

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. Charles Blé Goudé - ICC-02/11-02/11
5 Single Judge Silvia Fernández de Gurmendi
6 Status Conference
7 Thursday, 1 May 2014
8 (The hearing starts in open session at 9.47 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 SINGLE JUDGE FERNÁNDEZ DE GERMENDI: Good morning to you all.
13 I ask, please, the court officer to call the case.
14 THE COURT OFFICER: (Interpretation) Thank you, your Honour. The situation in the
15 Republic of Côte d'Ivoire, The Prosecutor versus Charles Blé Goudé, ICC-02/11-02/11. We
16 are in open session.
17 SINGLE JUDGE FERNÁNDEZ DE GERMENDI: (Interpretation) Thank you.
18 (Speaks English) For the record, I would ask the participants in this status conference to
19 introduce themselves.
20 The Prosecution, please.
21 MR MACDONALD: (Interpretation) Good morning, your Honour. The Prosecution team
22 is represented by the following persons: Mr Louis Rugambage, Sandra Schoeters, Yasmine
23 Chubin, Florie Huck, Lloyd Stang and myself, Eric MacDonald.
24 SINGLE JUDGE FERNÁNDEZ DE GERMENDI: (Interpretation) Thank you very much.
25 MR KAUFMAN: Good morning, Madam President. (Microphone not activated)

1 THE INTERPRETER: Microphone.

2 MR KAUFMAN: Pardon me. Good morning, Madam President. My name is Nicholas
3 Kaufman. I'm assisted today by Ms Alyzé Bianco and Ms Charlotte Bernard. And of course
4 Mr Blé Goudé himself is present who, despite the fact the learned Judge said that his
5 attendance was discretionary, wishes to follow all of the hearings, even the more technical
6 ones.

7 SINGLE JUDGE FERNÁNDEZ DE GERMENDI: (Speaks English) Thank you very much.
8 (Interpretation) Thank you.

9 (Speaks English) And I am Judge Silvia Fernández acting as Single Judge for Pre-Trial
10 Chamber I. I'm assisted today by Gilbert Bitti, Simon Grabovec and Andréanne
11 Charpentier-Garant.

12 On 14 April 2014 I issued the decision establishing a system for disclosure of evidence,
13 which is filing 57 in the record of the case. I see from the Prosecutor's submission of
14 25 April 2014, filing 65, that a disclosure of evidence has begun.

15 The purpose of this status conference is to obtain submissions of the parties for the
16 purpose of additional decisions that may be needed for the process of disclosure of
17 evidence to unfold smoothly.

18 The issues for discussions are referred to at paragraphs 15 to 19 of the decision of 14
19 April 2014 and I will address them one by one.

20 First, I would invite the Prosecutor to provide answers to the questions posed at
21 paragraph 15 of the decision on disclosure, namely, to what extent you intend to rely
22 on evidence previously disclosed in the case of Laurent Gbagbo as well as the
23 progress and anticipated duration of the process of disclosure of such evidence.

24 Second, to what extent you intend to rely on other evidence currently in your
25 possession, which was not previously disclosed in the case of Laurent Gbagbo as well

1 as the progress and anticipated duration of the process of disclosure of such evidence.

2 And finally, for this first item, whether you intend to continue investigations prior to
3 the confirmation of charges hearing, and in that case when you would be in a position
4 to disclose any evidence arising from this additional investigation.

5 So, the Prosecutor, you have the floor please.

6 MR MACDONALD: (Speaks English) Thank you, Madam President. I will be answering
7 the first two sub-questions, and then my colleague, Mr Lloyd Stang, will address the third
8 sub-question, namely the ongoing any further investigation, and for that purpose we will ask
9 you to briefly go in partial closed sessions in order to be able to speak freely in light of the
10 confidentiality of our investigations.

11 Now, yes, as noted by the Chamber, when referring to a notification of
12 disclosure - disclosure has started last Friday, 25 April if I'm not mistaken - by first
13 disclosing material that is essentially public in nature, so mainly open source material
14 that can be -- that are not classified currently as confidential.

15 We held back some material that may be nevertheless public if it was linked to
16 witness statements. So the purpose was to get immediately what we could disclose
17 to the Defence to -- sorry -- to gather what we could disclose to the Defence
18 immediately without the adoption of a protocol on the handling of confidential
19 material.

20 Now, I will let my colleague speak in that matter, but there is an agreement between
21 the parties in relations to that, so it should make things easy for the Chamber and the
22 parties.

23 Now, the question is when can we disclose the material that is currently classified as
24 confidential? Well, as soon as we have this protocol adopted, which we believe will
25 be probably today, then we can disclose, but here's the -- in terms of timing, that must

1 be the concern of certainly my learned friend and the Chamber, there are
2 approximately over 4,800 documents either of an incriminating nature, Rule 77 or
3 classified as potentially exonerating that have to be disclosed.
4 So this is a large volume, but after discussing with my colleague we believe that we
5 can do this as per the Laurent Gbagbo process and as recognised by your decision
6 number 57 probably within a week. So it would be disclosed in the same way.
7 So I think this basically -- and therefore the material would also be, and I want to
8 make this clear on record -- we believe that these cases are as if they were joint cases,
9 although they're being prosecuted separately at the moment. Therefore, the
10 disclosure will be exactly with the same categories. What is incriminating in relation
11 to Mr Gbagbo will be incriminating in relation to Mr Blé Goudé. The same for Rule
12 77 and potentially exonerating information.
13 Now, in relation to your second question, now of course when the transfer took place
14 like I would say in French, "C'est un peu comme un cheveu qui est tombé sur la
15 soupe." So at the moment while working on the Laurent Gbagbo case we now have
16 to concentrate our efforts to meet the current dead-lines in relation to Mr Blé Goudé.
17 So, yes, we're looking at our internal database, Ringtail, to see if there are any specific
18 documents that maybe were overlooked in the case of Mr Laurent Gbagbo that would
19 be more specific.
20 One might believe, just to give you an example, any documents belonging to Mr Blé
21 Goudé fall under the category of Rule 77 would have now to be disclosed which were
22 not of relevance at the time with Mr -- in the case of Laurent Gbagbo.
23 So we're doing this review at the moment, keeping in mind that preparing the
24 disclosure of 5,000 documents also takes time. So while we're doing that, although
25 one would say the Prosecution is a big office and has unlimited resources, that is not

1 the case. No, it isn't. I don't think I'm breaking any news.

2 We do have investigators that investigate, prosecutors that review evidence and -- for

3 the Court, but nevertheless these resources are limited and it takes time, especially

4 when dealing with material that is redacted for security purposes and so on. So we

5 need to do what we have to do.

6 Therefore for the future material that is currently in our possession, in order to be

7 efficient about it and give us the -- while we're doing other things obviously, we

8 would seek disclosure on 6 June, which I think is a Friday.

9 So in essence close to a month, or just over a month, from today for any material

10 currently in our possession, but if we're able always -- and this is what we -- when

11 we're capable of disclosing earlier we do so. So we're currently reviewing a large

12 number of documents again, but if we're able to do it faster then of course we will

13 disclose it earlier. But I think as an end date, this Friday, 6 June if I'm not mistaken,

14 would be appropriate.

15 My colleagues were reminding me that there is also a request from Mr Kaufman to

16 have access - these were exchanges of e-mail - in relation to a possible admissibility

17 challenge. There are certain documents that we're trying to obtain from States,

18 answers from States in relation to the transfer of Mr Blé Goudé, and these -- so we

19 need to get their consent to be able to disclose those responses. This takes a little bit

20 of time.

21 So the 7th -- so that would be material in our possession, but if you were to impose a

22 dead-line on 6 June we're -- currently we've made the request, but can we meet that

23 dead-line of 6 June? It's a little bit out of our hands. It's -- when dealing with States,

24 sometimes it takes a little bit more time than expected or that one would wish.

25 Also there are a number of UN statements that were collected or obtained in the

1 course of the Laurent Gbagbo investigation that have been disclosed in that case, but
2 that we need to go back to the United Nations to obtain their consent to be able now
3 to disclose them in this case. Therefore, this also is -- currently the request is made,
4 but again material that was previously disclosed in the Laurent Gbagbo case we
5 would now be able to disclose maybe next week, within those five days, or next
6 Monday in ten days let's say, and/or maybe 7 June. So I'm just raising it and giving
7 notice of that.

8 Now, I think those answer -- I would now give the floor to my colleague, unless the
9 Chamber has maybe specific questions on those two categories that we just dealt with,
10 past and current? No.

11 My colleague, Mr Stang, will now address the Court. Thank you.

12 MR STANG: Good morning, Madam President. As Mr MacDonald indicated earlier, if we
13 could request to go into a partial closed session as discussing the topic of prosecution
14 investigations has a higher level of confidentiality and it would allow us to speak freely?

15 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Yes, thank you very much. We will now
16 go into private closed session, please. Partial closed session.

17 (Private session at 10.00 a.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 (Redacted)

Status Conference

(Private Session)

ICC-02/11-02/11

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13 Page 7 redacted – Private session.

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15 (Open session at 10.04 a.m.)
16 THE COURT OFFICER: (Interpretation) Madam President, we're in open session.
17 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you. Now we will proceed.
18 Mr Kaufman?
19 MR KAUFMAN: Yes. Madam President, with respect to the Prosecutor's ongoing
20 disclosure obligations, our view is that the dead-lines should be set as they have been set in
21 the Bemba Article 70 proceedings with the express purpose of ensuring that the confirmation
22 hearing indeed takes place on the appointed date.
23 In light of our agreement to the protocols pertaining to the handling of confidential
24 information, which we will no doubt discuss later, we believe that the disclosure of all
25 evidence public and confidential should be immediate and no later than the one week

1 which Mr MacDonald talked about, and this of course is the evidence which the
2 Prosecution already has in its possession; evidence relating to this case and evidence
3 relating to the Gbagbo case.

4 Now, as for evidence obtained since Mr Blé Goudé's surrender to the Court, we also
5 believe that the Pre-Trial Chamber should set a relatively short dead-line for its
6 disclosure should the Prosecution indeed wish to rely on it at confirmation.

7 Now, I believe that Mr MacDonald talks about 6 June for that. 6 June really as far as
8 we're concerned should be the final dead-line. We would prefer that it were earlier,
9 but we do recognise the amount of information that there is. And I accept what
10 Mr MacDonald has to say about the staffing of the Office of the Prosecutor, but just let
11 him bear in mind that our staffing is less.

12 Now, as any seasoned prosecutor will know, Defence counsel's generosity is normally
13 accompanied by some form of sting in the tail and I am indeed sure Mr MacDonald
14 has been racking his brain for the last few days wondering why I have been so
15 kind-hearted and forthcoming.

16 Now, the thing is that when it comes to the Prosecutor's ongoing investigation in the
17 Blé Goudé case, I am of the firm opinion that the Pre-Trial Chamber should not
18 entertain any evidence at confirmation which is not as of this day currently in the
19 hands of the Prosecution, especially when Mr Stang said a few moments ago that he
20 can't even give a final dead-line for the date of disclosure.

21 Thanks to the excruciating snail's pace at which the Gbagbo confirmation proceedings
22 have progressed, the Prosecution has had the benefit of almost an extra
23 two-and-a-half years to investigate the case against Mr Blé Goudé, which according to
24 the Prosecutor herself is virtually the same case apart from a few minor details.

25 Mr Blé Goudé has absolutely no intention of festering in the Scheveningen Prison for

1 two-and-a-half years. He's eager to have the truth established immediately and to
2 have his innocence confirmed.

3 What the Prosecutor has not found to incriminate Mr Blé Goudé to date she will never
4 find because it simply doesn't exist, and what the Prosecutor does have of
5 purportedly incriminating value, will soon, we argue, be shown to be manifestly
6 unreliable.

7 So we would ask the learned Single Judge to rule that any materials arising out of the
8 Prosecutor's investigation from this day forward shall not be produced at
9 confirmation. Those are our observations, Madam President, on paragraph 15.

10 Thank you.

11 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

12 Can we now move to the next topic, which is now the issue of live witnesses.

13 In this regard I would like to recall that this Chamber has said previously that oral testimony
14 at the hearing, if any, should be narrowly relied on, and only to the extent that it cannot be
15 properly substituted by documentary evidence or a written statement; in other words, we
16 have discouraged live evidence in order not to prolong the pre-trial proceedings. So with
17 this reminder, I would also -- I would like to request the parties, in any case, to indicate
18 whether they intend at the present time to propose any witnesses to testify at the confirmation
19 of charges hearings.

20 The Prosecution has the floor.

21 MR MACDONALD: Thank you, Madam President.

22 No, the Prosecution -- in short, the Prosecution does not intend to call witnesses, with the only
23 caveat that we're contemplating maybe, but it's -- it's -- again, it's at the very early stages of
24 our thinking that maybe an expert witness could be called in this case, but we are -- but
25 most -- but it is more likely the answer will be no.

1 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

2 Mr Kaufman?

3 MR KAUFMAN: Yes, Madam President, with respect to live witnesses, since the Defence
4 has had no disclosure of any true value to date, merely hundreds of open-source media items,
5 I'm not presently in a position to be able to give an informed answer on that question, and we
6 will, of course, come back to the Chamber in due course.

7 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you.

8 I would like to turn now to the matter of judicial control over exceptions to disclosure. In
9 the decision of 14 April 2014, I asked the parties to discuss whether a system similar to that
10 previously adopted in the case of Laurent Gbagbo, or even broader, could be adopted with a
11 view to simplifying the procedure, and I would like now the parties to make submissions on
12 the results of these discussions. I give the floor to the Prosecution.

13 MR MACDONALD: Thank you. We, the Defence and the Prosecution, sat down last
14 Tuesday to discuss indeed these specific paragraphs, 17 and 18, of your order, and -- so
15 we -- we do have an agreement. I'm taking the floor now and -- I'll let my colleague discuss
16 those agreements because it is Mr Blé Goudé that is consenting to these agreements, so the
17 suspect himself is the one that renounces, if you want to, a model or not. But here in this
18 case, we, in line with what Mr Kaufman had said previously, that he wants this case to move
19 forward as quickly as possible, I understand that we are all aiming at meeting the dead-line of
20 17 July to file the document contained in charges and eventually proceed to a confirmation
21 hearing, but as Mr Stang said in closed session, there are still impediments, possible
22 impediments in the future, and we will raise them with the Chamber if need be.
23 I want this also to be clear that one's best intention over time -- there are uncertainties and
24 things develop in a way that is unexpected and sometimes, even if you have the best
25 intentions in the world, well, you need to come back towards the Chamber and raise these

1 issues with the Chamber and, of course, Defence.

2 Now, that being said, in relation to redactions, we have a proposal to maintain the
3 current regime, but with a modification in relation to incriminating -- redactions to
4 incriminating material.

5 And I distributed a decision to my colleague and also to your legal officer of the
6 Chamber, Mr Bitti, it's decision 106 and -- in the Laurent Gbagbo case, which is
7 public.

8 I come from a system, and Mr Kaufman also, where redactions are usually applied
9 proprio motu by the Prosecution and the over -- the review process is done by the
10 Chamber only if the opposing party, here the Defence, challenges these redactions,
11 but looking at your decision number 106 and mainly paragraph 15, 16 and 17, the
12 Chamber in a past -- in this instance, it was -- you may recall there was a dead-line,
13 we knew that material was going to come in which had been collected by
14 investigators who -- an investigator, sorry, whose name was in the metadata of the
15 electronic disclosure and had to be redacted.

16 So we had requested permission to proprio motu apply those redactions, but, in
17 essence, this -- our request was also an authorisation to do so, and the Chamber, and
18 this is where in discussing this agreement, and I want to -- I'm raising this in order to
19 save time, resources, both for the parties but also the Chamber, that you in paragraph
20 17 requested nevertheless for the Prosecution to simultaneously file a proper
21 reasoning for each individual redactions in order for the Chamber, upon review, to
22 either confirm the redactions or to order their withdrawal.

23 So we had to notify the Chamber, nevertheless, that we had applied proprio motu
24 redactions and why. So, in essence, there is not much distinction between seeking
25 permission or authorisation beforehand than to inform after the fact. You still have

1 to make a submission. You still -- I just want to recall -- I understand there is an
2 Appeals Chamber decision and this is the Chamber's concern certainly, but let me try
3 to alleviate those concerns.

4 I think it -- that decision has to be put in this context: The Chamber will always have an
5 overview, not obligation, but will be in a position to overview the process. What we're
6 proposing is that we disclose proprio motu to the Defence, upon reception the Defence then
7 comes back to the Prosecution and if any of those redactions seem to be unsatisfactory -- and
8 then we'll provide them a reasoning as to why we're redacting that information.

9 If ever there is a disagreement, the Defence will inform the Prosecution and/or can
10 even inform the Chamber by way of e-mail, and then the Prosecution would be filing
11 and justifying the specific redactions that are being challenged. In that way you're
12 overseeing this process.

13 So I think the Appeals Chamber decision is, upon a challenge, the Chamber keeps its review.
14 I think we need to read that in now into -- the Appeals Chamber decision so when there is a
15 disagreement -- here the Defence is being represented by a seasoned Prosecutor that knows,
16 that has worked for this institution and others before, and that understands why documents
17 are being redacted or not, and currently there is also, in this specific case, how should I put it,
18 examples, prior decisions where what are we redacting, the Prosecution? Currently we're
19 redacting names of investigators, our investigations are ongoing; locations of interviews; the
20 day and month of interviews; sources; or lead -- the name of potential future witnesses; lead
21 information. That's under 81(2); under Rule 81(2).

22 Under Rule 81(4), it's mainly family members of witnesses or victims and/or what we call the
23 innocent third parties, or persons at risk on account of the Court's activities that are named in
24 passing, being part of a story, or the -- the factual, the account of a witness. So I think these
25 are pretty well circumscribed.

1 And, again, the Chamber will always have, upon request, the possibility to review those
2 redactions. And I think this institution is maturing and can move in that direction. It will
3 save time for the Chamber. It will save time for the Prosecution and also it enables to
4 provide the disclosure quickly.

5 One of the -- in setting this calendar that you'll be setting is, and this impedes on the
6 Prosecution's ability to investigate and the timing of its investigations also, we're to
7 file on 18 July our document containing the charges.

8 If we are to seek redactions and authorisation for such redactions, while the Chamber
9 needs -- well, we need time to file, we need to have then the material available and ready to be
10 able to generate these -- these documents and highlights and provide the material to the
11 Chamber and then you need to assess those redactions. So everyone is working and rushing
12 into an area where, indeed, we don't want to make mistakes and so on.

13 So I believe that, in light of the Chamber's resources, the Prosecution's resources, but
14 also mainly the trust, I think that can -- between the Chamber and the parties, that
15 is -- is available -- is possible, we can move in the direction where the Prosecution in
16 this case, we're making it -- you know, we're recognising that it would be specific to
17 this case, we can't move in that direction.

18 So I -- I will now let my colleague and -- I'll give him the floor because, basically, we
19 have a document that we prepared, before coming to this hearing, where we have
20 such agreements for paragraph 17 and 18, and I've already been long enough
21 standing and explaining our position, but I think the Chamber understands what we
22 mean.

23 If -- but I just wanted to raise that issue in paragraph 17 of decision 106 that if you
24 were to impose such a model now, the Prosecution -- and I'll be very honest, of course
25 it may enable disclosure quickly to the Defence, but it still then creates an obligation

1 for the Prosecution to file and prepare reasons and so on, which do exist, which are
2 there, but then we're generating effort and work maybe on something that can be -- an
3 energy that can be put elsewhere.

4 That's the Prosecution's intent behind this whole thing, and it's not -- and I understand we're
5 letting, in a way, the Chamber -- the Chamber would have to let go maybe some
6 responsibilities, but it's always under the review and the purview of the
7 Defence -- experienced Defence counsel, and we would only solicit the Chamber when there
8 are disagreements.

9 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much for these
10 explanations. Indeed the Chamber urged the parties to -- to try to seek an agreement on a
11 simplified procedure in order to expedite our proceedings, so I'm eager to hear from you what
12 is this agreement.

13 MR KAUFMAN: Yes, Madam President. If I may start and just add to Mr MacDonald's
14 comments, this is not a renunciation of a previous better model, nor having heard the
15 substance of Mr MacDonald's submission is this a joint attempt to destroy court precedent.
16 We must stress that this is something which is sui generis to this case, and it is adopted with a
17 specific purpose of ensuring that the confirmation hearing takes place on its appointed date.
18 We have no intention of adopting a tactic of challenging each and every redaction so
19 long as the legal basis for the redaction is clear and we can have a good working
20 relationship, immediate responses from the Prosecution when we raise questions as to
21 what the redaction represents.

22 So if I may turn to the agreements between the Defence and the Prosecution, as
23 Mr MacDonald rightly said, we have a joint document and I'm going to read it.
24 With respect to Rule 77 and Article 67(2) material, the Defence agrees to the
25 procedures set out in Laurent Gbagbo decision ICC-02/11-01/11-30, paragraphs 48 to

1 51, on the understanding that the basis for the redactions are included and that the
2 redactions can be easily located in the documents.

3 The Defence also agrees that the Prosecution can dispense with the summaries
4 provided with the disclosed documents on the understanding that we would
5 continue to include a short -- that the Prosecution would continue to include a short
6 description regarding the relevance of the disclosed documents in the relevance
7 column.

8 Now, with respect to incriminating material, the Defence agrees to the same -- the
9 same procedure as with respect to Rule 77 and Article 67(2) upon the understanding
10 that the Defence will be able to easily locate the redactions in documents and also that
11 the basis for the redactions are included.

12 The Defence adds the additional requirement that if a concern is communicated to the
13 Prosecution about any redaction, then the Prosecution is required to respond
14 promptly within two working days. If the concern is not then resolved inter partes,
15 then the Chamber is to be seized of the matter.

16 Now, there is one other little issue, and this regards statements taken after 3 June 2013.
17 This is a special requirement pursuant to a special request made by me. And the
18 Prosecution agrees to provide the ERN numbers of the Article 55(2) statements
19 obtained after 3 June 2013.

20 Those are the agreements, Madam President, with respect to paragraph 17.

21 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. And I take that
22 this document will be filed with the Chamber?

23 MR MACDONALD: Yes, I can file a copy today --

24 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Yes.

25 MR MACDONALD: -- immediately. I just wanted to add one thing though in relation

1 again to -- that I forgot to mention in relation to the incriminating -- redactions to
2 incriminating documents.

3 As the Chamber has probably noted, when we do disclose material, we do a report, and in
4 that report we provide -- we indicate if redactions were applied to the documents when it's
5 Rule 77 or potentially exonerating. So there's a notice given to the Chamber for Rule 77 and
6 potentially exonerating material.

7 When we disclose incriminate -- incriminating material, sorry, we also inform the
8 Chamber, but we don't make much emphasis on -- we just state that the documents
9 were disclosed with the applied redactions as authorised by the Chamber.

10 Now, what we could do also in order for the Chamber to receive notice is to indicate
11 that the Prosecution has applied proprio motu redactions to the incriminating
12 documents disclosed to the Defence and indicate under which categories, and then
13 the Chamber would be on notice. And you always, if needed -- and you get the
14 list -- in a confidential annex, you get the list of material being disclosed.

15 And if ever the Chamber would be interested in knowing and overseeing the process as to,
16 well, why did you maybe redact in this document under information of that nature, then
17 this -- the Chamber could then raise it with the Prosecution. That could also be an
18 alternative in order for the Chamber to keep the control as maybe identified by the Appeals
19 Chamber.

20 So I just wanted to flag that.

21 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. And it is indeed
22 very good that you have discussed and you have reached an agreement for a simplified
23 procedure for the case. Yes, we want to see the document, in particular because we don't
24 have live transcripts, so it would be good for us to read this document. But it does sound
25 encouraging.

1 And of course, the system can only work if you have this constant communication in order to
2 address any concerns, because if any challenge is immediately brought to the Chamber, then
3 we are back to a system that would not be simplified and that would defeat the purpose. But
4 I do count on you to have this type of dialogue.

5 I think you already have addressed in what -- in the document you read something
6 that is also -- was part of my -- of the next item, which is to ask the parties to discuss
7 whether the disclosure of pieces of evidence should be accompanied by additional
8 documents or other explanatory information and to report back on this agreement. I
9 think you already referred to that. I don't know if you have something additional on
10 this issue.

11 MR KAUFMAN: Yes, Madam President, we do have an agreement with respect to this. I
12 must add that I'm quite a fan of in-depth analysis charts, but I'm still smarting from having
13 that rejected in the Bemba Article 70 case.

14 But here I'm pleased to see that in the Côte d'Ivoire situation the case is in fact
15 different. And with respect to -- well, it's not the in-depth analysis chart here, it's the
16 elements based chart, we have reached the following agreement: The Prosecution
17 will continue to provide the elements based chart information with each disclosure.
18 The Defence agrees to dispense with the elements based chart column previously
19 included in the list of evidence provided with the document containing the charges.
20 The Prosecution, however, will provide a consolidated elements based chart within
21 three working days of the submission of the document containing the charges.

22 That's our agreement in respect of paragraph 18, Madam President.

23 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

24 Prosecution?

25 MR MACDONALD: To explain the three days.

1 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Yes.

2 MR MACDONALD: Now, the Chamber may wonder, okay, why this distinction. First of
3 all, as -- in the Statute the DC -- the obligation to submit a document containing these charges
4 is found in the Statute itself, same with the list of evidence. You have flexibility for the
5 element based chart. This is mainly a request following decisions of Chambers on the
6 matter.

7 Now, the reason -- when we -- when we -- as noted maybe by the Chamber in January
8 when we filed the Laurent Gbagbo amended DCC, it is -- especially when
9 hyperlinking all these documents, it can be cumbersome because as you may
10 appreciate there are always last-minute changes and glitches, either technology or
11 human error.

12 So in order to be -- the element -- the element based chart will be disclosed -- will be provided
13 with every single disclosure. So it's before even filing the DCC. But in order then to
14 provide a consolidated one, we would like to be able to have a bit of a leeway or breathing
15 room, if you prefer, to file it after the dead-line of the DCC. So that is the proposal of the
16 parties here if the Chamber is amenable to that.

17 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: So if I understood correctly, you will use
18 basically the same system that was applied for the Gbagbo case with the only difference that
19 the consolidated elements based chart would be provided three days after the presentation of
20 the DCC. Is this correct?

21 MR MACDONALD: That is -- that is correct, three working days after the filing of the
22 document containing charges. And we had in the list of evidence itself a column repeating
23 those elements. I understand that the agreement of the parties is to eliminate -- that column
24 will not have to be generated in the list of evidence. So it's the last column. If you look at
25 the list of evidence in the Gbagbo case, the last column would be eliminated because the same

1 information is, in any event, already provided as disclosure takes place and in this
2 consolidated chart. So it's a bit of redundancy.

3 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.
4 Mr Kaufman?

5 MR KAUFMAN: Yes, Madam President. That is indeed correct. It's more simple for me
6 to work quite frankly in the way that is presented in our agreement. And for me, I was quite
7 happy to agree to it because it's a concession which allowed me to argue for, as I said, an
8 expedited confirmation hearing.

9 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

10 MR MACDONALD: I can provide a copy of the agreements.

11 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Yes, indeed. Thank you.

12 MR MACDONALD: To simplify it instead of sending it by --

13 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: And you have already provided a copy of
14 the other one? You can do the same.

15 MR MACDONALD: They're all together.

16 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Are they all together?

17 MR MACDONALD: Yes.

18 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Okay.

19 MR MACDONALD: Paragraph 17 and 18, sorry, have been answered in the same
20 document.

21 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: So finally, I think we are getting into the
22 request of the parties' views on the adoption of a protocol for the handling of confidential
23 information. In particular I would like to know whether this protocol could be identical or
24 similar to the one previously adopted in the case of Laurent Gbagbo. And I think you
25 already referred to some kind of agreement on this issue.

1 So, Mr Kaufman, you want to go first?

2 MR KAUFMAN: Thank you, Madam President. Well, I am realistic, and I'm not going to
3 try and reinvent the wheel when there's already a decision on the matter in the Gbagbo case.
4 So yes, with respect to the protocols for the handling of confidential information, although we
5 believe that Article 8 of the Code of Professional Conduct is sufficient, we do agree to the
6 contents of the two protocols set out in the annex to filing ICC-02/11-01/11-49 in the Gbagbo
7 case. Thank you.

8 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

9 Mr MacDonald?

10 MR MACDONALD: Sorry, nothing to add.

11 Now, the agreement that I just filed, I understand Mr Kaufman may have modified a few
12 words when providing it and there could be typos here and there. So in essence
13 I understand that what I just filed should be maybe accepted as a summary of the admission
14 of -- or the agreements as agreed by Mr Kaufman and as will be found in the final transcript.

15 MR KAUFMAN: That is indeed correct. I was trying to correct the grammatical errors as I
16 went along.

17 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. So in order to -- if
18 I may summarise, you have basically reached an agreement on all issues that you discussed
19 on the issues of disclosure, on the element based chart, on the protocol handling of
20 confidential -- the protocol for handling of information, and I think that has exhausted the list
21 of issues that was contemplated in our decision of 14 April.

22 So at this point then I may ask you if you have any other submissions that you want to make
23 at this point related to the matters of disclosure or -- yes.

24 MR MACDONALD: Thank you, Madam President. No, the Prosecution has nothing else
25 to add or to discuss with the Chamber at this stage. Nothing, unless I've forgotten

1 something, but at this stage we're -- all matters have been addressed.

2 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

3 Mr Kaufman?

4 MR KAUFMAN: Thank you, Madam President. Yes, there is one last small matter, and of
5 course it ties in with our desire to expedite the proceedings, and that concerns the request that
6 we filed for State co-operation, something which we believe seriously has the potential to
7 slow things down.

8 Now, I have to add that this request when it was filed was once again the product of Defence
9 and Prosecution negotiation and co-operation. I'm aware of the Single Judge's ruling
10 number 63 in the case record, and that has obliged the Defence to pursue the matter in the
11 courts in Côte d'Ivoire. So on 22 April 2014 a request was filed in the Tribunal de Première
12 Instance in Abidjan and we are yet to receive a decision. Indeed, if past conduct is anything
13 to go by, I seriously doubt whether we will receive a decision in the near future.
14 Nevertheless, given my general benevolent disposition today, I'm prepared to give the
15 domestic authorities the benefit of the doubt, and I sincerely hope that today's hearing will
16 prompt a reaction which will obviate the need for me to repetition the Chamber on the matter.
17 Thank you.

18 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much. We will see how
19 this response evolves and then we will take it from there.

20 MR KAUFMAN: Thank you.

21 SINGLE JUDGE FERNÁNDEZ DE GURMENDI: So if there are no other matters, then we
22 can reach to the end of our status conference. I would like to thank the parties, the
23 interpreters and everybody else in the courtroom for their assistance. And I declare this
24 status conference is now closed.

25 THE COURT USHER: All rise.

- 1 (The hearing ends in open session at 10.38 a.m.)