

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 and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Geoffrey Henderson, Judge Olga Herrera Carbuccion and
7 Judge Bertram Schmitt
8 Status Conference
9 Friday, 25 September 2015
10 (The hearing starts in open session at 10.04 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE HENDERSON: Good morning, everyone. The hearing is now open.
15 Would the court officer please call the matter.
16 THE COURT OFFICER: Thank you, your Honour. The Court proceeding in the case of the
17 Prosecutor versus Laurent Gbagbo and Charles Blé Goudé.
18 PRESIDING JUDGE HENDERSON: All right. Thank you.
19 Right. As a quick matter of housekeeping, if I can just sort of let you know how we
20 will be proceeding this morning. We will proceed from now until 10.30 -- I beg your
21 pardon, 11.30. We would then take a break of a half an hour and then we would
22 resume for a second session from 12 to 1.30. Because of certain scheduling issues, we
23 only have two sessions today. So therefore I would expect and I would urge that we
24 conduct our business expeditiously, and of course I would then ask all of the parties
25 and participants to be as concise as possible when making their submissions.

1 All right. So having said that, I would just like to formally note for the record that
2 Mr Gbagbo has signed a waiver in relation to his right to be present this morning, that
3 is filing 238. And I note for the record that Mr Gbagbo is therefore absent today.
4 Also, I would like to note for the record that the Trial Chamber received an email
5 from Ms Massidda, the Legal Representative for Victims, on 10 September at 17.21 in
6 which she requested a postponement for the start of this status conference. The
7 Chamber considered it but rejected the request, but indicated that we were prepared
8 to grant leave for another member of Ms Massidda's team to appear, Mr Enrique Rojo,
9 to represent the victims in her absence. And I see that Mr Rojo is here today and
10 shortly we'll ask him to introduce himself.
11 Finally, as usual, I always urge all of the parties, we do have translations, and
12 everything you say is being recorded, so I would urge everyone to speak as slowly
13 and to pause for a few seconds between speakers in order to assist both the court
14 reporters and the interpreters.
15 All right. Having said that, for the record, would counsel please introduce
16 themselves for the record? I'll begin with Mr Prosecutor.
17 MR MACDONALD: Good morning, Mr President, your Honours. The Prosecution is
18 represented today by Mr Louis Rugambage, Ms Henderson and Chubin, and the lawyers that
19 will be addressing the Court, Ms Pack, Mr Demirdjian and myself, Eric MacDonald.
20 PRESIDING JUDGE HENDERSON: Thank you, Mr MacDonald.
21 Counsel for Monsieur Gbagbo.
22 MR ALTIT: (Interpretation) Thank you, Mr President. Allow me to present Maître
23 Baroan of the Ivory Coast Bar; Madam Naouri, Madam Swiderski, you already know her
24 already; and I myself am Emmanuel Altit, lead counsel for Mr Gbagbo.
25 PRESIDING JUDGE HENDERSON: Thank you, Mr Altit.

1 And for Mr Blé Goudé.

2 MR KNOOPS: (Microphone not activated) To my left side, Maître Seri Zokou --

3 PRESIDING JUDGE HENDERSON: Counsel, can you start again because if you don't speak,
4 it's not recorded.

5 MR KNOOPS: Sorry, I see.

6 THE INTERPRETER: The microphone.

7 MR KNOOPS: Good morning, Mr President.

8 PRESIDING JUDGE HENDERSON: Perhaps, yes, I am guilty of the same offence. All
9 right.

10 MR KNOOPS: Good morning, Mr President, your Honours. I believe my person is known
11 to the Court. To my left side, Maître Seri Zokou. He is admitted to the Defence bar of
12 Brussels, Belgium and since recently has joined our team as legal assistant.

13 On my back, two case managers, Madam Lauriane Vandeler and Madam Antonina
14 Dyk. Thank you.

15 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

16 And for the Legal Representative for Victims.

17 MR CARNERO ROJO: Good morning, Mr President, your Honour. As you know as you
18 heard yourself, the Legal Representative of the Victims, Ms Paolina Massidda, is currently on
19 her way back to The Hague. She will be joining us later in this hearing. My name is
20 Enrique Carnero Rojo, and I am legal officer in the Office of Public Counsel for Victims.
21 Sitting together with me is Ms Ludovica Vetruccio, associate legal officer, and behind me is
22 Ms Giunia Petrillo, who is our intern. Thank you very much.

23 PRESIDING JUDGE HENDERSON: Thank you, Mr Rojo.

24 And for the Registry.

25 MS DAHURON-JACOBY: (Interpretation) Good morning, Mr President, your Honours.

1 There is Alexandra Tomic, Language Services Section chief; Vera Wang in the Office of the
2 Court services. In front of me, Patrick Craig, Chief of Detention Centre; and Natalie, a jurist
3 in the same section. We have Madam Maral Kaprielian and Madam Oseredczuk as well as
4 Ms Jacoby, Chief of Judicial Administration.

5 PRESIDING JUDGE HENDERSON: Thank you very much.

6 Now we will proceed to the agenda. We will begin unusually from a different point
7 because of the schedule, we will begin at Item D, which is any matters relating to the
8 detention of the accused. Now, as you are aware, in its order of 10 September this
9 year, the Chamber indicated that we would hold on 25 September a hearing pursuant
10 to Rule 118(3) of the Rules. Thereafter we will proceed to address the remaining
11 items on the agenda for this status conference.

12 Now, I also note for the record that Mr Blé Goudé is attending court this morning.

13 The Chamber welcomes you, Mr Blé Goudé.

14 Now, the purpose of this part of the hearing is to discuss the general conditions of
15 detention pursuant to Rule 118(3).

16 Now, the Chamber is mindful that the 120-day review period for pre-trial detention of
17 Mr Gbagbo, pursuant to Rule 118(2) of the Rules, must be completed at the beginning
18 of November 2015. Therefore, as a preliminary matter, the Chamber would like to
19 set the schedule for the Prosecution, the Defence for Mr Gbagbo, as well as the Legal
20 Representative of Victims to file any written submissions on Mr Gbagbo's detention.

21 And the schedule will be as follows:

22 The Defence is to file its written submissions concerning the review of detention by 9
23 October 2015.

24 The Prosecution and the Legal Representative of Victims are to file their written
25 submissions by 16 October 2015.

1 Thereafter the Defence shall file any further submissions by 23 October 2015.

2 In this regard the Chamber notes that as we have -- that as we are receiving written
3 submissions concerning the review of Mr Gbagbo's detention, it will not be necessary
4 for the parties to make any oral submissions this morning on the changed
5 circumstances under Article 60(3) of the Statute with respect to Mr Gbagbo, which is a
6 matter which will be reviewed in due course.

7 Therefore, the parties may limit their submissions today to discussing any other
8 matters which are related to the detention of Mr Gbagbo, Mr Blé Goudé. For this
9 reason, the Chamber has decided to include in the agenda of today's status conference
10 the general conditions of detention for Mr Blé Goudé in addition to Mr Gbagbo.

11 So having said that, and before we begin, are there any questions arising out of what
12 I've just said before we start? Mr MacDonald? Mr Altit? Mr Knoops? Mr
13 Enrique? Very well.

14 Having said that --

15 MR KNOOPS: Your Honour, I'm sorry, do you want me to address the general detention
16 conditions of Mr Blé Goudé before you move on? Is your remark meant to move on to the
17 second point of the agenda?

18 PRESIDING JUDGE HENDERSON: No.

19 MR KNOOPS: Okay.

20 PRESIDING JUDGE HENDERSON: No. In fact, I'll be coming to ask you in turn, invite
21 you on precisely that issue after Mr Altit. I was just asking if there was anything arising out
22 of what I had said.

23 MR KNOOPS: No. Thank you. Then I understood you correctly.

24 PRESIDING JUDGE HENDERSON: Yes. All right. So I'll give it to Mr Altit to address us
25 to make any submissions on behalf of Mr Gbagbo, on the detention of Mr Gbagbo.

1 MR ALTIT: (Interpretation) Thank you, Mr President. We have noted the schedule
2 established by your Chamber. As far as we are concerned regarding detention conditions,
3 we do not have any particular issues to raise, but we will respond if necessary after the
4 Registry would have made its submissions.

5 PRESIDING JUDGE HENDERSON: Well, the Chamber is pleased to hear that, Mr Altit.
6 And insofar as there are ever any issues, the Chamber would always invite you and Mr
7 Knoops in due course as a first step if there are any concerns to raise them with the Registry
8 first, and if there is any difficulty, you can always escalate it, raise it further by filing a
9 complaint under Regulation 216bis of the Regulations of the Registry in respect of those
10 matters if such is the case. But as you have said, all is well. Thank you.

11 That being the case, there would be nothing for Mr MacDonald to respond to. Is that
12 fair to say, Mr MacDonald? Right.

13 I will now invite Mr Knoops to address the Chamber on any submissions, if any,
14 regarding Mr Blé Goudé.

15 The Chamber recalls, as it did at its status conference in February, that of course
16 Mr Blé Goudé has not made any application for interim release, but we're speaking
17 here on the general conditions of detention.

18 Thank you, Mr Knoops.

19 MR KNOOPS: Thank you, Mr President. I have two matters to bring to your attention,
20 your Honour. First of all, there was three issues pending when it concerns the general
21 conditions of Mr Blé Goudé before the Registry, which we preferably want to deal with in a
22 non-contentious manner. I will not go into detail, but just to inform the Chamber that there
23 are some discussions about his detention conditions, but we have a good consultation with
24 the Registry, and we hope that we can deal with the Registry to deal with these issues in a
25 non-contentious manner.

1 Secondly, just to inform the Chamber, it's the second time, your Honour, that you
2 observed that there wasn't yet a request filed for provisional release regarding
3 Mr Blé Goudé. Our Defence team is mindful of his right, and I can inform the
4 Chamber that we'll address this right in due course. Thank you.

5 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

6 Mr MacDonald, anything arising out of that? Thank you.

7 I would now invite Mr Rojo, any observations?

8 Mr Knoops, if I can just go back to you, because you say that and I understand you to
9 be saying that there are discussions which are going on in a collegial, non-contentious
10 way, which is always the best practise, there is no need for the Chamber to do
11 anything at this stage at all, and that really is the best way.

12 All right. So having said that, let me just hear from the Registry whether it considers
13 it necessary to make any submissions on the detention of either Mr Gbagbo or
14 Mr Blé Goudé that are in its view relevant to or relevant for the Chamber?

15 MS DAHURON-JACOBY: No, Mr President.

16 PRESIDING JUDGE HENDERSON: Well, that being the case, this would conclude the
17 hearing on detention, and the Chamber will issue its decision under Article 63 of this Statute
18 on the detention of Mr Gbagbo after having received written submissions from the parties
19 and the participants, but in any case no later than 5 November 2015.

20 So that concludes Item D.

21 Now, before moving on to other items of the agenda, I would like to address the
22 Gbagbo Defence request for an extension of time limit, an extension of time limit to
23 submit observations on the victims' applications transmitted on 10 September 2015,
24 which is filing 235, which was filed yesterday. And I would wish to invite the
25 parties and participants to, if necessary, make any oral submissions.

1 And just to put the context, on 23 September 2015, although notified on 24
2 September 2015, the Gbagbo Defence filed an application seeking an extension of time
3 limits of two weeks, two weeks to file their observations on 259 new victims'
4 application forms, which were transmitted by the Registry in redacted form on 10
5 September 2015. Filing 211 contains the confidential ex parte annexes available to
6 the Chamber and the Prosecution, while filing 213 contains the redacted version
7 transmitted to the Defence.

8 The current deadline expires on 2 October 2015, but the Gbagbo Defence team
9 requests an extension of deadline to 16 October 2015.

10 I will briefly summarize the main arguments raised by the Gbagbo Defence in which
11 they are submitting that they have good cause as shown pursuant to Regulation 35 of
12 the Regulations of the Court.

13 The time the Gbagbo Defence has to spend preparing its observations to the victims'
14 applications is additional to other competing deadlines, particularly since trial, the
15 trial date has been set to commence, to start on 10 November 2015.

16 The Defence also notes that they have different submissions it has filed and have to
17 respond to and are currently working on. The Defence would require one person to
18 work full-time for one and a half months to check and to analyse the 259 applications
19 to determine whether they meet the criteria established by the Chamber, and this
20 calculation is based on the Registry statistics.

21 With the requested two-week extension, the Gbagbo Defence submits it would have
22 at least 35 days to analyse and present their observations.

23 The Gbagbo Defence notes that in 2014, the Registry had calculated that it would not
24 receive more than 150 to 200 new applications, and it was on that basis that this
25 Chamber set the 21-day deadline.

1 The Gbagbo Defence has also submitted that the Registry did not follow the
2 Chamber's instructions to transmit the applications as soon as possible and in or on a
3 continuous basis, but instead waited until the deadline of 10 September to submit all
4 259 new applications. It also states that the Registry was late in transmitting to the
5 Gbagbo Defence the application forms of victims in the Blé Goudé case. These 270
6 applications were only transmitted to the Defence on 20 August 2015.

7 The Gbagbo Defence argues that if it does not have sufficient time to prepare its
8 observations to these application forms, it will not be able to inform the Chamber of
9 any eventual irregularities that it may encounter or that may be contained therein.

10 Finally, it states that the extension of deadline would not cause any prejudice to the
11 Prosecution.

12 Now, these are the main points raised by the Gbagbo Defence in their written request.

13 Nevertheless, does the -- first of all, having summarized that, Mr Altit, is there
14 anything in addition to that that your team, that the Gbagbo Defence wishes to
15 advance, or have I summarized your submissions accurately?

16 MR ALTIT: (Interpretation) Thank you, Mr President. You have summarized our
17 submissions very accurately indeed.

18 PRESIDING JUDGE HENDERSON: Very well. Considering that the request is rather
19 urgent, and as the deadline expires next Friday, that is to say October the 2nd, the Chamber
20 would now like to hear observations from the parties and the participants so that it can decide
21 on this matter if possible immediately.

22 So, Mr MacDonald, having summarized the submissions for the Gbagbo Defence, is
23 there any -- are there any observations that the Prosecution wishes to make on the
24 reasonableness of this application?

25 MR MACDONALD: We leave it to your appreciation, your Honour.

1 PRESIDING JUDGE HENDERSON: Thank you, Mr MacDonald. The Legal Representative
2 for Victims, Mr Rojo?

3 MR CARNERO ROJO: Thank you, your Honour. We submit that there is no good cause
4 for the extension of the deadline. In fact, I remind -- I remember that in January this year, the
5 Defence of Mr Gbagbo and the Legal Representative filed a joint submission on victim
6 applications with an annex, it's annex 200 -- sorry, 204 of filing 748, in which the Defence and
7 the Common Legal Representative expressed that 10 weeks before the start of the trial will be
8 enough for the Defence to provide observations on the victims' applications. So we see no
9 reason why now the Defence has come back to this issue that had already been agreed upon.
10 Thank you very much.

11 PRESIDING JUDGE HENDERSON: Before you take your seat, in considering whether the
12 application was reasonable, have you directed your mind to the original, first of all, the
13 original estimated number of applications, which originally was 150 to 200, it has exceeded
14 that, as well as the Chamber's order that the applications were to be submitted on a rolling
15 basis so that they can consider it on a rolling basis as opposed to what actually happened,
16 which is to say that it was just given to them in total at the expiry date, which was not what
17 was envisaged by the Chamber?

18 Does that in any way at all figure in your consideration as to your objecting to the
19 application?

20 MR CARNERO ROJO: Thank you, your Honour. Yes, indeed we have thought about that.
21 But actually we had conversations with the Defence at that moment in time, and after
22 discussing deadlines, we agreed that 70 days was enough for them to provide observations on
23 any type, on any number of victims' applications. So we don't see now the reason why they
24 argue that the deadline should be extended. Thank you very much.

25 PRESIDING JUDGE HENDERSON: Okay. Thank you, Mr Rojo.

1 Let me hear from Mr Knoops. Any observations?

2 MR KNOOPS: Yes, Mr President. The Blé Goudé team will before noon file separate
3 submission on this issue, basically embracing the request of the Mr Gbagbo team as to an
4 extension of the deadline.

5 I'd also refer your Honours to Rule 89(1), which allows the Chamber to set a specific
6 deadline while being bound by the 21 days considering the specificities of a case.

7 But our team will also request the Chamber to grant leave to reconsider the 6
8 March 2015 decision on victims' application in the Monsieur Gbagbo case.

9 You will find in our request, which is an extensive request, the reasons why. So in
10 short, we will have a separate filing. And in light of the time, I refer your Honours
11 to our filing this morning. If your Honours want me to go into the substance, I can
12 do it, but my suggestion is that the Chamber will first look at our request before
13 making a ruling on the extension of time, because what we also submit in our request,
14 your Honour, is that we find that your Honour should make a decision on the
15 ex parte qualification of the supporting materials, and in our view, if your Honours
16 would grant this request to lift the ex parte qualification of the supporting materials,
17 our suggestion is that the extension of time of 14 days starts to run from the
18 submission of the ex parte materials.

19 So it's an extensive filing, and it comprises actually three prongs, requests for
20 reconsideration of the 6 March filing, which was -- in which the Blé Goudé team was
21 not involved. And, you know, the decision of joinder of the 11 March was applied in
22 retrospect, but in hindsight, I think our team was acting in good faith expecting from
23 the Chamber a specific ruling for our team. So you'll find in our request the legal
24 arguments why we think the Chamber should consider to grant leave for
25 reconsideration of this 6 March decision, specifically in the Blé Goudé case.

1 Secondly, you'll find in our request an argument to lift the ex parte qualification of the
2 supporting materials. Now, the Prosecution apparently also has access to these
3 documents, without which our team is not I think intelligently informed about how to
4 deal with the substance of the application.

5 And thirdly, in the most alternative form, we embrace the request of the Monsieur
6 Gbagbo team in that we seek for an extension of time until 16 October. But if the
7 Chamber would rule that there is no basis to uphold the ex parte qualification of the
8 supporting materials, we suggest that this time limit starts to run from the submission
9 made by the Registry to the teams of the ex parte materials.

10 In other words, our team has great difficulty in dealing with these applications
11 without having supporting materials, because without supporting materials, we
12 cannot I think intelligently grasp whether or not the applications fulfil some of the
13 criteria. And now the Prosecution has apparently access to these ex parte
14 supporting materials. It's also a matter of fairness that the Defence has access to
15 these materials, and we are under the same professional obligation as the Prosecutor
16 to not disclose any of this information contained in these supporting materials.

17 This is in essence the core of our request. And as said, it will be filed just before
18 noon to the Chamber. And your Honours can maybe first await this filing before
19 ruling on the request of my learned friends on my right side.

20 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

21 (Trial Chamber confers)

22 PRESIDING JUDGE HENDERSON: Before I go, any observations from the Registry?

23 MS DAHURON-JACOBY: No, your Honour.

24 PRESIDING JUDGE HENDERSON: All right. Mr MacDonald, Mr Altit, Mr Knoops, the
25 Chamber would have proceeded to consider, but in light of your submission and the potential

1 for it to impart, your filing to impart on the submissions of Mr Gbagbo's Defence, the
2 Chamber will not proceed as we had originally envisaged that we would deliberate on it and
3 come to a decision. We will not do so now. So you've persuaded the Court.

4 So we will await your filing, which you said should come sometime about midday?

5 All right. Thank you very much.

6 The Chamber will then proceed to the other items on the agenda. Now, on 10

7 September 2015, the Chamber issued an order, filing 214, in which we scheduled this
8 conference for the purpose of which is to receive updates on matters relating to the
9 preparation and the commencement of the trial.

10 In this order the Chamber requested that the parties and participants propose any
11 additional items for today's agenda.

12 The Chamber received responses via email on 21 September from the Prosecution, the
13 Defence of Mr Gbagbo and the Defence for Mr Blé Goudé.

14 Accordingly, the Chamber will proceed with the agenda as follows:

15 Firstly, updates on matters relating to the commencement of trial, and under this item
16 we will hear from you, A, any general updates on disclosure and updates from the
17 Prosecution regarding the Prosecution's list of evidence or amendments thereto; and,
18 B, languages to be used in the proceedings.

19 Second, we will give the floor to the Gbagbo Defence to address the Chamber on its
20 questions concerning Rule 134(2) on objections and observations concerning the
21 conduct of proceedings.

22 Three, we will give the floor to the Defence teams to raise any new issues concerning
23 the Prosecution's pre-trial brief.

24 Four, the Chamber will hear any updates on consultations to jointly agree on experts.

25 Five, updates on the progress made to reach agreements about non-contentious issues,

1 and

2 Six, we will hear preliminary views of the parties and the participants and the
3 Registry on holding hearings in situ, including the suggestion that we received that
4 opening statements be held either in Abidjan or Arusha.

5 Now, in respect of the Prosecution's proposal to add to the agenda an item related to
6 the modalities for hearings and the trial schedule, the Chamber having considered it
7 and considered it carefully, we have decided that it is more appropriate to discuss
8 these items at the next status conference.

9 In respect of the Prosecution's and Mr Gbagbo's Defence proposal to add to the
10 agenda an item relating to scheduling an on-site visit, the Chamber instructs the
11 Prosecution and the Gbagbo Defence to make their submissions on this matter by way
12 of a written filing.

13 Now, before we proceed to the first agenda item, I would like to make two further
14 announcements of a more general nature. Firstly, the Chamber recalls it has set a
15 deadline for the filing of any further motions that in the view of the parties and
16 participants require resolution prior to the commencement of trial. As indicated in
17 its order of 7 May 2015, that is filing 58, five eight, any such motion shall be filed by 1
18 October 2015.

19 In addition, as already mentioned, the Chamber reminds the parties and participants
20 that filings should be as concise as possible. Less sometimes is more.

21 Parties and participants need not necessarily exhaust the 20-page limit. In fact,
22 depending on the issues raised by the parties, the Chamber may consider from time
23 to time limiting the page limits for responses in advance if the Chamber considers
24 that the parties should be more concise and this pursuant to Regulation 37(1) of the
25 Regulations of the Court.

1 Now, with those preliminary remarks out of the way, we will now move on to the
2 items which I have just set out on today's agenda.

3 The first item on the agenda is to hear updates from the parties and participants on
4 any matters relating to the commencement of the trial.

5 Mr Prosecutor, let me begin with you. Do you have any observations or anything
6 you can provide us by way of an update on this and as to any other matters relating
7 to the first agenda item?

8 MR MACDONALD: Just to be clear, your Honour, because I see that in the email that we
9 received there is point 2 and then there's 2(e) which relates to disclosure.

10 So if you want me to answer on the general matters that may impact on the
11 commencement of the trial, I'm willing to do so, or do you want to hear me also on
12 the disclosure item, the item related to disclosure, updates from Prosecution
13 regarding the Prosecution's list of evidence or amendments thereto?

14 PRESIDING JUDGE HENDERSON: Yes.

15 MR MACDONALD: Yes. And my colleague Mr Demirdjian will be addressing the issues
16 of languages which I will not address right now. So I'll limit my comments on number 2,
17 2(e).

18 The Prosecution, well, let's put it this way: There's the transcripts related to Witness
19 P-0483, the French translation is at the moment being registered, and we will be
20 disclosing these transcripts next week. So this will complete in relation to witnesses,
21 it will complete the request that we had filed and that the Chamber had granted in
22 relation to insider witnesses.

23 Now, this -- I want to add that these transcripts, because of the -- they were submitted
24 to different or outsourced to different companies to proceed to the transcript, to the
25 transcription in order to receive it as we had initially requested, end of September.

1 But unfortunately, these transcripts have not been revised by our language and
2 services unit. Nevertheless, we will disclose those transcripts to the Defence, and if
3 ever there were to be any changes in advance of the presentation of the evidence or by
4 the end of this year or before we start the actual presentation of evidence as it's
5 scheduled currently in January, we will re-disclose transcripts with track changes to
6 indicate where these changes may be.

7 That is also, your Honour, you may remember that in any event from your order
8 granting our request pursuant to Regulation 35, this witness is not to be called within
9 the first six months in any event. So currently he would not even figure
10 independently of that in our first 20 witnesses depending which comes first, six
11 months or first 20. So independently of that, again, the purpose is to minimize, if
12 any, any unfair prejudice.

13 Now, the Prosecution, the Prosecution is also currently reviewing a number of -- well,
14 first of all, we're making the correlation in detail between the 4,700 and over 700 items
15 of evidence that we have and also the items identified in our pre-trial brief to make
16 sure that there are no discrepancies while we're working on other things at the same
17 time. So this is -- and as we go along, sometimes we find mistakes. The more
18 urgent mistakes obviously we filed recently Regulation 35 specific ones.

19 But the purpose is to very soon, as soon as possible, to file a request for
20 reclassification of a number of documents that were disclosed as Rule 77 that may
21 appear on our list of evidence or may appear in a pre-trial brief or should appear, so
22 we're talking about approximately 30 documents for which we would seek
23 reclassification to incriminating.

24 Now, these documents I want to reassure everyone, they have been already disclosed
25 pursuant to Rule 77. So this is nothing new in terms of knowledge. So that will

1 come in that request.

2 And at the moment we have identified between four, maybe six documents that have
3 to be disclosed pursuant to Rule 77 which have not, and we will proceed to make that
4 request because they were in our possession prior to 30 June, and we will be
5 explaining why now we're proceeding to that. Again, these are between four and six
6 documents. We're finalizing that.

7 There is one issue that I want to mention, which is more specific to the videos and
8 their presentation in court, again, following the directions on the conduct of the
9 proceedings, if I'm not mistaken, I think it's -- anyway, there is a specific article that
10 deals with the presentation of videos.

11 Now, the Prosecution has disclosed and identified as incriminating evidence these
12 videos providing also the minutes that are of relevance. In some instances
13 transcripts have already been disclosed. Now, transcripts are not mandatory.
14 They're basically helpful for the presentation and following obviously a presentation
15 of videos when they're presented in the courtroom, especially for the transcribers and
16 interpreters.

17 Now, the Prosecution, in order for these -- and this is one of the difficulties with this
18 institution is it's an electronic court in a way, and this is why we have an eCourt
19 protocol.

20 In order for the Registry to be able to show to the Chamber on screen transcripts, they
21 have to be in eCourt. And according to our protocol, what is in eCourt has to be
22 incriminating evidence of the Prosecution, not Rule 77, not potentially exonerating
23 evidence, only what is to be relied for presentation in the courtroom.

24 So we have to disclose these transcripts under the heading of incriminating evidence
25 for it to be uploaded and granted permission to be added to eCourt. So we will

1 come with a number of transcripts, and we will seek permission from the Chamber to
2 be able to disclose them to the Defence, but again, the primary material has been
3 disclosed. These are the videos. Some videos sound -- you can hear no people are
4 talking. In others, there are people speaking and obviously you want to have a
5 transcript to be able to follow if we do present the videos in the courtroom.
6 We're still evaluating how -- we have a large number of videos, your Honour, on our list of
7 evidence and obviously we will not be presenting all of them in our evidence. We'll
8 introduce them and have them hopefully admitted on the record, but obviously for some we
9 will show them, for others, we will leave it to the appreciation of the Chamber as to how to
10 take notice of this material.
11 So I just want to forewarn, if we want, or inform the Chamber in advance that we will
12 be seeking to disclose a number of transcripts.
13 This covers pretty much, your Honour, what I had to say in terms of what is left to be
14 disclosed. If you allow me just one second.
15 Sorry, when I said there are four to six documents that we want to disclose as -- it's not Rule
16 77, but four or six documents that have not been disclosed that we would like to disclose as
17 incriminating evidence, your Honour. Sorry. I just want to clarify that.
18 So these are the comments I have. So just to recap in terms of numbers, not to get
19 mistaken, there is approximately 30 documents for which we will be seeking
20 reclassification from Rule 77 to incriminating evidence, and also four to six
21 documents that we will seek potentially disclosure as incriminating evidence which
22 were never disclosed before.
23 Now, also I want to reassure the Chamber, we have a large number of evidence on
24 our list of evidence. A big portion are obviously statements, transcripts of
25 interviews, annexes to these transcripts and so on. So they make for a number. But

1 let's say we have, including videos, around 3,000 to 3,500 documents, individual
2 items. I just want to mention that we also are looking into dropping, if you want, for
3 lack of a better word, a number of these documents from our list of evidence. And
4 we will inform the Chamber.

5 Now, the impact of the recent decisions of the Chamber granting the Prosecution's
6 Regulation 35 requests, I will come back when we will discuss the amendments or
7 possible amendments to the pre-trial brief, because of course as a heads-up, the
8 Prosecution intends to file an updated version with now the ERNs of the transcripts,
9 for instance, of Witnesses 500, 435, 607, 483, and other ERNs of individual items that
10 the Chamber allowed us to add to our list of evidence.

11 So obviously, these now we can insert in the footnotes the actual ERNs. Before we had
12 reference or just left, you know, we'll add ERN once -- if granted. But now that we have
13 them, we're in a position to add them. But I'll come back to that once we discuss
14 amendments and/or hyperlinking and so on. Thank you.

15 PRESIDING JUDGE HENDERSON: Thank you, Mr MacDonald.

16 Mr Altit, would you wish to respond?

17 MR ALTIT: (Interpretation) Thank you, your Honour. Yes, we do wish to respond. And
18 Maître Naouri will set out the Gbagbo Defence position as regards this matter.

19 First of all, however, I would like to stress two things, make two comments. If I have
20 fully understood what my learned friend, Mr MacDonald, has said, the Prosecution is
21 continuing to divulge crucial elements, we're no longer at the date of 30 June 2015,
22 and intends to continue to do so. The entire architecture that your Chamber had
23 constructed in order to allow the Defence to prepare itself, the time that the Chamber
24 granted to the Defence to prepare itself will be cut back slowly but surely day after
25 day and kept to an absolute minimum. That's my first comment.

1 Secondly, if I've understood correctly, the Prosecution is attempting to try to avoid
2 complying with the deadlines that you set by an application of Rule 78 -- 77, sorry,
3 revealing matters and saying they're going to be requalified as incriminating elements.
4 And that is the situation as we see it.

5 Maître Naouri is going to set out our position to you as for the other points that were
6 raised.

7 MS NAOURI: (Interpretation) Your Honour, your Honours, as regards this question of
8 notification of elements, we'd like to deal, first of all, with the incriminating ones to begin with
9 and the exonerating ones subsequently under 77.

10 As we got to the incriminating elements, the Prosecutor is continuing to ask that the
11 incriminating elements be notified to the Defence, which makes the work of the
12 Defence extremely difficult as on -- whatever subject it considers it's carried out a full
13 analysis of the useful elements and has, once again, to keep coming back to the
14 analysis.

15 Let me give you an example. The Prosecutor has asked that incriminating elements,
16 additional ones, be notified for 7 September, 15 September, 22 September and today
17 once again.

18 We cannot work in such conditions. What is more, it is a denial of the instructions
19 issued by the Bench, which were perfectly clear. Notification of all incriminating
20 elements had to be done by 30 June 2015 in order to allow the Defence team to carry
21 out its work.

22 In reality, what does this delay in notification imply? It means that the Prosecutor is
23 actually not ready. Throughout the procedure the Prosecutor has constantly been
24 saying that it was willing to notify all elements of evidence, but constantly pushed it
25 back whenever the opportunity arose. It has to be noted that the Prosecutor has

1 never been able to stick to the deadlines that it committed to.

2 In such conditions, the six-month deadline that the Chamber granted to the Defence in order
3 to prepare the case, between the end of notification of the elements by the Prosecutor on 30
4 June and 1 January, all of this time has actually vanished.

5 In actual fact, the Defence, and right through to the very start of the trial, is at the mercy of
6 further repeated notifications on the part of the Prosecution.

7 What is more, the Prosecutor has filed requests to extend timelines on certain
8 important aspects. The transcript of Witness P-183 according to the Prosecution is a
9 key witness. And we hear today that what is planned for 30 September, the
10 notification, could actually be covered by a further notification on a key aspect.

11 The example also of three recordings that are to be used in the context of P-501, the
12 logbooks, these are extremely valuable elements, and every time there is a delay the
13 Prosecutor takes things on a case-by-case basis and says that this is not prejudicial to
14 Defence.

15 First of all, how does one calculate prejudice? Secondly, the notion of prejudice is
16 used by the Prosecutor here in order to avoid having to acknowledge that this delay
17 in notification is prejudicial to the Defence; for example, when Rule 68 elements
18 become incriminating, the analysis carried out by the Defence of 68 element is not the
19 same as what happens if you're analysing an incriminating element. And sometimes
20 there are differences, there are 68 elements that are then re-notified as incriminating
21 elements and that are actually much longer.

22 Use of this notion of prejudice means that the Prosecutor is glossing over the fact that
23 he has not complied with the deadlines provided for by the Chamber in order to
24 protect the Defence.

25 Thirdly, we have to --

1 PRESIDING JUDGE HENDERSON: Madam Naouri, can you speak just a tad slower so we
2 can get -- just bear in mind that there is translation.

3 MS NAOURI: (Interpretation) Yes, your Honour.

4 Thirdly, I think we have to take a step back regarding the violations of the
5 Prosecution regarding its disclosure obligations. It is the cumulative effect of those
6 delays, the time that needs to be used to analyse, understand, respond, and then
7 analyse the new elements in the work schedule of the Defence. And this has a
8 significant effect on the preparation of the case by the Defence because of its limited
9 resources.

10 So this is an erosion of the rights of the Defence. So if the Chamber accepts what the
11 Prosecution says, then it will be only a few weeks before commencement of trial that
12 the Defence will have the entire dossier of the case, which is very important. And
13 with such limited time, the Defence will not be able to analyse these materials,
14 crosscheck them, or carry out the necessary investigations for the preparation of
15 cross-examinations. So in other words, accepting the motions of the Prosecution
16 would prevent the Defence from having the necessary time to prepare its case.

17 In such circumstances the trial cannot be fair. So consequently, the Chamber should reject
18 the endless applications for extension of time limits by the Prosecutor. We have to avoid
19 these changes of the Prosecution materials every time they are made after the deadline fixed
20 by the Court.

21 Now, regarding the reclassification of Rule 77 evidence, the Prosecution has made
22 several applications for the disclosure of Article -- of Rule 77 evidence. We would
23 like to make certain observations. The first observation concerns the slow and
24 progressive gradual disclosure of elements which makes the Defence work very
25 difficult. And this suggests that the Prosecutor continues to investigate contrary to

1 the Chamber's orders; for example, on 9 September 2014, the Prosecutor disclosed
2 seven pieces of evidence and some of them were new. And nothing justifies such
3 slow disclosure because many of those materials had been in the possession of the
4 Prosecution for several years.

5 On 27 September, the Prosecution asked for the disclosure of a transcription of
6 Witness P-49, and this statement had been made three years before. And apparently
7 the Prosecution is keeping to itself materials that would be very important for the
8 Defence.

9 On 2 September 2015, the Prosecutor asked for an extension to disclose a report of the
10 Prosecution regarding Witness P-483.

11 These examples prove that some Rule 77 evidence have a direct impact on the analysis of the
12 incriminating witnesses of the Prosecution, but the Defence needs to have in its possession all
13 this materials to be able to adequately prepare cross-examinations.

14 Fourthly, the Prosecutor usually raises the issue of having forgotten to comply with
15 its obligations. And they have to change their internal way of working. Ever since
16 the beginning of the Gbagbo case, the Prosecution has made nine applications to
17 rectify errors because of having forgotten something. However, a few months prior
18 to the commencement of trial, the Defence has to be sure that no element useful for its
19 progression -- for its preparation has been overlooked. So we have to crosscheck
20 everything and ensure that the Prosecutor is not keeping back any materials that
21 could be crucial to the Defence.

22 It is not up to the Prosecutor to substitute itself, to take the place of the Defence and
23 decide what is useful or not depending on the way they perceive the Defence strategy.
24 The obligation of disclosure of the Prosecution has nothing to do with the idea that
25 they have of the Defence strategy. In fact, the Appeals Chamber in the Lubanga case

1 stated clearly that these are two different issues because the Prosecutor, whatever the
2 situation, has the obligation to disclose incriminating 77 -- Rule 77 evidence. And I
3 refer to decision ICC-01/04-01/06-1433, paragraph 50.

4 Let us take an example. The Prosecutor kept an autopsy report, which had been
5 given to them on 10 May 2015, using the excuse that they had to wait for another
6 report to assess the relevance of the first report. An autopsy report is necessarily
7 useful for the Defence and they should have disclosed it independently of their own
8 strategy.

9 So to avoid any such problems, they have to disclose all incriminating evidence under
10 Rule 77 that is in their keeping.

11 PRESIDING JUDGE HENDERSON: Thank you, Ms Naouri.

12 Before I go onto Mr Knoops, let me just formally recognize that Ms Massidda came in
13 just about a half an hour ago. So I just have you on record as appearing.

14 Yes, Mr Knoops.

15 MR KNOOPS: Mr President, thank you very much. We have no separate observations
16 other than the team of Monsieur Gbagbo.

17 I just want to make an additional observation. Until so far, your Chamber has addressed the
18 Regulation 35(2) matter every time on its case-by-case basis according to the jurisprudence,
19 which is of course justified.

20 Now, in light of the developments with the disclosures of the Prosecution and the
21 observations made by the Gbagbo team that were, until so far, nine applications to
22 this extent on the basis of having overlooked certain disclosure, it would perhaps be
23 of importance by the upcoming rule -- Regulation 35(2) filings if the Court would be
24 encouraged to look at, what I would say, the cumulative effect of these filings.

25 The Court can address every Regulation 35(2) application on its merits on a

1 case-by-case basis, and as such the Court can adjudicate whether the criteria are met
2 per document, per request. But in light of the repeated related disclosures, it might
3 be of importance to introduce also the legal question whether the cumulative effect of
4 all these Regulation 35(2) at the end of the day will have prejudice in its entirety.

5 So maybe I'm sure that the Prosecution will follow up its announcement with
6 Regulation 35(2) requests or applications. And it might be helpful to the Chamber
7 that the Defence will raise this issue in its response. And the Court is open to look at
8 this effect, you know, the accumulation of all these requests in its totality on the
9 fairness of the proceedings.

10 So abstracted from its ordinary case-by-case interpretation according to the
11 jurisprudence, it might be also maybe an innovative way to approach the Regulation
12 35(2) in the future before this Court. Thank you.

13 THE INTERPRETER: From the interpreters: The Gbagbo Defence had concluded by
14 requesting that the Prosecution give access to its database to all the parties. Thank you.
15 (Trial Chamber confers)

16 PRESIDING JUDGE HENDERSON: Right. So we'll hear from Ms Massidda. Are you in a
17 position to assist or will it be Mr Rojo?

18 MS MASSIDDA: Good morning, your Honour, first of all.

19 PRESIDING JUDGE HENDERSON: Good morning.

20 MS MASSIDDA: I have nothing to add in relation to the disclosure matter. Thank you very
21 much.

22 PRESIDING JUDGE HENDERSON: Thank you.

23 The representative from the Registry, do you have anything to add to that?

24 MS DAHURON-JACOBY: (Interpretation) No, Mr President.

25 PRESIDING JUDGE HENDERSON: Mr MacDonald, if I could just go back to you. You

1 had indicated that you would be addressing the Chamber on one aspect and that your
2 colleague would be addressing the Chamber on some other aspect?

3 MR MACDONALD: Well, yes, your Honour. The other aspect on your order which deals
4 with commencement of trial --

5 PRESIDING JUDGE HENDERSON: Okay.

6 MR MACDONALD: -- is the question of languages.

7 PRESIDING JUDGE HENDERSON: Yes.

8 MR MACDONALD: So unless -- but still since I'm standing up, there is just one other thing I
9 want to mention, your Honour, in reply --

10 PRESIDING JUDGE HENDERSON: Yes.

11 MR MACDONALD: -- is that for every single request we file a request, and every single
12 time the Defence has an opportunity to respond.

13 So any complaints, any legal arguments in the form of complaints, n'est pas, can be
14 addressed in writing. So I don't understand what the issue is when we're talking
15 about documents that have been disclosed pursuant to Rule 77 in the past. And yes,
16 sometimes we do find a document here or there, but the trial has not even started yet.
17 We're doing opening statements scheduled on 10 November. The presentation of
18 evidence is going to start in January. We're not flooding with new documents.
19 Over the totality of the documents that were disclosed, if you find a document here
20 and there, it doesn't recreate a whole new analysis.

21 Now, I understand the drama and the purpose of this drama, but at this stage, again, I
22 think all of these can be addressed in writing.

23 PRESIDING JUDGE HENDERSON: Mr MacDonald, let's -- not just directed to you,
24 Mr MacDonald, but to Mr Altit and Mr Knoops, it is never helpful I think in this Court's view
25 to characterize submissions in any terms other than the barest legal terms. So in that regard,

1 the characterization of submissions by one attorney as being akin to drama may provoke
2 responses. Now, we have a long way to go.

3 So the submission as I understood it of both Mr Knoops and Mr Altit essentially had
4 to do with what they considered, which they're entitled to raise, it's a matter which
5 the Chamber will ultimately have to consider, was that there have been several
6 omissions which they catalogued, which Ms Naouri catalogued as nine I believe.

7 And Mr Knoops has invited the Chamber at the appropriate time to not consider the
8 Regulation 35 applications on a case-by-case basis, but to consider the cumulative
9 impact perhaps on the preparation. It's something he's entitled to do.

10 And when it does happen, if it does come, as he has foreshadowed it may, the
11 Chamber will deal with it. But at this point the Chamber will just invite everybody
12 just to keep it calm.

13 We have a very long way to go. So let's just keep it calm.

14 All right. So thank you very much on that aspect. Let's move on.

15 The Court, the Chamber would like to hear from the representatives of the Registry
16 from the VWU. Now, let's see, I think we have a problem with space with the
17 Registry bench so that perhaps -- do we have the VWU in court at this particular
18 moment or is it just the detention Registry staff?

19 MS DAHURON-JACOBY: (Interpretation) No, Mr President. But they are ready to come
20 if requested. If you wish the VWU to be present here now, then please allow us to let the
21 detention centre representatives leave.

22 PRESIDING JUDGE HENDERSON: Yes. Thank you. We would in fact do that. I
23 recognize, the Chamber recognizes that there is a space challenge and that we had the
24 detention staff because we did begin with a detention hearing. So we thank the detention
25 personnel for coming to assist the Court. The Court is always happy to get the assistance to

1 get the fullest and best picture. So you are relieved from attending and we will have the
2 VWU staff replace you. So you can leave. Thank you very much.

3 The VWU have been requested and they will be here momentarily.

4 MS DAHURON-JACOBY: (Interpretation) Mr President, this is Ms Isabelle Oseredczuk
5 and Madam Kaprielian of the VWU. And the detention centre representatives have now left
6 the courtroom.

7 PRESIDING JUDGE HENDERSON: Thank you. Just as a note, when we do start in the
8 new building, I know that there is considerably more space that would allow people to be less
9 cramped both on Prosecution side, the Defence side. So that come next year when we do
10 start, you will find that the accommodations are a little more spacious. So you can look
11 forward to that.

12 So VWU, to put you on the spot right away, you have just come, thank you for
13 coming, the Chamber would like to hear from you in principle on how much time in
14 advance does the VWU need to receive the approximate dates of testimony to prepare
15 for trial in -- to prepare for trial? And if the Chamber has set the evidence stage as
16 beginning in January, how much time in principle would you need?

17 MS KAPRIELIAN: Thank you, Mr President. I know that so far there isn't an approved
18 protocol for the familiarization of witnesses. But leaning back on protocols that have been
19 approved in other Chambers, we have maintained a requirement of a minimum of 35 days
20 where we would receive the witness information, details of witnesses, identifications, et cetera,
21 et cetera, so that we are able to prepare.

22 The time would be needed basically to make sure that we have arranged all the
23 necessary travel documents, visas, where possible and needed, vulnerability
24 assessments and so on in the field. So I would maintain the same line of saying a
25 minimum of 35 days, your Honour.

1 PRESIDING JUDGE HENDERSON: All right. Do you -- and you have raised the issue of
2 visas. Do you foresee any issues or are you in a position to say whether you foresee any
3 difficulties regarding travel documents, visas, that sort of business?

4 MS KAPRIELIAN: In fact, I understand that the first list of 20 witnesses as per their order of
5 appearance will be submitted by the OTP on 15 October. The minute we have that order, in
6 fact, as of today we invite the OTP to already start sending us their witness information sheets.
7 And, in fact, as I understand it, some of them have been forthcoming if I'm not mistaken.
8 But the minute we receive that list of 20 witnesses per their order by 15 October, we
9 will immediately start the process of requesting passports.

10 At this stage we do not foresee any difficulties, but should anything arise, we will
11 simply inform the calling party as well as the Chamber.

12 PRESIDING JUDGE HENDERSON: All right. Mr Prosecutor, is there anything arising out
13 of that?

14 MR MACDONALD: It is one of the reasons why, your Honour, we requested an
15 opportunity to discuss the start of the trial and to have a scheduling idea. It impacts greatly
16 first on the witness information sheets that we have to provide to the VWU for them to come
17 and travel, for them for organised travel of the witnesses, and it impacts also on the selection
18 of our 21st witness, the 21st witnesses that we intend to call and the overall case strategy of
19 the Prosecution in presenting its evidence.

20 So it's all interlinked because some people, for some people it's quite easy to obtain
21 passports, they already have passports, for others it may be a little bit more
22 complicated and if we want those in the first 20.

23 Also a big factor to consider is that we're overlapping, depending on when the trial
24 starts, we're overlapping with the Christmas holidays. Therefore, for an
25 international institution, as you know, that period in December is one of travels to far

1 destinations for some people. So this has to be factored in. And this is why we
2 welcome the fact that we'll have an opportunity to discuss it in a separate status
3 conference. So we are sending the WIS on a regular basis as they come in. We have
4 been working on this obviously, your Honour, for a number of weeks now. We're
5 not finished. We have 138 witnesses scheduled to testify. Hopefully we'll be able
6 to bring that number down.

7 But yes, what I can say is that the sooner we know when we will be presenting or
8 calling witnesses for the number of weeks in a row that the Chamber may be sitting
9 the better it is, because witnesses, it also impacts if I should say, your Honour, at a
10 minimum also on their psychological well-being for some knowing that they're to
11 come and when.

12 PRESIDING JUDGE HENDERSON: Thank you, Mr MacDonald, on that.

13 It's now 11.30. We will take the mid-morning break of exactly one half hour and we shall
14 resume at 12.

15 THE COURT USHER: All rise.

16 (Recess taken at 11.29 p.m.)

17 (Upon resuming in open session at 12.05 p.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE HENDERSON: Right. Thank you. Okay, so we shall resume.

21 Now, Mr MacDonald, we didn't deal with the issue of languages. So perhaps I could hear
22 from your colleague now on the issue of languages.

23 MR DEMIRDJIAN: Good day, your Honours. Alexis Demirdjian for the Prosecution.

24 I will be dealing very briefly on this matter considering the time we have left to -- all other
25 matters.

1 As you will have seen from our filing of 30 June, we have 137 witnesses on the list and out of
2 those we can inform the Chamber at this stage that about 100 or 101 witnesses will be
3 testifying in French.

4 I'm saying this as an approximate number because we are still in the process of
5 contacting our witnesses to ensure their preferred language. Some have expressed
6 preference to express themselves in the Dioula language; there are 21 of those currently.

7 And we have 15 witnesses who wish to testify in English.

8 There is one other language for one of our witnesses, which was the subject of a
9 confidential filing. I will refer to the filing number, it's filing number 115, at
10 paragraph 12. And if need be we can deal with it in private session, your Honours.

11 But coming back to the languages, so those are the main languages; we can expect
12 English, French and Dioula.

13 When it comes to counsel, of course, depending on the witnesses, you may expect us
14 to lead our examinations in French or English depending on the language of the
15 witness. Our team is composed of a mix of lawyers from various jurisdictions.

16 So, your Honours, that is it. If you would like me to mention the language of the one
17 witness who was the subject of a confidential filing I can do that in private session,
18 otherwise you have the filing number and the paragraph number.

19 PRESIDING JUDGE HENDERSON: I don't think we would need to hear that.

20 MR DEMIRDJIAN: In that case, I have exhausted the matter, your Honours.

21 PRESIDING JUDGE HENDERSON: Thank you.

22 Mr Altit, anything arising out of that?

23 MR ALTIT: (Interpretation) Thank you, your Honour. Ms Naouri will set out our
24 position on this.

25 MS NAOURI: (Interpretation) According to our current investigations, it would seem that

1 all of the witnesses called by the Defence would be speaking French. The working language
2 of the Gbagbo Defence team is French, and the language spoken and answered perfectly by
3 Laurent Gbagbo is French, so it will be French. Thank you.

4 PRESIDING JUDGE HENDERSON: Mr Knoops.

5 MR KNOOPS: We have no observation, Mr President. Thank you.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 Ms Massidda.

8 MS MASSIDDA: Thank you, your Honour. For us our previous submissions remain the
9 same. It will be French, Dioula and Bambara eventually. Thank you.

10 PRESIDING JUDGE HENDERSON: Thank you.

11 Before we move on, any observations by the Registry?

12 MS TOMIC: Thank you, Mr President. Chief of language services, Alexandra Tomic.

13 We just would like to say that with regard to the Dioula-speaking witnesses, we
14 would appreciate considerable notice. And I'm talking four to six weeks' notice.
15 We will be able to provide simultaneous interpretation, but in order to carry out the
16 logistics, the visas, the travel arrangements, almost the same as for witnesses except a
17 little more complicated.

18 And we would also appreciate if they could be grouped together. I know this is not
19 always possible, but planning is of the essence because it is not a language that we
20 have around the corner. Thank you.

21 PRESIDING JUDGE HENDERSON: All right.

22 Mr MacDonald, anything arising out of that?

23 MR MACDONALD: Yes.

24 PRESIDING JUDGE HENDERSON: And the --

25 MR MACDONALD: We're very much conscious of the advantages of grouping witnesses,

1 but there is also a chosen order of presentation of the Prosecution's evidence.

2 Notice is given. Notice has been given for over six months now that Dioula will be a
3 language that will be used. So we will provide notice in the order and Registry will
4 be informed. The Chamber's direction foresee -- four weeks, we will do our best, we
5 will cooperate obviously as best we can.

6 It impacts also on the Prosecution. Just for example, witness preparation if granted, we will
7 have to have Dioula interpreters for the office. These are unfortunately the cost of doing
8 business, and it's -- you cannot circumvent that. But we take note of the wish of Registry and
9 we'll try to accommodate as best we can.

10 PRESIDING JUDGE HENDERSON: I think that's all that has been asked.

11 All right, so with those, thank you very much.

12 We can now move on to the next item on the agenda, to what I had earlier indicated would be
13 number 2, and this has to deal with the Rule 134(2).

14 Now, the Chamber takes note of the request by the Gbagbo Defence to add to the
15 agenda objections or observations on the conduct of proceedings pursuant to Rule
16 134(2).

17 In respect of this, if the parties or participants know now that they would like to raise an
18 objection or make any observations on the conduct of proceedings since the confirmation
19 hearing, the Chamber would be pleased to receive these by 1 October 2015 in order to avoid
20 any unnecessary delays to the start of the trial.

21 The Chamber does note, however, that Rule 134(2) specifically provides that the
22 Chamber shall ask the parties and participants if they have any objections or
23 observations at the commencement of the trial.

24 Having said this, I now give the floor to Mr Altit to make any submissions on this
25 agenda item.

1 MR ALTIT: (Interpretation) Thank you, your Honour. We have taken note of your
2 request, in other words, to inform you before 1 October or at the latest on 1 October of our
3 intentions on this matter.

4 The question we wanted to raise today is slightly different, but it is complementary to the
5 matter that you have just mentioned, and it is to find out whether in the light of the fact that
6 the Chamber has clarified the procedure for the opening statements, particularly the order for
7 the parties in which to speak and the time that will be available to them, the Chamber had
8 said it would follow the following order: Prosecution, Victims, Gbagbo Defence, Blé Goudé
9 Defence.

10 As the decision doesn't make any mention of the time allocated for any comments or
11 preliminary statements based on Rule 134(2) or pursuant to Rule 134(2), the Defence
12 wanted to make sure that the possibility of making such observations would be
13 included in the proceedings as planned for the hearing on 10 November 2015 as such
14 observations have to be made before the opening statements proper.

15 So what we're trying to do is to make sure that as regards the procedure provided for
16 in the hearing, there is room earmarked for any such observations before the start of
17 the opening statements themselves given that the parties of course will inform the
18 Chamber at the latest on 1 October of any such intentions that they might have in this
19 regard.

20 PRESIDING JUDGE HENDERSON: Let us see if I can understand you clearly. Now, the
21 Chamber has made provision for -- the Chamber has made provision for opening speeches on
22 the one side. The Chamber has invited parties, participants to make any objections, any
23 observations made known, if possible, by 1 October. We have also recognized that the
24 Chamber specifically under Rule 134(2) shall ask the parties and participants if they have any
25 objections, observations at the start of the trial.

1 But now from a case management point of view, it is always ideal if it is that you are
2 aware of issues beforehand that you address these as you see them so that the
3 Chamber can for good trial management purposes deal with the issues because it may
4 impact the efficient running of the trial. You would agree with me, would you not?

5 So what the Chamber -- now, Rule 134(2) as I understand it does require that the
6 Chamber ask you if you have these -- have any objections or any observations, so it
7 must be provided for.

8 All that the Chamber is saying is that if you know now or by October 1 from your
9 papers, from the preparations what issues you may wish to raise, it is ideal to raise
10 them before.

11 Conversely, if it is that you have an idea as to what you may wish to make
12 observations on even now, it is less than ideal from a time management point of view
13 to raise it on the morning of the first hearing. That's all that the Chamber I think
14 would be saying.

15 So do you follow me?

16 MR ALTIT: (Interpretation) Your Honour, yes, I think so. If I've understood correctly,
17 and it's perfectly legitimate, the Chamber wishes to be informed as early as possible in order
18 to be able to organize itself. It's very clear, and we will, of course, follow your instructions.

19 Now, if we were to desire to raise a number of points pursuant to Article 134(2),
20 would we have on 10 November an amended proceeding that would quite simply
21 take account of in the event of one of us perhaps wanting to wish to discuss these
22 elements before the opening speeches proper, would we have in the proceedings an
23 amendment, shall we say, mentioning the fact that there is time allocated for
24 discussion under Rule 134(2) prior to the opening speeches proper? Please say if I'm
25 not expressing myself clearly.

1 PRESIDING JUDGE HENDERSON: You've expressed yourself clearly. Just a moment.

2 (Trial Chamber confers)

3 MS PACK: Your Honours --

4 (Trial Chamber confers)

5 PRESIDING JUDGE HENDERSON: Yes? You wish to -- did you wish to say something?

6 MS PACK: Your Honours, yes, we did wish to address you from the case management point
7 of view on the Defence observations if it would assist.

8 PRESIDING JUDGE HENDERSON: It would assist.

9 MS PACK: Grateful. Your Honours, we don't see Rule 134(2) as providing a means by
10 which the Defence can raise again the same issues that have been canvassed in written filings
11 as at the date of commencement of the trial. It seems to us, and it follows from your order of
12 7 May, that the parties should appropriately file via written submissions any objections or
13 observations concerning the conduct of proceedings by 1 October. And if anything newly
14 arises thereafter, then that might be appropriately dealt with thereafter.

15 But if there are issues that are existing or foreseeable as of the date of filing on 1 October, in
16 our submission it would be appropriate for those issues to be raised by then. So from the
17 case management perspective, that would be our observation.

18 MR ALTIT: (Interpretation) Your Honour.

19 PRESIDING JUDGE HENDERSON: Yes.

20 MR ALTIT: (Interpretation) Thank you. If I may, in order to answer and to try to
21 circumscribe the discussion, I think our point is perfectly clear. It doesn't go as far as the
22 limits set out here. Article 134(2) provides that at the commencement of the trial, the Trial
23 Chamber shall ask the Prosecutor and the Defence whether they have any objections or
24 observations concerning the conduct of the proceedings which have arisen since the
25 confirmation hearings at the commencement of the trial, in other words 10 November.

1 The point we are making is as follows: Can we take it as read -- and if I might say,
2 that means it has of course to be before the opening speeches proper, it can't come
3 after those opening statements. So it's prior to the start of the trial.

4 So the point we're making or question, if you like, is whether what we have under Rule 134(2),
5 whether this can be added to the planned proceedings of 10 November 2015 as the first point,
6 because it's only once the Chamber has heard the parties on objections that they might wish to
7 raise that it will then be possible to hear the opening statements.

8 (Trial Chamber confers)

9 PRESIDING JUDGE HENDERSON: All right. What the Chamber would and is prepared
10 to say at this stage, which you may not consider particularly helpful, but that Rule 134(2) does
11 expressly provide that the Chamber is mandated to ask the parties and the participants if they
12 have any objections or observations at the commencement of the trial.

13 So having said that, and I wouldn't want to go beyond that except to repeat what I had
14 originally said that from a case management point of view, it could not be ideal if there are
15 observations or objections which you can foresee, either party or participant can foresee that
16 should not be raised before, because ultimately the purpose of these series of case
17 management or status conference hearings is to so manage the case to usher it to trial
18 readiness.

19 Once it is seen in those terms, then it would not be helpful to, on either side or party
20 to, as it were, have some objection or observation which you are aware that you wish
21 to raise, but for whatever purpose you don't raise it until the morning of the hearing,
22 which the obvious impact would be to undermine the steps taken, the careful steps
23 taken to manage the case towards trial readiness.

24 Having said that, the Court, the Chamber is mindful of its obligation under Rule 134(2)
25 and is mindful of the need that it has to be addressed. The Chamber would urge the

1 parties and the participants to therefore in approaching any concerns that they have
2 to deal with these not -- if I could be forgiven for using the term "tactical," not for
3 using it in a tactical or last-minute way, if you know you have to use it, but to raise it
4 so that the Chamber can deal with it, because there is no advantage to anyone, to the
5 accused, to the witnesses, to the attorneys, to the Chamber if we can deal with
6 something in a carefully -- in a careful way with full preparation rather than having
7 something foisted or raised at the last minute. It's always better.
8 That's the only observation that the Chamber would wish to make on its approach to
9 Rule 134(2).

10 So that is it. Is there anything else arising out of it?

11 Mr Knoops, have I invited your submissions on this point?

12 MR KNOOPS: You didn't, Mr President.

13 PRESIDING JUDGE HENDERSON: Please forgive me.

14 MR KNOOPS: I have no observations.

15 PRESIDING JUDGE HENDERSON: Ms Massidda?

16 MS MASSIDDA: No, your Honour. We have no observation. Just for the information of
17 the Chamber at this point in time we do not intend to make any observation of the conduct of
18 the proceedings, if I can be of assistance at least in answering, unless some issue will come up
19 from now until the beginning of the commencement of the trial. Thank you.

20 PRESIDING JUDGE HENDERSON: And the Chamber is always grateful for these sort of
21 heads-up. Thank you very much.

22 And conclusion of this point before we move on to the next issue, anything, Mr Altit,
23 arising out of that?

24 MR ALTIT: (Interpretation) No. Thank you, your Honour.

25 PRESIDING JUDGE HENDERSON: Thank you.

1 We will now go on to the next issue on the agenda being that of pre-trial briefs. Now, in its
2 proposal for items to be added to today's agenda, both Defence teams raised issues
3 concerning the Prosecution's pre-trial brief. As you know in our decision on Defence
4 requests relating to the Prosecution's pre-trial brief which was filing 224, the Chamber has
5 already adjudicated several matters related or relating to the pre-trial brief which is now the
6 subject of a pending request for leave to appeal. That's filing 223.

7 This request is currently under submission and the Chamber will render its decision
8 in due course. Thus, if the parties have any new issues to raise in relation to the
9 pre-trial brief, the Chamber will now give the floor to the Defence teams to do so.

10 Thereafter I'll give Mr MacDonald an opportunity to respond.

11 Mr Altit, I'll start with you.

12 MR ALTIT: (Interpretation) Thank you, your Honour. Ms Naouri will present the
13 Defence's position.

14 MS NAOURI: (Interpretation) The first issue regarding everything that happened relating
15 to the pre-trial brief, the consequence is that the pre-trial brief is not the useful tool that it
16 should have been. First of all, it is not finalized. The Prosecutor submitted its entire
17 evidence on 30 June as requested from the Judges and the other document on 16 July. They
18 also requested to amend the pre-trial brief under Regulation 55 and today they still wish to
19 amend that pre-trial brief. The Prosecutor informed the Chamber that they wished to amend
20 after receiving the statement of P-483.

21 They also said that they wished to amend the list of evidence and consequently they
22 would amend the pre-trial brief to include that list of evidence. And today they
23 have told us that once again they wish to amend the pre-trial brief.

24 This is a problem for the Defence because we need a finalized version. There is no
25 consolidated version. We have bits and pieces of documents here and there. We

1 need a final consolidated version notified to the parties so that the parties,

2 participants and Judges should have one official working document.

3 Today, if the parties and participants refer to page 1 to 240, they have to refer to other
4 documents. And if they wish to refer to other parts of the pre-trial brief, they have to
5 refer to page 192 of annex 2. So these are the reasons why we need a consolidated
6 version of the pre-trial brief.

7 The Prosecutor has insisted that whatever the document used in the preliminary
8 phase, the DCC or pre-trial brief, this document will contain hyperlinks making it
9 possible to access the electronic versions. And according to the Prosecutor, all the
10 evidence used by the Prosecution will through the hyperlinks be referenced in the
11 pre-trial brief enabling the Defence to be notified of the charges.

12 They made that commitment regarding the hyperlinks, but they have not complied
13 with that commitment, whether in the English version or in the draft French version.
14 There are no hyperlinks yet. So consequently it is necessary for the Prosecutor to
15 notify to the parties the versions with the hyperlinks so that the Defence should be
16 able to work.

17 Regarding the final translation, the Defence has just filed an application for appeal to
18 be able to work on a French version of the pre-trial brief. We would like to stress
19 that working with an unrevised version of the pre-trial brief undermines the work of
20 the Defence.

21 There are errors of translation between the pre-trial brief in English and the pre-trial brief in
22 French, and these errors are prejudicial to the work of the Defence, because sometimes they
23 change the nature of the allegations, and it is therefore necessary for the Defence to
24 systematically verify paragraph by paragraph that the translation is accurate. So that is an
25 enormous amount of work.

1 So we really need a final version, a final revised version of the pre-trial brief so that
2 the Defence has to -- should be able to work. And this can only be possible if there is
3 a consolidated final version in English which would make it possible for the Defence
4 to work.

5 We cannot prepare for such an important trial based on bits and pieces of a document
6 which has not been finalized and revised and in which there are no hyperlinks.

7 It is very important to have a pre-trial brief because it is the only document that gives
8 the totality of the case of the Prosecutor against the accused. So a pre-trial brief in
9 several pieces, in several languages, without a finalized translated version in
10 view -- in the view of the parties and participants cannot constitute a reliable
11 foundation for such important work. Thank you.

12 PRESIDING JUDGE HENDERSON: Right. I will hear from Mr MacDonald, but
13 Mr MacDonald I think had sort of foreshadowed what he would be saying on this at the
14 commencement.

15 Mr MacDonald.

16 MR MACDONALD: I don't know if you want to give an opportunity to Mr Knoops to also
17 put forward any arguments on that and then I can answer to both of them, yes, at once.

18 PRESIDING JUDGE HENDERSON: Mr Knoops, you had also raised some concerns, yes?

19 MR KNOOPS: Yes, Mr President.

20 Thank you, Mr MacDonald.

21 Mr President, your Honours, it's not my intention to create more work in this Court
22 and more documents. I just have on behalf of our team an observation which is
23 meant to raise because it might be helpful for your Honours and also the other
24 participants and parties to these proceedings in dealing with the transparency of the
25 pre-trial brief.

1 It relates to section V. This section is about individual criminal responsibility. Your
2 Honours have set in the order for the commencement of the trial in para 26 the
3 guideline for the Prosecution. It was actually also propositioned by the Prosecution
4 himself, to explain the relation between the evidence and the alleged charges,
5 including, it's my interpretation, the issue of individual criminal responsibility.
6 Now, in my submission, the section V of the pre-trial brief will cause all the parties
7 during the trial potential practical problem. I give you just two examples for the
8 sake of time. If you look, for instance, in section V to footnote 1398, it refers to
9 section III(C)(5). Section III(C)(5) relates to the alleged mobilization of the youth for
10 violent acts.
11 If you go to this section III(C)(5) you will see that this section comprises 6 pages and
12 38 footnotes, footnote section 27 'til footnote 665. That's 38 footnotes.
13 And moreover, within some of these footnotes in this subsection, III(C)(5), you will
14 find in those footnotes in that subsection also references to new sections. For
15 instance, footnote 663 refers to section III(C)(7). Footnote 664 refers to section IV(8).
16 665 refers to III(C)(4) and V(1)(b), et cetera.
17 Second example of the difficulty to grasp the underlying evidence and the relation
18 between the material the Prosecution and the charges is footnote 1369. It's I think
19 even a more clear example of the -- I think the difficulty we'll all encounter when we
20 have to deal with the Prosecution theory and the examination of witnesses is this
21 footnote 1369 refers to section III(C).
22 III(C) relates to the alleged sharing of the intention to have a common plan. That's
23 Article 25(3)(a). That's the reference in the pre-trial brief.
24 The reference in section V on alleged individual criminal responsibility to section
25 III(C) relates to 46 pages which comprises 322 footnotes, namely footnote 503 'til

1 footnote 825. It's pages 87 'til 133.

2 So the reader of the brief is in chapter 5 confronted with a cross-reference to another
3 section, which other section also comprises of reference to subsections, which means
4 that in its totality, the reader is confronted with a labyrinth of more than 300
5 footnotes.

6 And just an example of the second category, this footnote 1369 in chapter V, it's
7 footnote 807, refers to section IV(B)(1) and footnote 730 refers to section IV(C)(3).

8 So also here you find a cross-reference to other sections which also comprises of
9 different footnotes.

10 In other words, in the case of Mr Blé Goudé where according to also page 192 of the
11 Prosecution pre-trial brief, all the modalities of Article 25(3) are to be -- he's to be
12 charged with. There is no specific evidence which underlies each different alleged
13 liability mode; and, therefore, it's questionable whether section V of the brief complies
14 with your Honours' instructions that there should be a relation between the alleged
15 evidence and the charges as per paragraph 26 of the order of the commencement of
16 the trial.

17 These are just two examples. And for the sake of time, I will restrict myself to these
18 two examples. So my question is to you, to the Bench and also the Prosecution: Is
19 this sufficient for us to start a trial without having the specific evidence in mind which
20 underlies all the different alleged liability modes in the case of Mr Blé Goudé, which
21 indeed are fourfold.

22 If your Honours, for the sake of time, wishes us to make a submission on this in
23 writing, we're ready to do so next week. But it was I think my obligation to alert this
24 problem, because along the road to the Court trial, our team faces the difficulty that
25 this section V is not giving us any concrete direction where what evidence the

1 Prosecution is really in concreto applying for each different liability mode. Thank
2 you.

3 MS NAOURI: (Interpretation) Mr President, very, very quickly, I would like to clarify one
4 point. A short while ago I said obtaining a French version needs the existence of a final and
5 consolidated English version, which does not yet exist. So obviously we work on a French
6 version, but this depends on the existence of a final and consolidated English version, which
7 will then be translated into French and then we will work on that version. I'm sorry, I may
8 not have been very clear. That is what I wanted it clarify. Thank you.

9 PRESIDING JUDGE HENDERSON: You were clear. We understood you before.
10 I will invite Mr MacDonald shortly.

11 But in the context that the pre-trial brief is an auxiliary document, does that in any
12 way impact your submissions, Mr Knoops, about as you say or as you describe it, this,
13 is it sufficient to start a trial? Is the presence of an auxiliary document mandatory in
14 the form that you wish for it to be ready for a trial to begin? Do you follow?

15 MR KNOOPS: Thank you, Mr President. Two observations. First of all, it was in the
16 context of an auxiliary document that your Honours instructed the Prosecution in para 26 to
17 explain how the evidence relates to the charges. So it's your Honour's direction itself to the
18 Prosecution which actually proposed this brief itself.

19 Secondly, the problem is in the case of Mr Blé Goudé, there are several alleged
20 liability modes with which he's charged. And the practical problem our team faces
21 is that we, for instance, when it comes to, and that's the first example I gave, the
22 footnote 1398, this is being put in the context of Article 25(3)(b), the alleged ordering
23 or inducing.

24 If you were to have to deal there with 38 footnotes which also cross-reference to other
25 sections which also build on footnotes, it's for our Defence difficult to imagine what in

1 concreto the pieces of evidence are to underlie this specific charge of Article 25(3)(b)
2 and the same counts for the second example.

3 So of course the pre-trial brief, we understand, it's a document which it would be
4 helpful for the parties and, with all due respect, the section V as it's currently framed
5 is not assisting our team in preparing specifically the trial in light of these examples.
6 Thank you.

7 PRESIDING JUDGE HENDERSON: Thank you.

8 Let me hear from Mr MacDonald. Are you in a position to respond?

9 MR MACDONALD: Thank you, your Honour. On this last point raised by Mr Knoops on
10 part V, my colleague Mr Dermirjian will answer that specifically. I will now address more
11 precisely the points raised by the Gbagbo Defence team.

12 The Prosecution intends to file an updated pre-trial brief like I said earlier this
13 morning with the ERNs or adding footnotes. We do not have an intention to touch
14 upon the content of the document. So primarily we're looking at the footnotes to
15 add new sources in light of the decisions you have delivered or may deliver shortly.

16 So in other words, it's an order to help the Defence, to provide them with notice. But
17 the factual allegation and how we interpret that factual allegation is already there.

18 We're not creating new content. We're adding new sources. These sources have
19 been disclosed already to the Defence apart from the final version of the French
20 translation of the transcripts of 483, that's the only example, and piecemeal
21 documents that you will rule upon in due course.

22 So it's not recreating or reinventing the wheel or the case, because I think it is quite
23 clear, and you said these are new items, let's not rehash. But there is a Document
24 Containing the Charges. Prosecution sets the charges. The Chambers, the Pre-Trial
25 Chamber, sorry, confirms these charges and that was done. So the notice is there.

1 And you said it's an auxiliary document.

2 The hyperlinks, we will, but the main and biggest issue that we were being
3 confronted with, including with the Defence teams, is to have a joint eCourt. We
4 have the Gbagbo eCourt. We have the Blé Goudé eCourt. And now it was to put
5 this as you had ordered in the joint case eCourt. That is being finalized. And the
6 difficulty that we have is that there are different redacted versions of some documents
7 or statements, and there is a suffix to the Defence. We have the ERN and then R01 or
8 R02, R03. We're just making sure at this very moment that the least redacted version
9 is accessible by the Defence in eCourt. The Chamber has access to the unredacted
10 versions in eCourt, but the Defence have only access to the redacted versions. So
11 this is being finalized. Once that is done, then we can provide the hyperlinks to the
12 Defence, but right now -- which facilitates.

13 But right now they have a 250-page document with over 1,300 footnotes, with over
14 7,000 ERNs. The information is there. They can cut and paste the ERN and put
15 them in their own system. I understand. And that's what we are doing ourselves.
16 But I mean, the hyperlinks of course will help. I understand. But it does not
17 impede on the Defence preparation of an auxiliary document.

18 My colleague, Mr Demirdjian, will now address the issue of part V.

19 MR DEMIRDJIAN: Thank you, your Honours. So going back to section V of our pre-trial
20 brief, your Honours, counsel for the accused Mr Blé Goudé has been arguing that the
21 footnotes which are contained in that section of our brief reference to previous section of the
22 brief, and that as a result this is making that review or it is hindering a proper review of
23 section V.

24 We disagree, your Honours. First of all, every paragraph of section V contains a
25 footnote. Indeed, almost every sentence in that section contains a footnote. And

1 these footnotes refer the reader back to earlier sections where we will have
2 established the factual background, that is to say that section V is the moment where
3 we're applying the law to the facts. If we were to repeat all the evidence that had
4 been already footnoted in the earlier sections, our pre-trial brief would go on for
5 several hundred pages, and I think that this is an impractical way of dealing with
6 what is essentially a legal section where the Prosecution is presenting the Chamber
7 with our conclusions or our position on the responsibility of the accused.
8 So for example, if we refer to the accused's involvement in arming of mercenaries or
9 members of the youth, it would be impractical for us to repeat all the footnotes which
10 would have been incorporated in let's say a five-page section dealing with that very
11 topic. What we are saying in section V is that the accused participated in the
12 commission of the crimes in the way that we have described in relation to, for
13 example, the arming of mercenaries. So we don't need to repeat once more all the
14 evidence, all the citations, and all the references once more in this section V.
15 One other aspect of this is that there are two categories of cross-references. One of
16 them my learned friend Mr Knoops referred to was what I would call a very general
17 reference, for example, section III(C), it is a very general concept, the common plan.
18 However, we have also ensured, and if you look at the footnotes of section V, we have
19 ensured to provide very specific references to subsections, and these subsections
20 sometimes are a page long, and yes, sometimes they will be five or seven pages long.
21 So those are more specific references, and in those situations and most situations, this
22 is what we've provided. We've provided very specific references.
23 So for example, if we say that the accused participated in the common plan, of course
24 we will provide the more general section number III(C), but we've ensured to provide
25 them more specific reference as well.

1 I believe that the example that Mr Knoops gave us with respect to -- what was
2 footnote number? Never mind, your Honour. I think I made the point on this
3 issue.

4 I'd like to also bring the attention of your Honours to the fact that this way of drafting
5 legal sections at the end of the brief also matches with the way the Pre-Trial Chamber
6 issued its decisions on the Confirmation of the Charges. If one reverts back to these
7 decisions, you will find that Section III, part III of each of these confirmation decisions
8 deal with the mode of liability of the accused and contain almost exclusively footnotes
9 which cross-reference back to where the Pre-Trial Chamber made factual findings.

10 So for that purpose, your Honours, I think that --

11 PRESIDING JUDGE HENDERSON: Okay. We get your point.

12 MR DEMIRDJIAN: Yes. Thank you, your Honours.

13 PRESIDING JUDGE HENDERSON: Ms Massidda, is there anything you wish to add?

14 All right. Thank you.

15 The Chamber takes notes of the submissions and we will deal with this in due course.

16 I have a keen eye we have an half an hour left and we still have three items to deal
17 with.

18 Now we'll move to the item on the agenda which is updates on consultations to jointly agree
19 on expert witnesses. The Chamber recalls that in its directions on the conduct of proceedings,
20 filing 205, the Chamber directed the parties to engage in inter partes consultations to jointly
21 agree on experts who will testify during the trial.

22 So I would now like to hear from the parties about any progress which you may have
23 made in that direction.

24 Mr MacDonald.

25 MS PACK: Your Honours, I can address you briefly on this issue.

1 PRESIDING JUDGE HENDERSON: Yes.

2 MS PACK: There haven't been consultations as such to jointly agree on experts who were
3 previously instructed by the Prosecution, and we don't presently foresee that there will be any
4 joint experts agreed, but what we have done is submit this week, on Tuesday, a proposal to
5 the Defence teams that they each accept or agree the expertise, at least, of each of the experts
6 who we have instructed, i.e. that they agree their qualifications as experts.

7 So that is as far as we have gone. We thought that this may save a little time, but that is our
8 position presently. Unless I can assist any further?

9 PRESIDING JUDGE HENDERSON: It would have been desirable if it could have gone
10 further, but let me hear from mister -- but at least on the expertise of the prospective
11 witnesses?

12 MS PACK: Yes, what we've done is just request that in respect of each of our experts,
13 proposed experts, that their qualifications as such, their expertise as such is agreed. And that
14 may indeed save a little time. But as I say, the experts were otherwise previously instructed
15 by the Prosecution in advance of your directions on conduct.

16 PRESIDING JUDGE HENDERSON: Okay. Thank you, Ms Pack.

17 Mr Altit.

18 MR ALTIT: (Interpretation) Thank you, your Honour. As has just been recalled to you,
19 we received the proposal from the Prosecutor just three days ago.

20 Given the significant amount of work we have to carry out, obviously it's too early for us to
21 say anything on this. We're going to take a very close look at this along the lines set out to us
22 by you in order to try to save time and rationalize the work of the Court. We'll take a look at
23 the proposal and we hope that we, too, will be able to reach an agreement.

24 We have taken note of the date that you set for all of the parties, 1 December.

25 PRESIDING JUDGE HENDERSON: Thank you.

1 Mr Knoops.

2 MR KNOOPS: Mr President, our team is currently reviewing the list of prospective experts,
3 and we can hopefully in due course file our first response. We have already identified some
4 experts with the qualification of whom we will probably not agree, but we're working on the
5 list and we will inform the Prosecution as soon as possible.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 Ms Massidda, do you have anything to add concerning this item on the agenda?

8 MS MASSIDDA: Thank you very much, your Honour. Very briefly, we are aware of the
9 decision on the conduct for the proceedings but, however, we'd like to make a point in
10 relation to the experts.

11 There are experts on the list of witnesses of the OTP who are of crucial importance for victims.
12 I'm thinking, for instance, of experts in relation to harm suffered. This is crucial for the
13 interest of our clients. So we contend that it is not only for the parties to eventually consult
14 on this issue, but that the Common Legal Representative should also be consulted in relation
15 to possibly joint instruction of experts, if any.

16 Now, the Office of the Prosecutor has just said that these experts were already
17 instructed, therefore the experts have already provided a report without having
18 afforded the possibility of this issue of jointly consult and, therefore, jointly instruct
19 the expert.

20 So I understand that at this point in time this is not possible for the experts who
21 already provided reports on behalf of the Office of the Prosecutor. However, if in
22 the future there will be any discussion on joint instruction, for instance on matters on
23 which the expert could be questioned, then at that point in time the Common Legal
24 Representative will request to be part of such joint instruction.

25 Final, I don't see either the point, your Honour, for not being copied with any

1 communication in relation to the experts, who are on the list of witnesses of the OTP.

2 We have access to the document, so we don't see the point of not being in the loop for
3 anything concerning this issue. Thank you very much.

4 PRESIDING JUDGE HENDERSON: Thanks, Ms Massidda. The Chamber takes careful
5 note of your submissions.

6 We move to the next agenda item, which is updates on the progress made to reach
7 agreements about non-contentious issues or updates on agreed facts.

8 Now as you know, in the Chamber's order setting the trial, the Chamber ordered the parties
9 to liaise with each other with a view to reaching agreements about non-contentious issues,
10 there be no need to have to waste time if things can be agreed.

11 In this respect a joint report on the progress was made, filed on 1 September in filing
12 201. And in that joint report, the parties indicated that discussion on agreed facts
13 was stalled because the proposal by the Prosecution were provided to the Defence
14 teams in English.

15 Nevertheless, the parties were able to agree on 73 facts, and the Chamber takes note
16 of this.

17 The Chamber would like to know whether the parties are able to provide any further
18 updates made since that last report, joint report was filed.

19 Mr MacDonald.

20 MR DEMIRDJIAN: Your Honours, just a small clarification. The facts which were
21 proposed by the Prosecution were provided in French. I think the difficulty the Defence was
22 having is with the pre-trial brief being in English. So that is small clarification on that issue.

23 PRESIDING JUDGE HENDERSON: I see.

24 MR DEMIRDJIAN: Your Honours, as you have seen, on 1 September, we had agreed to 10
25 facts and 62 acronyms. Since then, I could report to the Chamber that just this week we have

1 finalized an agreement on 10 additional facts, and these facts are limited, again, to the first
2 batch of proposed facts we had submitted to the Defence on 7 August.

3 We are hopeful to reach more agreements. A lot of the facts that we have proposed
4 we believe are very basic and deal with the historical and political context. Some of
5 them also very basic information relating to the crime base, such as the date and the
6 locations, et cetera.

7 So we are in ongoing discussions with our learned friends from the Defence and we're
8 encouraging further discussions to reach these agreements.

9 I will not go back on the matters that are already contained in the first report, but we expect to
10 be able to file a second report, at least, on these 10 additional facts very shortly. And perhaps
11 at the end of this process, if we have more reports, we could perhaps have one consolidated
12 document where all agreed facts are contained.

13 That is all I would say at this stage, your Honours.

14 PRESIDING JUDGE HENDERSON: Thank you.

15 Mr Altit, anything to add?

16 MR ALTIT: (Interpretation) Thank you, your Honour. As has just been recalled, we are
17 involved in constructive discussions with the OTP and we've taken a look at a number of facts
18 and we have drawn a number of conclusions. We're continuing the discussions and we have
19 agreed to meet in the second half of November in order to expedite the process.

20 The Defence would like to point out that the very large range of alternative liability alleged
21 by the OTP makes it very difficult for it to reach agreement on a certain -- a large number of
22 facts. Indeed, a fact that might just be peripheral in the context of one mode of responsibility,
23 a specific one, could take on crucial importance in the context of another.

24 This difficulty is aggravated by the existence of Rule 55 and the existence of its use up until a
25 very late stage in the deliberations. As we can see, if we take a look at the practice of the

1 Court, a non-contentious fact in the context of the trial could again be requalified to the
2 detriment of one of the accused if there were to be a requalification.

3 As far as we're concerned, we welcome the fact that these discussions are being held
4 and we want to reach a position where it be possible to rationalize and streamline the
5 matter and move ahead. We hope that we'll be able to come back to you with new
6 proposals.

7 PRESIDING JUDGE HENDERSON: Thank you, Mr Altit.
8 Mr Knoops.

9 MR KNOOPS: Mr President, no separate observations. Thank you.

10 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

11 The Legal Representative of Victims informed the Chamber via an email dated 3
12 September 2015 at, if we are to be precise, 17.32, that she took note of the parties'
13 submissions on agreed facts but indicated that she did not intend at this stage to file
14 any observations on the matter.

15 Ms Massidda, although you indicated that you did not intend to make submissions
16 on this matter, is there anything you wish to add?

17 MS MASSIDDA: No, Mr President, not in relation of the agreed facts, if we can call them
18 this way, just already filed. We will retain, of course, our rights to eventually inform the
19 Chamber if the interest of victims are concerned by further agreed facts. Thank you.

20 PRESIDING JUDGE HENDERSON: Thank you. Well, I will just then, just to wrap up this
21 point, just continue to encourage the attorneys that it really operates to everyone's advantage
22 if there are certain things, certain facts that can be agreed. It makes the work of everyone less
23 contentious, more efficient, if we can agree on facts.

24 I will now go to the final issue on the agenda. We will now hear preliminary views
25 of the parties and participants and the Registry on the request for holding in situ

1 hearings, including an opening statement, in Abidjan, which has now been the subject
2 of a written request I believe by the Gbagbo team and which has not met with any
3 objection by the Defence for Mr Blé Goudé.

4 So perhaps I should hear from Mr Gbagbo's defence, Mr Altit. It was your
5 application, perhaps I should begin with you first.

6 MR ALTIT: (Interpretation) Thank you, your Honour. As you've said, yesterday Defence
7 filed a request so that the opening statements be held in Côte d'Ivoire. And we set out the
8 arguments to support this.

9 We think that it's absolutely essential that the Ivorians should be able to take
10 ownership of this trial because it's to do with their recent history. These are events
11 that occurred over the last 10 years. It's a question of shedding light on what has
12 happened in whichever direction. That's not the issue. It's a question of bringing
13 justice back to the communities concerned, and it's the only way for them to be able to
14 take ownership of the trial, for them to be able to take part, even indirectly, and for
15 them to take out of it something productive that will be useful in the context of
16 national reconciliation.

17 I think that from this point of view your Court has tremendous responsibility as do
18 we, Prosecution and Defence, we have a tremendous responsibility to the judicial
19 proceedings, to the purpose set out by the International Criminal Court. It's very
20 *raison d'être*.

21 And we also have a responsibility to the Ivorians. We have an obligation to them
22 and we cannot lose sight of that.

23 I think, we think that it would be in the interests of justice, it would be in the interests
24 of the trial, it would be in the interests of the Court, it would be in the interests of the
25 Ivorians, Africans in general that at least the opening statements which can easily be

1 organised in a confined space, because they don't go on for so long, should be
2 organised in the Côte d'Ivoire.
3 Côte d'Ivoire is a country that has a lot in the way of infrastructure. Abidjan is a modern city.
4 There are a lot of buildings that could be used for these opening statements. They could
5 easily be secured. And we think it would be relatively easy to organize the opening
6 statements in Abidjan.
7 Let me add the possible financial logistic and security cost of such an organisation has
8 to be assessed and weighed up against the advantages to be drawn. And as I have
9 just said, the advantages are tremendous.
10 I think to a certain extent we're talking about the future of the Court because we're
11 talking about the way in which the populations concerned perceive the work carried
12 out by the Court. We're talking about opening our arms, being fully transparent.
13 And bearing that in mind, it seems to us that there would be a better understanding
14 of the work of the Court, not just in the Côte d'Ivoire, but in Africa in general. And
15 you know, your Honour, how much mistrust, distrust there sometimes is in Africa as
16 regards the Court.
17 We have proposed that if the opening statements to be held in Abidjan were to -- the
18 whole process were to be too complicated, that at least they could be organised in
19 Arusha, because there we have the buildings, the infrastructure, means of
20 communication and security.
21 I don't think that it should be overly difficult to do that. And it strikes us that what
22 is at stake here makes this a worthwhile exercise.
23 PRESIDING JUDGE HENDERSON: Thank you, Mr Altit.
24 Mr Knoops, anything that you wish to add?
25 MR KNOOPS: Mr President, this morning our team filed its observations on the request of

1 the team of Mr Gbagbo. In essence, you already referred to it, Mr Blé Goudé doesn't oppose
2 the suggestion. His only concern and wish is that the truth is being served, whether it's
3 being in The Hague or in Africa, but for him, it's in the hands of the Court.

4 In essence, he's not opposing this request of the Gbagbo team. And his observation, his own
5 observation is that it could serve the process of reconciliation in Côte d'Ivoire, and you find in
6 our submission a reference in the footnotes to his own endeavours to contribute to this
7 process. Thank you.

8 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

9 I will hear next from Mr MacDonald and then from the Registry on this issue.

10 Ms Massidda, please forgive me.

11 MS MASSIDDA: I'm obliged, your Honour.

12 PRESIDING JUDGE HENDERSON: Yes, proceed. I'll hear from you first and then I'll hear
13 from Mr MacDonald.

14 MS MASSIDDA: Thank you very much, your Honour. And your indulgence, I have just
15 read early this morning the submission by Maître Altit exiting one flight and entering another
16 one. So maybe my submission will not be entirely exhaustive at this point in time.

17 PRESIDING JUDGE HENDERSON: Well, it can't. We have 10, 15 more minutes.

18 MS MASSIDDA: Thank you.

19 Now, our first reaction as Legal Representative of Victims was to be a little bit
20 confused about the request coming now by Mr Gbagbo Defence in relation to holding
21 the hearing and the opening statements in Abidjan. We had this discussion
22 previously, and if my memory recalls well, in April 2015 during a status conference,
23 even the Defence of Mr Knoops said that for security reasons, it was not advisable to
24 have a hearing in Abidjan at that point in time.

25 And I think that we can easily recall this in the transcript of the status conference. I

1 was just having a look into it. It was the transcript of hearing of 21 April, page 93,
2 lines 11-15. This was actually one of the reasons because the Defence was opposing
3 even the starting of a trial before the beginning of 2016. Now suddenly out of the
4 blue we receive a communication yesterday requesting to consider having the
5 opening statements in Abidjan, and one of the reasons which is advanced by the
6 Defence is because in this way we can be more proximate to the communities, and
7 this could also be helpful and useful for the reconciliation and for the interest of the
8 victims.

9 Well, I'm a little bit surprised of this -- of this observation by the Defence of
10 Mr Gbagbo considering how victim issue has been handled until now by Mr Gbagbo
11 Defence.

12 We think that at this point in time, 45 days before the start of a trial, it's a little bit
13 unrealistic to think of being able of having the opening statements in Abidjan for few
14 reasons. We would love to do it in Abidjan. That's another matter. It's not a lack
15 of willingness. We also think that it could be important for victims to have the
16 opening statements in Abidjan.

17 However, we need to consider few issues. The first one, the security situation in the
18 country. We know that election will be held on 21 October. We don't know if the
19 election will end in the subsequent days or if a second round will be held.

20 Second, there are important logistical matters to be settled, and I think that the
21 Registry will elaborate on this before deciding of having a hearing in situ, all the
22 logistical matters need to be sorted out, and this requires a feasibility study and a
23 certain amount on time.

24 And finally, and I will end in 2 seconds, and finally we need to take into account the
25 legal framework requiring a decision by the plenary of the Judges to sit outside The

1 Netherlands.

2 It is therefore my submission at this point in time it is not feasible to start the trial on
3 10 November in Abidjan. Thank you.

4 PRESIDING JUDGE HENDERSON: Thank you.

5 Mr MacDonald or Ms Pack, in a nutshell, as it were, I'm not meaning to constrain you, but in a
6 nutshell, what's the OTP's position on this?

7 MS PACK: Our position as I -- is a preliminary view, but our position is that it is not in the
8 interests of justice or desirable to hold the opening speeches or any hearings in either Abidjan
9 or Arusha, as is alternatively suggested by the Defence teams.

10 One matter which hasn't been addressed in either the written submissions or orally
11 just now is whether or not the Defence teams are seeking the attendance of either or
12 both of the accused during opening speeches in Abidjan.

13 Now, your Honours, of course are fully aware of the timings the opening speeches
14 taking place on 10 November, just after the first round of the presidential elections
15 and before a second round, if there is one. Your Honours will appreciate that there
16 is much by way of consultations and discussions that the Prosecution needs to engage
17 in in order to fully address all the various factors that apply in a determination of
18 whether or not the proceedings should move to another location, but we can say that
19 it is obviously the case that there are high risks both to security of the local populace
20 and to members of this Court in moving the trial to Abidjan for opening speeches.

21 So it's a question we would put to the Defence right now is whether or not the
22 expectation is that the accused would be present, because the alternative of course
23 would be that they would be present via video link in The Hague.

24 As for briefly the issue of Arusha, which has come up, and obviously we will be filing
25 a full response to the request that was filed just today by the Defence team for

1 Mr Gbagbo, on the question of Arusha, we don't see that there is any countervailing
2 benefit in having a hearing in Arusha at the other side of a vast continent with no
3 connection in terms of being more localized for the obvious connection for the
4 community of Côte d'Ivoire.

5 So in any event, we don't see that there is any benefit to weigh in the balance in terms
6 of having hearings in Arusha. But as I say, we are still, these are early stages, and
7 these are preliminary views, but certainly our position is no opening speeches in
8 Abidjan and certainly not with the presence of the accused.

9 PRESIDING JUDGE HENDERSON: Thank you for your brief but significant and helpful
10 submissions.

11 Registry, can you help us? Can you give the Court assistance on the Registry's
12 preliminary perspective?

13 MS DAHURON-JACOBY: (Interpretation) Your Honour, the Registry considers that given
14 that the trial is to begin very soon, we think that going through necessary steps for the
15 Registry, in other words, assessing the security situation, the political situation and also in
16 negotiations with the State, it will not be possible to finalize all of the preparations in time for
17 10 November as far as the Côte d'Ivoire is concerned.

18 As for the Arusha proposal, yes, indeed, there are certain advantages logistically
19 speaking, but if the Chamber were to wish to pursue that possibility further, we
20 would ask to be able to come back to you subsequently with more in the way of
21 information should you so wish. Thank you.

22 MR KNOOPS: Mr President, if you allow me, I acknowledge the time --

23 PRESIDING JUDGE HENDERSON: Yes.

24 MR KNOOPS: -- to briefly make one observation, I'm always honoured when I'm quoted
25 like anyone in this Court, but quotations could be correct. If you read the transcripts on 21

1 April, you find my submission that at that time there was no issue of opening statement at
2 stake, because there wasn't yet any reference to an opening statement. My reference to the
3 security issue on the status conference 21 April was in relation to the investigation. You'll
4 find on page 93 of the transcripts, lines 11 and further, that I was concerned about security of
5 the Defence team in terms of the investigation, which is totally different when a mission on
6 the supervision of the Court would be administered in the context of an opening statement.
7 So I never, and your Honours can find it in the transcript, any reference to security in
8 relation to the opening statement. At the time of this status conference there was no
9 opening statement mentioned by this team. Thank you.

10 PRESIDING JUDGE HENDERSON: Thanks, Mr Knoops. The words would speak for
11 themselves.

12 Now, we have a filing -- just a moment.

13 (Trial Chamber confers)

14 PRESIDING JUDGE HENDERSON: All right. So now that we have the filings from the
15 two Defence teams, there would be responses by the OTP and the Registry. I do, however,
16 still consider as very helpful the preliminary positions that have been set forward. Not
17 foreshadowing how the Chamber thinks, the Registry's intervention may prove significant
18 given the timing, but we will see. We will have to --

19 There is much force in your submissions, Mr Altit. The Chamber and the Court has to
20 understand what it's about. But the Chamber and the Court also has to be mindful of its
21 responsibilities not only to, as you have identified, but also its responsibility to witnesses,
22 victims, the attorneys and court personnel, if there are concerns, and in that regard, the
23 Registry's observations are extremely important.

24 So having dealt with that final point --

25 MR MACDONALD: One issue, your Honour, I'm sorry.

1 PRESIDING JUDGE HENDERSON: Yes.

2 MR MACDONALD: Just before -- I understand you want to break, but I think it would be
3 wise to ask our colleagues, because they're silent and we don't want to file and then have a
4 request to reply. What is your position on the presence --

5 PRESIDING JUDGE HENDERSON: On the issue on the attendance?

6 MR MACDONALD: -- of both accused, the elephant in the room, if I may say, which is not
7 being discussed.

8 PRESIDING JUDGE HENDERSON: I'm sure it's not an elephant.

9 First of all, Mr Altit, is it that your request contemplates Mr Gbagbo's physical
10 attendance in Abidjan?

11 MR ALTIT: (Interpretation) Thank you, your Honour. It is not an elephant in the room,
12 not at all. We are trying to give life to this Court, to nurture it for it to be accepted by the
13 population. That is the state.

14 I will be very brief, your Honour. But you can see the problem here. We are not
15 making this proposal as something that will benefit us, that will be favourable to us or
16 to the Prosecutor. But the Prosecutor is saying if President Gbagbo was there, it
17 could lead to disturbances. It is an argument. But this has nothing to do with the
18 principle of having that first hearing, the symbolic meaning of that hearing for the
19 Ivorians and for Africans in general. For the Africans, in fact, that would be part of
20 resolving these issues.

21 So we are not going into arguments about what if, but we need to accept the principle
22 or not. But if we accept the principle, it is only after that that we can discuss the
23 issue of the presence of the accused or not. Mr Gbagbo, that was his country. He
24 was the president. He has support. He was supported by --

25 PRESIDING JUDGE HENDERSON: Mr Altit --

1 MR ALTIT: (Interpretation) So if it is possible, Mr President. But if it was not possible,
2 then all of us together should examine --

3 PRESIDING JUDGE HENDERSON: Mr Altit --

4 MR ALTIT: (Interpretation) -- the possibility of organizing a hearing without the accused.

5 PRESIDING JUDGE HENDERSON: Mr Altit, I've quite clearly heard your point.

6 Mr Knoops.

7 MR KNOOPS: Thank you, Mr President. In case the Court would rule in favour of having
8 opening statement in Côte d'Ivoire, Mr Blé Goudé would prefer to attend such a ceremony.

9 PRESIDING JUDGE HENDERSON: Thank you.

10 MR KNOOPS: Thank you.

11 PRESIDING JUDGE HENDERSON: Mr Altit, just to go back, the point is the Court asked a
12 very simple question. The Court understood what is behind it, and it wasn't really, the
13 Court, in my view, necessary for you to repeat, because the Court understands your
14 submission. It was just a simple direct question.

15 Thank you very much. The matters on the agenda have been concluded. I want to
16 thank the parties and participants for having assisted the Court. That would
17 conclude our hearings for today. We have exhausted our time. Thank you very
18 much.

19 THE COURT USHER: All rise.

20 (The hearing ends in open session at 1.33 p.m.)