So it's  
3 not limited.

4 SINGLE JUDGE PROST: [16:50:22] Well, thank you much.

5 I don't think we need to litigate the particular issue today. I think my intention at  
6 least was simply to give the reminder vis-à-vis, I was -- I was in fact reflecting on  
7 in-court testimony, but we can leave it there for today because the reminder has been  
8 given. So I'm sure the message has been heard in that respect.

9 So those were all of the issues that I had on my -- my agenda, but is there any other  
10 business, any other matter that any of the parties, participants, Registry wish to raise  
11 at this stage?

12 I see no takers to that offer. So, therefore, I believe that we can conclude this session.

13 I'd like to thank all of you who participated, attended, or facilitated our hearing  
14 today.

15 This session is adjourned. Have a good evening, everyone.

16 THE COURT USHER: [16:51:34] All rise.

17 (The hearing ends in open session at 4.51 p.m.)