

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo - ICC-02/11-01/11
5 Single Judge Silvia Fernández de Gurmendi
6 Status Conference
7 Tuesday, 11 December 2012
8 (The hearing starts in open session at 2.31 p.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Good afternoon. Would
13 the court officer please call the case.
14 THE COURT OFFICER: Thank you, your Honour. Situation in the Republic of
15 Cote d'Ivoire, in the case of The Prosecutor versus Laurent Gbagbo, ICC-02/11-01/11.
16 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Before we proceed, I
17 would like to ask the parties and participants to introduce themselves, starting with
18 the Prosecutor, please.
19 MR DUTERTRE: (Interpretation) Good afternoon, your Honour. With me today
20 my colleague Reinhold Gallmetzer, Krisztina Varga, Florie Huck, Maria
21 Berdennikova and our case manager, Sandra Schoeters, and I am Gilles Dutertre.
22 Thank you, your Honour.
23 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Victims'
24 representatives, please, do you want to introduce yourselves now? Thank you.
25 MR SUPRUN: (Interpretation) Good afternoon, your Honour. The OPCV is

1 represented today by Dmytro Suprun, counsel, and Ms Ludovica Vetrucchio, associate
2 lawyer. Thank you.

3 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

4 Mr Gbagbo's Defence team, please, would you introduce yourself?

5 MR ALTIT: (Interpretation) Good afternoon, your Honour. You already know
6 Maître Baraon, who is co-counsel; Madam Naouri is our legal assistant and I would
7 like to introduce Gaëlle Buchet to you, our case manager, who is seated behind me.
8 My name is Emmanuel Altit, lead counsel for President Gbagbo.

9 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Registry,
10 please, would you kindly introduce yourselves?

11 MR SANT-ANNA: (Interpretation) Good afternoon, your Honour. For the
12 Registry you have Almoustapha Alghafeyet, officer in charge of witness protection;
13 Ms Oseredczuk of the immediate office of the Court Management Service; and we
14 have a lawyer from the VWU; and I am Dahirou Sant-Anna.

15 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

16 My name is Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I on
17 the situation in Côte d'Ivoire and cases emanating therefrom. Today with me there
18 is Gilbert Bitti, Silvestro Stazzone and Simon Grabovec.

19 This status conference has been convened in order to talk about the following points:
20 First, possible dates for the Confirmation of Charges hearing; second, matters relating
21 to disclosure of evidence, including the need to submit to the Chamber requests for
22 additional redactions; third, determining whether the parties intend to call viva voce
23 witnesses during the confirmation hearings; and finally, practical modalities for the
24 confirmation hearing, mindful of the state of health of Mr Gbagbo.

25 Today's hearing will therefore be organised as follows: The first session will hold 'til

1 4 p.m., to be followed by a 30-minute break, and the second session will run from 4.30
2 to 6 p.m., if necessary.

3 On the first point on our agenda for today, namely the date for the confirmation
4 hearing, I would like to recall that for reasons that we are all familiar with the
5 proceedings in this case have been delayed significantly. However, in a recent
6 decision, the Chamber found that Mr Gbagbo is fit to stand trial and that the date for
7 the confirmation hearing could now be set.

8 Allow me, first of all, before we begin discussions on this issue, to clarify one point.

9 The Chambers of this Court have consistently recalled that a confirmation hearing
10 does not in any way amount to a trial before the trial or a mini trial. In fact, the
11 Chambers have on several occasions reminded parties, including in this case, the
12 purpose of the confirmation hearings as being limited.

13 This Chamber on two occasions, namely in its decision number 107 of 4 May 2012 and
14 its decision number 186 of 16 July 2012, that the hearing has a limited scope and
15 purpose. Pursuant to Article 61(7) of the Statute the Chamber shall determine
16 whether there is sufficient evidence to establish substantial grounds to believe that the
17 person committed the crimes charged against the person, unlike the provisions of
18 Article 66(3) which require that the Chamber be convinced of the guilt of the accused
19 person beyond reasonable doubt.

20 Therefore, the hearing must be brief, while at the same time offering the parties the
21 opportunity to make their arguments and to reply to the submissions of the other
22 parties.

23 I wish to emphasise this point because the Chamber believes that it is time for this
24 case to move to the confirmation hearings as soon as possible. Parties have had
25 enough time to prepare their cases and no further delays can be justified. Clearly,

1 and without prejudice to Rule 121, which requires a 30-day period to be respected
2 between providing documents describing the charges and the list of evidence and the
3 confirmation hearing, as well as a 15-day period between the submission of the
4 Defence list and the same hearing, mindful of the factors above the Chamber is of the
5 opinion that it could be possible to hold the confirmation hearing in the month of
6 February 2013.

7 The dates and the specific time frames will be set bearing in mind any necessary
8 adjustments relating to Mr Gbagbo's health, as well as the availability of courtrooms
9 and the services of the Registry.

10 Following these comments I would now like to give the floor to the parties and
11 participants, and I'll begin with the Prosecutor.

12 MR DUTERTRE: (Interpretation) Thank you, your Honour. Yes, indeed, your
13 Honour, the Prosecution notes that the Confirmation of Charges hearing normally
14 would have held in June, and at the request of the Defence, it was postponed to
15 August and then again sine die.

16 As you have rightly recalled, on 2 November 2012 the Chamber found that Laurent
17 Gbagbo was fit to stand trial. The Prosecution therefore believes that we must now
18 move to the confirmation hearing within the specific and limited scope, as you have
19 recalled, and that this should be done without any further delay.

20 It is the opinion of the Prosecution that it would indeed be possible and desirable to
21 have those confirmation hearings in the month of February. We also have to bear in
22 mind the dead-lines under Rules 121(2) and 121(6), namely 30 days as provided for in
23 Rule 121(3), 30 days between the disclosure of the Document Containing the Charges
24 and the list of charges which is referred to as the elements-based chart.

25 The Prosecution is mindful also of the time frames and dead-lines that the Chamber

1 would need in order to decide on any subsequent applications for redactions of
2 evidence. We have requested redactions on some evidence, but we may revisit this
3 subsequently.

4 In any event, the Prosecution intends to file the elements-based chart and the
5 document of charges on 21 January 2013. If we add 30 days to that date, we should
6 be able to start the confirmation hearings in February.

7 Let me explain what I mean. There will be a request for redaction, and the Chamber
8 will have to rule on that request, and thereafter if such request or such a motion were
9 granted, the motion from the Prosecution, then the Prosecution would be required to
10 update the Document Containing the Charges as well as the elements-based chart and
11 we believe that this can be done within a reasonable time frame.

12 We are talking about the Document Containing the Charges, and I would like to state
13 in that regard that the Prosecution intends to include another mode of responsibility
14 in addition to the amended notification of charges that was disclosed in July.

15 Your Honour, you know that our charges were based on Article 25(3)(a) of the Statute
16 and we intend to add Article 25(3)(d) as an additional mode of responsibility. At
17 this juncture I must clarify three points: (1) This falls within the ambit of the general
18 case of the Prosecution regarding the charges against Mr Gbagbo. We remain
19 squarely within the framework of our case, in conformity with the charges that have
20 so far been disclosed.

21 We will continue to rely on the facts and the circumstances described in the
22 Document Containing the Charges, and this has been available to the Defence for
23 several months now. We also intend to rely on the same evidence that has already
24 been disclosed over the last weeks, and particularly in May and June, following the
25 decisions of the Chamber.

1 This means therefore, in a nutshell, that we would be relying on the same elements,
2 and you know also that some additional evidence has been disclosed since July and is
3 available to the Defence and we believe that they have had opportunity to analyse
4 such evidence.

5 Allow me therefore to recall that, if we were to proceed in this manner, then the
6 Prosecution would have clearly stated its position and will not in any way surprise
7 the Defence. In so doing we will be complying with the content of the arrest warrant
8 issued by this Chamber, which at the time indicated that under 25(3) of the Statute
9 Laurent Gbagbo's responsibility as indirect co-perpetrator will have to be examined.

10 So we are acting along the same lines and this is something that could have been
11 expected, so in a nutshell we are standing by our case, the same evidence, the same
12 facts and the same circumstances.

13 Your Honour, we are going to have to make some additional submissions in writing
14 and therefore we are applying for an increase in the number of pages from 50 to 65, so
15 we are applying for an additional 15 pages. Let me say that we may not use up all
16 the 15 pages, we will be as brief as possible, but in order to avoid having to make a
17 similar application again we will at this juncture apply for 15 pages.

18 We are also going to have additional material to bring to the Chamber during the
19 confirmation hearings, and in that connection we apply for an additional hour during
20 the confirmation hearings to be able to provide our legal arguments and material
21 arguments relating to the charges under Article 25(3)(d).

22 Your Honour, that is what we can say in relation to the Document Containing the
23 Charges.

24 Now, as for inculpatory materials, we disclosed to the Defence pursuant to Rule 37,
25 following the decision of the Chamber of 13 November, some ten or so documents

1 this week and we intend to disclose a few more documents to Defence next week and
2 probably a few more subsequently, but these would not require any redactions.

3 There are some documents which would need to be redacted and the Prosecution
4 may file a request for redactions before Christmas; that is before 21 December. That
5 way, and mindful of the Defence's right to reply, we can expect that a decision from
6 the Chamber would come before the submission of our Document Containing
7 Charges on 21 January 2013.

8 In that connection, I seek clarification from the Chamber in relation to the documents
9 that we can disclose. We note that, under the application 35, we understand that
10 Prosecution can disclose additional evidence. What has happened over the past
11 months is that - and I say so mindful of our desire to include the responsibility under
12 25(3)(d) - there is evidence which we would like to disclose, some evidence which has
13 been gathered prior to the dead-lines that the Chamber had previously set, and
14 therefore this additional material, which was not available at the time and which has
15 been gathered since the month of August, and some evidence which had been
16 collected before - incriminating evidence which had been collected before - we would
17 like to be able to proceed in the manner I have requested.

18 That having been said, your Honour, these are the few main remarks that I would like
19 to make regarding the date for the confirmation of hearing. We are ready to provide
20 any further clarification that the Chamber and parties may request.

21 Thank you, your Honour.

22 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. I see that
23 you have already touched on the first part of our work and then also mentioned a few
24 things about redactions. Do you have any additional -- or anything else to say, or
25 that's enough?

1 Well, we'll leave it at that for now and then when we move to the viva voce witnesses
2 we may be able to do that, or do you have anything to say?

3 MR DUTERTRE: (Interpretation) I can already tell you that we will not have any
4 viva voce witnesses.

5 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Thank you.
6 It's better that way then, or it's easier that way.

7 Now I want to give the floor to the victims' representatives, please.

8 MR SUPRUN: (Interpretation) Thank you, your Honour. The OPCV on several
9 occasions has submitted and would reiterate now that it is in the greatest interest of
10 all witnesses in this case that the confirmation hearing for Mr Gbagbo be held as soon
11 as possible. The date for that hearing has been postponed several times. The
12 interests of victims dovetail with the principle that the accused should be judged in a
13 timely manner and expeditiously. That is why it is time for the confirmation hearing
14 to take place in February next year.

15 Thank you, your Honour.

16 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

17 Maître Altit, you have the floor, please.

18 MR ALTIT: (Interpretation) Thank you, your Honour.

19 Thank you, your Honour. Three brief comments: (1) On the postponement of the
20 Confirmation of Charges hearing, it has been postponed, yes, but for a good reason;
21 namely that President Gbagbo, as confirmed by the Appeals Chamber, is severely
22 unwell.

23 Second, we have just learned that the Prosecution intends to use a second or a new
24 mode of responsibility. We are told that it will refer to the same Document
25 Containing the Charges, but that it is not indeed the same document because 15

1 additional pages will be filed as well as additional evidence.

2 Well, you have recalled, your Honour, that the confirmation hearing is not a trial and
3 that it is not even a mini-trial, but in any event the accused person can challenge the
4 charges and challenge the evidence and himself produce evidence. This requires
5 times and work, and it also requires that the Defence be allowed some elbow-room to
6 do its work.

7 Now, speaking to the question which you raised in your decision, we believe that it
8 should be divided into several points in order to cover as much ground as possible in
9 order to have an overview of the situation.

10 Let me provide you, your Honour, with the list of points that we would like to see
11 tackled in order to be specific in our discussions, so that as we look at each of these
12 points we can come to a natural determination of a date for the confirmation of
13 hearing, or Confirmation of Charges hearing.

14 The date would depend on the availability of a number of elements or materials,
15 including a number of processes and disclosures, as well as investigations on the
16 ground. This is indispensable for the Defence relating to the confirmation hearings.
17 I therefore believe that these points should be dealt with before coming to a decision
18 on the date for the confirmation hearing. Some of these points may need to be dealt
19 with in private session, some may need to be dealt with ex parte with the Registry,
20 and we will make this clearer in our presentation.

21 So the first item we would like to deal with relates to the documents we received from
22 the Prosecution, such as witness statements. Those documents can barely be used by
23 Defence. The electronic format in which they come only allows us to work on the
24 document after a lot of time and a lot of energy, particularly regarding the manner in
25 which they are disclosed.

1 We therefore want to find common ground with the Prosecution, because it tried
2 to -- because it costs us a lot of time to reconfigure and analyse these documents today.
3 I believe that, in spite of these difficulties, we will need some time in order to sort out
4 these documents, receive them from the Prosecution and analyse them accordingly.

5 The second item is the lifting of some redactions, which do not help the Defence in
6 analysing and understanding the evidence of the Prosecution. This matter should be
7 dealt with in private session.

8 Now, regarding redactions, redactions relate to disclosures under Rule 77 by the
9 Prosecution and, pursuant to the decision of 28 January 2012, we seek that some of
10 these redactions be lifted.

11 Rule 77 disclosures should be material that can be used by the Defence because it's
12 essential to its case, but where the redactions are so numerous then the material
13 cannot even be used.

14 So lifting or unredacting these elements is something that may take some time,
15 depending on the Prosecution's reaction, to which we must add the time that the
16 Defence needs to work on the so unredacted documents.

17 Third point, verification of the authenticity of some material received from the
18 Prosecution. For example, documents which according to the Defence need to be
19 examined by experts. This matter, as far as the Defence is concerned, also has to be
20 dealt with in closed session, or private session.

21 Such checks are particularly important because here we have experience of dubious
22 documents. The Defence wishes to inform the Chamber -- I beg your pardon, wishes
23 to inform the Single Judge, that the Prosecutor has already disclosed video
24 documentation which did not correspond to what they claimed, so we want to ask the
25 Chamber to appoint an expert, and then it will take a time, some time for the expert to

1 carry out his study, and particularly, and this is our fourth point, it is essential that we
2 get certain information from the Prosecutor. Firstly, it is essential that we obtain
3 from the Prosecutor information on the process of obtaining statements from certain
4 witnesses, among the most important witnesses, and information about the context in
5 which those witness statements were taken. The detail would have to be examined
6 in closed session, but we would need to take -- count the time for the procedure
7 which we would need to look at later, your Honour.

8 Likewise, it is essential that we obtain from the Prosecutor the information necessary
9 to analyse an important stage in the procedure which can also only be examined in
10 closed session.

11 The fifth point relates to the procedure to be followed to establish contact with certain
12 witnesses of the Prosecution. That too needs to be dealt with in closed session.

13 The sixth point relates to the steps which the Defence has to take to meet particularly
14 important witnesses. The fact of being able to have access to such witnesses is an
15 important, is a vital aspect of the Defence strategy and we can only deal with that
16 point in closed session, in the presence of the Registrar.

17 In addition, and this is the seventh point, the Defence at the present time is trying to
18 obtain certain crucial documents in view to the Confirmation of Charges hearing, and
19 this process is going to take some further time. For reasons of obvious
20 confidentiality, we can't go into detail in this matter in public session, but we would
21 like to discuss this point in closed session and ex parte. This is a core of the
22 Defence strategy.

23 The eighth point relates to the organisation and implementation of
24 Defence investigations. In order to enable the Defence to carry out useful, effective
25 investigations, we need to have settled in advance the issues which we have just

1 raised. The Defence has a very limited budget. Therefore, it cannot organise many
2 missions or investigations, and that is why the missions have to be carefully prepared
3 and can only be organised once the Defence has the necessary information, and that
4 necessary information comes, in particular, from the requests which are pending now.

5 All the points that I have just raised need to be taken into account in reaching a
6 realistic and pragmatic decision about the dead-line which the Chamber can set for
7 the Defence, both for submitting requests for redactions, asking for protective
8 measures, and deciding whether the Defence will or will not present viva voce
9 witnesses or decide on the dead-line by when the Defence has to submit its list of
10 evidence for the Confirmation of Charges hearing.

11 The ninth point which we would like to broach relates to the proposed dead-lines for
12 procedure which the Defence could reasonably meet. The proposals made by -- for
13 the Defence will depend on the information which we can discuss in closed session.

14 Relating to the procedural dead-lines, experience in this case shows that there have
15 been many requests for postponement, so perhaps here we should have a more
16 detailed discussion about the time the Prosecutor thinks that he will need because
17 new elements were referred to previously. And finally, as the Chamber recalled in
18 its order, we have to discuss the necessary arrangements to be made to take into
19 account President Gbagbo's state of health so that the Confirmation of Charges
20 hearing can be held, and this is the 11th point. If some of the Defence submissions
21 on this point can be made publicly, certain issues relating directly to the president's
22 state of health would have to be dealt with in closed session.

23 Yesterday evening, the Defence received the observations from the Prosecutor in
24 relation to the arrangements to be made for the Confirmation of Charges hearing and
25 indicates that they will respond, but already the Defence would like to underscore

1 that the question of the arrangements is only a consequence or a corollary of the
2 treatment to be afforded to President Gbagbo, and we will come back to this, I think,
3 in closed session.

4 And finally, the Defence would like to say a few words about the impact of the
5 witness' participation -- of the victims' participation on its work, since the amount of
6 work to be done has to be taken into account in determining the date for the
7 Confirmation of Charges hearing. There too we could discuss the details of
8 participation later, but I would ask the Chamber to take into account the fact that we
9 have limited resources. Quite apart from the case manager, we have an envelope for
10 three people, no more.

11 So if we have to decide on a date now, we feel that we need to take into account all
12 these issues which I have just listed before taking a decision. It seems to us that we
13 need to examine each item to determine the time necessary for each party to be in a
14 position and only then to decide on the possible date for the Confirmation of Charges
15 hearing.

16 Thank you, your Honour.

17 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Mr Altit, do
18 you have anything to add at this stage on redactions? I also wanted to ask you
19 whether you intend to call viva voce witnesses? And I'd remind you of what was
20 already said, namely, you have the right to do so but it is always exceptional at the
21 pre-trial stage.

22 MR ALTIT: (Interpretation) Your Honour, I quite understood that it was
23 exceptional. There are certain -- there's certain information from the Prosecutor
24 which we haven't been able to use properly, that we need to carry out investigations.
25 Until we have all the information, we can't answer your question. I would merely

1 reiterate what I said the first time round, namely, we take into account the exceptional
2 nature, indeed, of calling such witnesses, but we can only take a decision once we
3 have all the necessary information. That is what I was trying to say.

4 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. I'd like to
5 remind you and indeed remind parties that should you wish to call witnesses, they
6 will have to contact the Victims and Witnesses Unit in the Registry as quickly as
7 possible.

8 Do you have anything to add? I can see that you want to deal with several items in
9 closed session, in closed session ex parte or in closed session with the Registrar, but
10 do you have anything further to add in public -- in open session?

11 MR DUTERTRE: (Interpretation) Thank you, your Honour. Several points:

12 Firstly, I note that some things are staged in rather subliminal terms and it's not very
13 clear to the Prosecutor exactly what the Defence is talking about.

14 Secondly, the Prosecutor notes that certain subjects raised could perfectly well be
15 dealt with in open session, provided we take certain precautions such as mentioning
16 not the names of the witnesses but pseudonyms. And I'll come back to this question
17 of the use of names because it is important.

18 Thirdly, on the substance, it seems to us that Laurent Gbagbo's Defence is raising
19 these issues rather late in the day. For a long time now Laurent Gbagbo's
20 Defence has had most of the Prosecution's incriminating evidence, and for a long time
21 they could have drawn the Chamber's attention to the various points they've listed.

22 And I would respectfully submit this to you, your Honour, that all this, in the eyes of
23 the Prosecution, represents an attempt to delay the Confirmation of Charges hearing.

24 Let me take three examples: The Defence wishes to meet the Prosecution witnesses.

25 We received an email yesterday in this context. The names of the witnesses were

1 communicated for the Confirmation of Charges hearing in June and there are some
2 names of PEXO witnesses to prepare for the Defence, but the Defence has had all
3 these names for some months and now it's just before Christmas that the Defence has
4 approached the Prosecution and request to contact these witnesses, after an initial
5 contact with the Registrar a few months earlier.

6 The Prosecution is working on this. We might come back to this point, but this is an
7 example of action where the Defence could have acted sooner.

8 Second example: The Defence wants to remove the redactions in documents under
9 Rule 77. I haven't had time to review all the emails but I don't think the Defence has
10 previously made such a request, whereas they could very well have done this
11 gradually, at the time of the different disclosures. Applying the rules laid down by
12 the Chamber for the exculpatory documents and documents under Rule 77, the
13 Prosecution can make redactions and it is for the Defence then to challenge them and
14 this would have been possible in recent months.

15 And then also a third example, the Defence has come back to the fact that they can't
16 make use of the documents, that we need to find a different form of communication.
17 I understand the Defence's concerns, but this is something that has already been
18 raised.

19 The Defence want documents which aren't in a PDF form, and the Prosecution is
20 conforming to the eCourt protocol and in using Ringtail, and in Ringtail you can find
21 all the documents you want within a document, but also series of documents. So
22 there I would ask the Defence to contact the Registry and get the technical details.
23 I'm not going to use up the Chamber's time with these technical details, but we
24 replied on Monday to a Defence email sent on Friday and we answered all their
25 questions about disclosure. So the Prosecution is trying to do the utmost to facilitate

1 matters and provide explanations when they are requested.

2 Apart from that, the questions raised by Maître Altit do not, I feel, belong at this stage.

3 He's talking about a video, needing to check the authenticity of the video. He can
4 challenge the video during the Confirmation of Charges hearing, or -- that is when he
5 should challenge it; and he can carry out his investigation, would have elements to
6 challenge, and could say that the video is not authentic, but it's during the
7 Confirmation of Charges hearing that he should provide this -- these elements. It's
8 not grounds for postponing the Confirmation of Charges hearing.

9 So, your Honour, we are of course prepared to raise -- to examine all the matters and
10 the concerns raised by Maître Altit, but the Prosecution feels that all this should have
11 been raised earlier - sooner - and it cannot justify a postponement of the Confirmation
12 of Charges hearing. And as far as the rest is concerned, I think a lot of the issues can
13 be dealt with in open session.

14 Thank you.

15 MR ALTIT: (Interpretation) Thank you, your Honour. Firstly we're not asking
16 for a postponement of the Confirmation of Charges hearing; here we are together
17 discussing the date. It's not exactly the same thing. In order for a date to be set the
18 parties have to be in a position to comply with the date. And we don't have the
19 same resources as does the Prosecutor, that's the crux of the matter.

20 And with your permission I'd like to come back to what the Prosecutor has just said.
21 When we receive a witness statement which is 300 pages long, 15 different dispatches
22 with dates which are redacted, it's quite impossible for us to know what goes where
23 and how we can make use of this. When we receive -- it's true that the initial
24 documents were sent a few months ago, but we've had other documents sent in the
25 meantime and then we got additional information from this -- about this witness, I'm

1 thinking of one particular witness, and well after the initial documents were sent.

2 And this is why we have asked in what context was that statement obtained by the

3 Prosecutor? That is -- that's what is at issue.

4 We can reach agreement, I'm quite sure about that, but you need to understand that

5 we cannot handle what is being done over a period of several months. This is a

6 highly sensitive, delicate, complex case. If we want to handle it properly, then we

7 need to have the resources. We're not asking for much.

8 We have explained the various points which require not necessarily a debate but a

9 discussion so that everyone knows where they stand. We're trying to be transparent

10 on the difficulties confronting us, and I think that it's important that we should be

11 able to share those difficulties with you, because we don't have the same resources as

12 the Office of the Prosecutor. There's just three of us plus a case manager.

13 And possibly a final word: We're supposed to be based outside the court, we just

14 have one office in the court, and if we work outside the court we don't have access to

15 the same IT tools as if we were working seven days a week inside the court's

16 premises.

17 MR DUTERTRE: (Interpretation) Your Honour, I think we could get involved in

18 technical IT debates, I don't know whether this is the time or place to do so, but we

19 have responded to the Defence. The Defence has CITRIX to get outside access to

20 whatever tools they want and they can get the transcripts, the recordings of witnesses.

21 They are indeed in different packages, but the ERNs are in a sequence. If you put

22 the one in order, in sequence order, you can -- you can get the -- you can get the

23 witness statement in the right order.

24 It's the same system that works in all cases, and it reflects the fact that when you've

25 got a recording there might be several cassettes and each of them has an ERN. I can

1 explain all that to the Defence. I won't go into more detail, so I don't think that this
2 is the right place.

3 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) No, I don't think
4 this -- that is the right place to discuss this, and it's true that for the moment nobody
5 has asked for a postponement of the dates. We are now trying to decide on the date,
6 but it's also true, as I said at the outset, that the procedure in this case has been
7 considerably delayed already, for reasons which are quite justified. I'm not
8 challenging that, but the result is that for -- we've had -- for the last year we've had
9 proceedings which have not begun, and it is vital that we have a Confirmation of
10 Charges hearing as quickly as possible. The parties must be in a position to do so,
11 and they must do everything possible to ensure that they are in a position to be ready
12 by that date, and the Chamber would ensure that everyone is ready as soon as
13 possible.

14 Now, you said you wanted to deal with certain issues in closed session. Is there
15 anything you could begin to deal with in open session before we move to closed
16 session? Otherwise, I would like to say a few words about the practical
17 arrangements for the hearing and I wanted to say that in open session. But if you
18 wish to begin to discuss any other subjects now, you have the floor.

19 MR ALTIT: (Interpretation) Thank you, your Honour. The comments I wanted to
20 make, or rather precise points I want to relate to, relate to each of the issues I listed. I
21 tried to present things in a way to facilitate our discussions, but it's obviously on
22 those precise items, it's not just a question of the identity of individuals but there are
23 important points relating to confidential investigations, and I think it would be
24 preferable for all of that to be in closed session, and for some of them I think it would
25 be better to be an ex parte session, for obvious reasons.

1 As regards the open session, I think it'd be preferable for you to make your
2 statements.

3 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) In a few minutes we will
4 move to a closed session. I don't know whether we're going -- we're going to need a
5 half-an-hour or less half-an-hour.

6 We will begin our closed session at 4 p.m., because we're going to need half-an-hour
7 in the middle, and prior to that we have a few minutes and I'd just like to say,
8 regarding the practical arrangements for the hearing, I wanted to recall, as you know,
9 that the Chamber on 2 November concluded that adjustments will need to be made to
10 enable Mr Gbagbo to participate fully at the Confirmation of Charges hearing. These
11 adjustments will have to be determined in consultation with the Defence and the
12 Registry. That was our -- that is our decision on Mr Gbagbo's fitness to stand trial,
13 paragraph 102.

14 Given the nature of this issue, a certain flexibility will be necessary, and I'd like to
15 underscore the importance of discussions between Mr Gbagbo's Defence and the
16 Registrar, as quickly as possible, to determine which measures could be implemented
17 in the interest of Mr Gbagbo.

18 These measures could include, as indicated in the decision relating to Mr Gbagbo's
19 fitness to stand trial, shorter hearings; making available appropriate equipment to
20 enable Mr Gbagbo to rest during the recesses; and the possibility for Mr Gbagbo to
21 absent himself for all or part of the procedure and to follow the proceedings via video
22 link, if he so requests.

23 I also note that on 24 and 25 September 2012, during the hearing relating to
24 Mr Gbagbo's fitness to stand trial, specific measures were already adopted to adapt to
25 his situation. As far as I know, these arrangement worked well and I think that

1 experience needs to be taken into account in organising the future Confirmation of
2 Charges hearing.

3 I'd now like to give the floor to the Defence and then to the Registrar. Do you have
4 any comments on this, Maître Altit?

5 MR ALTIT: (Interpretation) Thank you, madam. Thank you, your Honour.

6 As regards the arrangements on 24 and 25 September last, we don't think that those
7 are useful arrangements, for various reasons which we could go into in a closed
8 session, but I'd like to make this point: Those arrangements are inadequate and are
9 not real arrangements. There's a room behind which I think any of the accused has
10 access to. If President Gbagbo is to be treated respectfully, it's not that specific
11 arrangements take into account the kind of fatigue which affects him have been
12 organised. It's grossly inadequate.

13 And secondly, as regards these arrangements, once again, we think that it is
14 important, it is vital, that proper treatment be provided. Arrangements would be
15 the consequence of the treatment. It is the specialist who should tell us what needs
16 to be done and how it should be done. Of course, we want to speak to the Registrar
17 and try and improve things, but neither the Registrar nor us or even the medical
18 services in the detention centre, if I read the documents of the Office of the Registrar,
19 seem to be equipped to propose treatment on such specific subjects which, if they're
20 not properly treated, might as you know have serious repercussions.

21 So we are asking that the question of treatment be dealt with and the arrangements
22 can only be a consequence or a corollary of the treatment.

23 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

24 MR SANT-ANNA: (Interpretation) Thank you, your Honour.

25 Just to clarify the position of the Registrar, I think if we were -- if you were to decide

1 that a Confirmation of Charges hearing is to be organised at a certain date, and if
2 additional arrangements need to be made, the Registry will examine what can be
3 done.

4 As to the documents of the -- from the Registry, without going into detail, I think a
5 report was prepared recently. It has not yet been sent to the Chamber. It would
6 give the Chamber an idea of the possibilities which exist in relating to the treatment.

7 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

8 MR DUTERTRE: (Interpretation) Thank you, your Honour. I'd like to use this
9 open session. I think we can come back to this later, but in open session the
10 Prosecutor would like to say that Laurent Gbagbo has been declared fit to stand trial.
11 For the Prosecutor, the treatment is not a necessary prerequisite. The necessary
12 arrangements for the Confirmation of Charges hearing can perfectly well be
13 implemented once the date of the hearing has been set, and I'm referring to the
14 written documents we submitted, and I won't -- I'd referred to this in the written
15 documents and I won't say any more until we're in closed session.

16 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. I've just
17 heard the representative of the Registry who says he is going -- the Registry will soon
18 submit a document.

19 MR SANT-ANNA: (Interpretation) No, I'm referring to the last document of the
20 Registry which refers to a report which could be submitted to the Chamber which has
21 not yet been submitted.

22 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) But, if I've understood
23 correctly, this will relate to the treatment as well?

24 MR SANT-ANNA: (Interpretation) According to what the doctor -- the medical
25 services of the Detention Centre said, yes.

1 JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We will wait for those
2 reports and we will continue the discussion of the details once we've decided on the
3 date of the hearing, and of course if anything -- if there's anything further to be added
4 in closed session we can do so.

5 I've been told we don't have to wait 30 minutes. We can move into -- we can move
6 to a closed session - not an ex parte, but a closed session - subsequently, so perhaps I
7 could ask the representatives of the Victims and Witnesses Unit to leave the room and
8 that way we could go into private session with the two -- with the parties and with
9 the Registry.

10 Thank you.

11 (The Victims and Witnesses Unit withdraws)

12 (Private session at 3.32 p.m.)

13 (Redacted)

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16 (Redacted)

17 (Redacted)

18 (Redacted)

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Ex Parte Status Conference

(Private Session)

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5 (The hearing ends in private session at 4.32 p.m.)

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