

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Koudou Gbagbo - ICC-02/11-01/11
5 Single Judge Geoffrey Henderson
6 Status Conference
7 Thursday, 4 December 2014
8 (The status conference starts in open session at 9.34 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 SINGLE JUDGE HENDERSON: Good morning everybody.
13 Will the court officer please call the matter, please.
14 THE COURT OFFICER: Yes, your Honour. Good morning.
15 Situation in the Republic of Côte d'Ivoire, in the case of The Prosecutor
16 versus Gbagbo, case reference ICC-02/11-01/11.
17 And for the record we are in open session.
18 SINGLE JUDGE HENDERSON: Thank you.
19 I would just like to welcome the parties to this status conference. And just for the
20 record I'd just like to note formally that Mr Gbagbo is absent, the Defence having filed
21 on 1 December a waiver signed by the accused himself in relation to his right not to
22 be present this morning. That is filing number 733.
23 So for the record, can counsel please introduce themselves for the record. And as
24 usual, if you can take your time and speak slowly for the transcriptionist as well as
25 the translators.

1 The Prosecution.

2 MR MACDONALD: Good morning, your Honour. The Prosecution this morning
3 is represented by Mrs Berdennikova, Huck, Varga, Chubin, Mr Stang and myself,
4 Eric MacDonald.

5 SINGLE JUDGE HENDERSON: Thank you.

6 The Defence.

7 MR ALTIT: (Interpretation) Good morning, your Honour. Ms Naouri is with me,
8 and behind is Ms Le Guennec and Ms Turgis. Myself, I am Mr Altit.

9 SINGLE JUDGE HENDERSON: Merci. Thank you.

10 The Legal Representative for the Victims.

11 MS MASSIDDA: Good morning, your Honour. For the victims participating in
12 these proceedings, Enrique Carnero Rojo and I am Paolina Massida.

13 SINGLE JUDGE HENDERSON: Thank you.

14 And the Registry.

15 MS BECERRA SUAREZ: Good morning, your Honour. Representing the Registry
16 today we have to my left Isabelle Oseredczuk, who is associate legal officer within the
17 Victims and Witnesses Unit and myself, Bibiana Beccera Suarez, legal coordinator for
18 the Division Of Court Services. And we appear on behalf of the Registrar,
19 Mr Herman von Hebel. Thank you.

20 SINGLE JUDGE HENDERSON: Right. So on 27 November, a status status
21 conference was scheduled for a Single Judge, and we issued an agenda. And upon
22 the invitation of the Chamber, the parties informed us by way of an email of the items
23 that they wished to add to the agenda. The Prosecution indicated two additional
24 items, namely, one, the adoption of a witness preparation protocol; and, two, further
25 discussions on the redaction protocol, if need be.

1 The witness preparation protocol will be discussed later on today. However,
2 regarding the redaction protocol, the Chamber wishes to let the -- you know that we
3 have already received extensive submissions from all the parties, and having
4 considered the matter, we are of the view that no further submissions or assistance
5 from you is needed. And I will, therefore, not be hearing any submissions on that
6 particular topic this morning. And I should also let you know that a decision will be
7 issued shortly on that matter as this is crucial to the case moving forward.
8 Now, the Defence suggested to discuss the protocol on contacts with witnesses whom
9 the opposing party intends to call as an agenda item. As this protocol is closely
10 related to the protocol concerning the disclosure of the identity of witnesses of the
11 other party and the handling of confidential information in the course of investigation,
12 we will discuss these together later on this morning.
13 So that being said, let's start with the specific items of the agenda that we have listed
14 for the status conference this morning.
15 So the first item would be an update on the status of disclosure pursuant to Rules 76
16 and 77 of the Rules as well as Article 67(2) of the Statute.
17 Now, during the status conference the Prosecution has updated the Chamber on the
18 status of disclosure. It has indicated, among other things, that out of the 55
19 witnesses, witness statements already disclosed to the Defence in the course of the
20 confirmation hearing proceedings, the identity of only three witnesses had been
21 withheld from the Defence, and that out of those three witnesses, it was ready to
22 disclose the identity of two of these witnesses.
23 Now, the Prosecution informed the Chamber that in relation to the one witness
24 referred to as P-238, whose identity could not be disclosed immediately, it intended to
25 meet him as soon as practicable in order to discuss the feasibility of the disclosure of

1 his identity and to report to us promptly. The Prosecution had also indicated that it
2 was ready to disclose statements related to at least five other witnesses,
3 approximately 420 documents collected in the context of another proceedings, the
4 Blé Goudé case, as soon as a decision on the redaction regime is issued by the
5 Chamber, which will be done in the very near future, as I said a short while ago.
6 The Prosecution further stated that it was ready to disclose the documents and videos
7 that it has in its possession, having been reviewing them, and they propose to do so
8 by the end of January. And, finally, the Prosecution also indicated that it was
9 conducting further investigations.

10 So to start off, Mr Prosecutor, can you provide us an update on the progress made
11 regarding the disclosure, regarding disclosure generally since the last status
12 conference?

13 MR MACDONALD: Certainly, your Honour.

14 First of all, just to -- we are currently in relation to documents in our possession, we
15 are currently on schedule as mentioned the last time. What is holding us back as
16 you've referred to it is the redactions protocol.

17 Since our last status conference and as mentioned, our investigations are ongoing,
18 and we are also reviewing internal documents that were previously reviewed for
19 purposes of exonerating or materiality for the Defence. And so documents are being
20 added to the number that was provided to you last time.

21 The current number, your Honours, of documents that we would like to disclose to
22 the Defence and that we'll be in a position to disclose once we have certainty on the
23 redactions is close to 649 documents.

24 I understand, your Honour, that you mentioned that you don't want the parties to
25 relitigate the redactions protocol. And I will be providing information, and it is not

1 for the purposes of relitigating the issue, sorry. It's simply that, depending on the
2 categories that the Chamber may agree to adopt on a proprio motu basis -- and I will
3 prefer more specifically to the category of investigators -- if names of investigators
4 cannot be redacted on a proprio motu basis, then we have to file for 623 of these
5 documents a request for redactions that you will have to then rule upon.
6 So I am just saying that for logistical and practicalities. If we have to file a chart
7 indicating where and why and so on and then the Chamber has to rule, this will
8 inevitably create delays. But if it becomes a category that we can redact proprio
9 motu, then we will be able to disclose 623 -- sorry, 643 or close to 643 of these
10 documents and only 6 documents would need to be -- would fall outside the Kenya
11 protocol categories where we would need to seek justifications. So, in other words,
12 this category and, again, it is just to indicate to the Chamber in terms of logistical and
13 practicalities issues what is at stake and the delays it may create. So I'll stop there.
14 Just to mention that in relation to Witness P-238, we have not been in a position to sit
15 down with him currently and discuss disclosure of his identity. And we had
16 mentioned I believe the last time that we were trying to do this as promptly as we
17 could, but by the end of December it would be done. I must confess, your Honour,
18 that in light of the scheduling order -- I mean, the setting of the date of a trial to
19 July 7th, which is not problematic, the trial date, but the disclosure of 6 February, five
20 months, which is quite exceptional, we had to reprioritise our investigations in the
21 field and, therefore, at the moment we have not been able to sit down with 238,
22 Witness 238, but we will do so.
23 What I'd like to add for the Chamber's knowledge is, while we are currently on track
24 in relation or on schedule in relation to the documents in our possession,
25 investigations in the field are actively continuing and including interviews that lead

1 to the request of transcriptions, transcripts, interview transcripts, so basically, Article
2 55(2) interviews. And as mentioned, it takes a while to obtain these transcripts.
3 We're doing our best, and there are also competing interests, and this is what I want
4 to -- when I say "competing interests," there are competing interests within the office
5 between the different cases, and there is also competing interests within the case itself
6 because, as mentioned, we have videos, and we are trying to transcribe the
7 incriminating videos for presentation in Court.
8 So we are able to disclose obviously on time the videos. That's not an issue. But the
9 transcripts, which are not an obligation in terms of disclosure, but are an obligation in
10 terms of presentation -- not even an obligation, I would say a visual aid for
11 presentation at trial, we're working on that also, and there's a large number of videos.
12 So in other words, what I want to say is the raw material, the primary material, the
13 videos themselves, which you can hear them quite properly, they're in French, or if
14 ever there's another different language, like Dioula, for instance, then we transcribe
15 those parts for the Defence, obviously. And even then they may have their own
16 capacity to understand what is being said on those videos. But we feel that at this
17 stage the important thing is to get the video, the primary evidence to the Defence by
18 the set deadlines. So that is all on schedule indeed so far.
19 If ever, your Honour, and this is what I want to stress, if ever there are a situation
20 where we cannot for a reason or another in relation to Article 55(2) interviews meet
21 the deadline of 6 of February, we will know that well in advance. When I say "well
22 in advance," three weeks to a month in advance. And one has to consider also that
23 we're at a time of the year where there is a Court recess, and it impacts on our
24 operations. But we will then forewarn the Chamber via Regulation 4 -- Regulation
25 35, sorry. I don't want to get mistaken between the different sections of the

1 Rome Statute Rules or Regulations. But we will provide advance notice to the
2 Chamber and to the Defence.

3 Now, also, and I'm raising it now again, the purpose is to inform the Chamber of the
4 Prosecution's position and what may be coming in relation to the management of the
5 schedule of this Chamber. As you well know, even though the schedule was set for
6 this case, there is another case, which is the Blé Goudé case, there will be a decision
7 very shortly, the latest, 15 December, so in a few -- a few days. And that decision
8 unavoidably, your Honour, will impact on this case.

9 Now, it is the Prosecution's intention, and we're not hiding, we're forewarning, we're
10 indicating, it is a heads-up, that the Prosecution will be seeking, if the charges are
11 confirmed, hypothetically at this stage, we understand, we'll seek to join the two cases.
12 But in the meantime in this case we'll seek for a variation of the time limits, including
13 mainly 6 February deadline, and we'll justify that, and the Chamber and parties will
14 have a chance to obviously view their position, and the Chamber will decide on the
15 merits or not of that variation for time limits request.

16 So I wanted to say that at this stage, because it impacts obviously on everything that
17 we're discussing that relates to disclosure. I'll stop and limit myself at that for now,
18 your Honour.

19 So, in essence, if you'd allow me maybe one second, then I can consult my colleagues?
20 Sorry, one point I had forgotten. I have notes, which I'm not reading. Maybe I
21 should. Yesterday we disclosed documents that -- incriminating documents, not that
22 many, 12, that did not need redactions, and also Rule 77 and one pixel, in total
23 600 -- or sorry, 100 documents, 99 pursuant to Rule 77 and 1 pursuant to Article 67(2).
24 Now, those were disclosed with redactions pursuant to the previous model adopted
25 by the Pre-Trial Chamber in decision 30. Disclosure took place at 5 p.m., so a report

1 to this Chamber could not be filed and/or notified, but will be notified today. But, in
2 essence, it's going to repeat what I've just said. That's what I wanted to mention.

3 Thank you, your Honour.

4 SINGLE JUDGE HENDERSON: Thank you.

5 Now, insofar as you mentioned another case, the Chamber, while it will appreciate
6 what you have referred the heads-up, ultimately the Chamber has before it one
7 matter. So the decisions of the Chamber have been premised on the fact that we are
8 dealing with one matter. And insofar as, and it was -- we fairly stated it in our
9 decision regarding the timelines, the Chamber would have, of course, taken into
10 account that this is a case of some antiquity, relatively speaking, and that there had
11 been investigations going on for some time. So thank you.

12 Let me hear from the Defence, Mr Altit, or let me hear from Ms Naouri.

13 MR ALTIT: (Interpretation) Thank you. My colleague, Ms Naouri, will be
14 responding.

15 MS NAOURI: (Interpretation) Concerning disclosures, the Prosecutor did mention
16 that, yes, indeed, at 5 in the evening yesterday we did receive some documents.

17 They date 6 February 2015, 2015. That deadline, it is very important for us. We just
18 heard that the deadline will not be extended, at least there is no request to extend the
19 deadline. So in light of Rules 76 and 77, the proper disclosure must be done in time
20 for our team. So we did raise this issue during the last status conference and the
21 issue of the items of evidence that the Prosecution already has.

22 Now, is the Prosecution saying that the redaction protocol has to be adopted for
23 disclosure to occur? Is he saying that once the protocol is adopted that he will
24 disclose all his exhibits immediately?

25 Today we've been told that there were 649 documents disclosed and that some of

1 them came under 77 and had to be reviewed. It is important for us. And this, you
2 see, this is a considerable number of documents. Disclosure must occur as quickly as
3 possible. We cannot be submerged in a sea of last-minute documents disclosed at
4 the last minute, on the 6th.

5 As for the videos, we heard that 164 videos would be disclosed. That is what the
6 Prosecution said and has reiterated today. We will need time to review these videos,
7 analyse them and analyse the transcripts. We would suggest that each video be
8 disclosed as soon as it is analysed so that the Defence is not drowning in a sea of
9 last-minute disclosures on 6 February.

10 Concerning disclosure of exhibits that the Prosecution believes it will be receiving
11 soon, the Prosecution is still investigating. We asked for that disclosure to be done
12 on a rolling basis. It is important for us for disclosure to be done on a continue basis.
13 Once again, we do not want to be drowning in last-minute disclosures on the 6th.
14 Now, it is not very clear to us whether the Prosecution will be asking for an extension
15 to the deadline. He asked -- he made mention of a possible joinder of this case and
16 the Blé Goudé case. But we really can't operate on the basis of assumptions. We
17 may wish to appeal. Well, of course, we would ask for leave to appeal first. So the
18 whole issue of the joinder could go to appeal.

19 So we would like the deadline that has been set to be maintained, and if the
20 Prosecution requires additional time, we should be notified as quickly as possible,
21 because that could have an impact on the possible date of trial. We want the
22 deadlines to be upheld.

23 One word about testimony. Exhibits that come under Article 76, the disclosure must
24 be done by February 2015. One thing that is fundamental for us is for us to have the
25 substance of the statements in question, the statements made by the witnesses that the

1 Prosecution is planning to call so that we can analyse the content, cross-check and so
2 on and so forth, cross-check the accuracy and the truthfulness of the account given;
3 and to do all of that we will have to have all the witness statements and assess them
4 in light of our own documents that we have obtained by our own means.

5 If there is just a single testimony that might call into question the Defence's
6 investigations, once again, that is why the Defence is suggesting that we stick to the
7 deadline, but authorise the Prosecution to disclose a few statements after the -- after
8 the deadline on a very much exceptional basis. Any request for an extension to the
9 deadlines should be looked at individually, and the Prosecution should provide
10 proper grounds to justify any requests for an extension.

11 Turning now to the charges. So that the proceedings are as transparent and fair as
12 possible, the Prosecution should disclose all elements that may be of interest to the
13 Defence. They should not leave anything aside, even things that they don't intend to
14 use, because the Defence wants to consider the exculpatory nature of such items.

15 This is particularly important because in paragraphs 25 and 38 of the Prosecution's
16 filing, the Prosecution hinted that they would not be disclosing everything that they
17 have in their possession.

18 One word to conclude. The schedule that has been set by the Judges in their order
19 takes into account the need to ensure the rights of the Defence, particularly the rights
20 of the accused to benefit from suitable time and facilities to prepare his Defence in
21 accordance with Article 67. The Prosecution announced at the last
22 statement -- correction, status conference that they would be calling a hundred
23 witnesses, which is the highest number of witnesses ever brought before the Court for
24 a particular case. Thus, the work that these 100 witnesses represent will be
25 considerable. We will need time. If somewhere between 80 and 100 witnesses are

1 called, the Defence will need on average three days to analyse the possible testimony
2 of each witness, and this brings us to a grand total of 240 days. And given that the
3 current deadline for start of trial is five months away, I think the Defence will not
4 have the necessary time to prepare Mr Gbagbo's Defence. So the five-month
5 deadline we are looking at is a minimum.

6 If the deadline for the Prosecution were to be extended, that means the start of trial
7 would have to be extended as was done in the Ruto case. In that particular case, the
8 Judges found that the disclosure of numerous items very close to start of trial
9 significantly hindered the work of the Defence team, and that is why the Judges
10 decided to delay the start of that particular trial. Thank you.

11 SINGLE JUDGE HENDERSON: Thank you, Ms Naouri.

12 I have heard that you said the Prosecution does intend to, you know, perhaps call as
13 much as 100 witnesses. But when disclosure has been effected, at that time perhaps
14 it may be appropriate to discuss, and we'll come to that in due course, agreed
15 evidence as a mechanism to manage the size of these proceedings. But that is
16 something that can only properly take place when there has been a completion of the
17 disclosure exercise.

18 Mr Prosecutor, you had indicated that Witness P-238, you had to because of the
19 priority of the disclosure, you had to reprioritise things, but I couldn't recollect how
20 soon you said that this may, in fact, take place.

21 MR MACDONALD: Well, sorry, your Honour. It will -- it is on the agenda, first of
22 all, of the tasks and that we have to do. But for sure by the end of January we'll
23 know. But I want to reassure the Chamber the Defence already has the material of
24 Witness P-238, although in redacted form. But any information that maybe
25 incriminating, potentially exonerating or material to their preparation in the

1 statement of 238 has been provided at the pre-trial stage. The only thing that would
2 be additionally disclosed is his identity or not, and if not, well, then we'll come back
3 to the Chamber and discuss disclosure of his identity in relation to potentially
4 exonerating or rule the material, material or -- sorry, Rule 77 purposes. But then the
5 Prosecution would not be relying on that witness. I just want to clarify that so it's
6 not -- there are no surprises to the Defence at this stage.

7 Now, just to come back on, I take this opportunity to maybe answer one of the
8 questions of the Defence, and I'm going to repeat what I've just said for clarity
9 purposes if it was misunderstood, we have not mentioned anything about requesting
10 a change of the calendar. We have not said that. What we've said is in relation to
11 potential insider witnesses, their transcripts may not be ready for 6 February. And if
12 that was the case, we will, of course, follow the prescriptions of Regulation 35.

13 Last, what I've mentioned, and the Chamber -- sorry, your Honour, clarified that this
14 is the Gbagbo case, while I was providing a heads-up, and we understand clearly the
15 position of the Chamber, including on the reason why 6 February may have been set
16 as the deadline, what we're saying is giving a heads-up. And that will be ultimately
17 for the Chamber to decide obviously after the parties had an opportunity to litigate it.
18 So we're very well aware. This is just information I'm providing.

19 Now, again, without repeating what we've said previously a month ago, a year to
20 prepare a case, I'm sorry, if we've been investigating for that long, the Defence has
21 been receiving disclosure for that long also, and they have already 55 witnesses. So
22 we can -- and I understand that's also the reason, possibly one of the reasons why the
23 Chamber set the date of 6 February, the five months, so then the Defence cannot argue
24 on 7 July, "Well, listen, we didn't have enough time to prepare our case." They've
25 had five months.

1 So you can cut their number in two, a year -- because they already have 55 witnesses.

2 So the three days they've had for a long time ago.

3 And one correction I want to make, and I will end with that, yesterday's disclosure is
4 not the first at the trial stage. It's the third. And there are the reports for that
5 purpose. Once this Trial Chamber was seized, the Prosecution disclosed material.

6 So it's been on an ongoing basis.

7 The only thing that is holding us back at this stage is the litigation in relation to a
8 protocol on redactions. And it is unfortunate that the Chamber can appreciate why
9 we cannot agree. Thank you.

10 SINGLE JUDGE HENDERSON: All right. Now, before I invite the Defence to -- if
11 they have any observations on that, as I indicated earlier this morning, the Chamber
12 will issue shortly its decision on the redaction, the regime to be applied.

13 Now, once this is done, I would imagine, and I would imagine you could confirm to
14 the Chamber that you would be in a position to effect your disclosure rather
15 effectively and efficiently and quickly?

16 MR MACDONALD: Yes, your Honour. But this will all depend on what the
17 redactions protocol allows the Prosecution to redact on a proprio motu basis.

18 That's -- that's, again, the unknown for the parties at this stage. But, yes, if, for
19 instance, the Prosecution's proposal plus the redactions on investigators, then that can
20 be done very quickly, possibly within a week. I'm saying "possibly," your Honour,
21 because we have a knowledge-base unit that manages the redaction, the disclosure,
22 the redactions and so on, and here there's 643 documents that would need to be
23 redacted, plus another 6 for which we would need to seek permission, and there are
24 60 documents associated with those 643 that do not need redactions, but we don't
25 disclose because they are annexes to statements, stand-alone documents that don't

1 mean anything unless the principle is disclosed, so we're not disclosing them at this
2 stage. We're waiting again.

3 But, yes, we can get it out quickly, but there's all -- I mean, it's technology. There is
4 an equal protocol that needs to be followed. A volume of that magnitude, such
5 volume needs to be managed, and it takes a little bit of time.

6 And that's why also, just to again -- yes, we can disclose one piece of evidence, but
7 each time we disclose only one, then we need to write a disclosure letter, a list and
8 then we have to make a report. So we tend not to do that just for one document.

9 We try to, you know, package documents together and this is why, for instance,
10 yesterday in total there is 120 -- 112 documents that were disclosed.

11 So voilà. But, yes, to answer the question, we will do it as quickly as we can.

12 SINGLE JUDGE HENDERSON: All right, thank you.

13 Now, before I move on to the other protocols, is there any observations that you may
14 wish to make on that? All right, very well.

15 All right, so thank you. We now move on to item B, namely, the views of the parties
16 and participants and an update on any ongoing discussions on the following
17 protocols.

18 So let me begin with the protocol concerning the disclosure of the identity of
19 witnesses of the other party and the handling of confidential information in the
20 course of investigations.

21 Now, within the this item, for the reasons explained earlier, the parties and the
22 participants are invited to discuss also the protocol on contacts with witnesses of the
23 opposing party.

24 Now, during the first status conference, the Chamber noted that these protocols had
25 been agreed upon by the parties at the confirmation phase, and this was done, it is

1 confirmed in filing 49 and its annex, and that no specific comments in this regard
2 were made by the parties during the first status conference and in their observations
3 in preparation thereof.

4 So can you inform us, the Chamber, on your views on these protocols and if there are
5 any ongoing discussions.

6 So perhaps I can start with you, Mr Prosecutor, Mr MacDonald.

7 MR MACDONALD: Well, let's put it this way, we are more hopeful to come to an
8 agreement with the other protocols than the one on the redactions that may have
9 posed more specific problems, mainly to the Defence.

10 The Prosecution, the parties, and I will name them as participants, the legal
11 representatives, have been discussing all of the protocols mentioned and more. And
12 the discussions are currently ongoing, and I can say -- I can go through each and
13 single one of them if the Chamber wishes, but from the outset I must say that the first
14 protocol, you may remember that the Defence sent an email earlier this week
15 indicating that in Decision 49 at the pre-trial stage, the Chamber's decision mainly at
16 paragraph 29 to 32 included a reference to a protocol or regulating contacts between a
17 party and witness of the opposing party. So that should be included if we -- if
18 we -- if the Chamber wishes to this protocol, which you've identified at disclosure of
19 the identity of the witnesses of the other party and the handling of confidential
20 information in the course of investigations, all three could be joined.

21 I'd like to mention that while the Pre-Trial Chamber may have adopted previous
22 protocols, some of which were a decision or a compromise after discussions between
23 the parties, the Prosecution has been looking when submitting proposals to the
24 Defence at obviously the Gbagbo protocols as adopted by the PTC, the Kenya
25 protocols, and also recently submitted protocols and in the Ntaganda case.

1 And I will say this on record, because the Defence team of Mr Ntaganda took offence
2 and I'm very sorry when I was referring to Mr Ntaganda by his first name at the last
3 status conference, so on record it is obviously Mr Ntaganda. And it was just a lapsus
4 on my part.

5 But so for that in the current week we've sent proposals. The participants, the
6 Defence has not necessarily sent us anything, but we have sent proposals in track
7 changes to these past Gbagbo protocols for them to reflect certainly for our part now
8 the position of the Office of the Prosecutor. While the Chamber noted in its schedule
9 that it is maybe looking at standardising these protocols at the Trial Chamber level,
10 the Prosecution is obviously looking to doing the same thing within its own office, so
11 that's why there are amendments that are being proposed to some of them.

12 What I'd like to say where I think in principle we agree, and I'm mentioning it now
13 under of course the watchful eye of Mr Altit, the preparation, the witness preparation
14 protocol. We agree on principle that there should be one. We also agree on
15 principle on most of its clauses.

16 The Prosecution has an amendment to propose reflecting discussions I had with the
17 Ruto prosecution team whereby we feel that while it is suggested that or
18 recommended that the lead counsel should be doing the witness preparation,
19 sometimes for logistical and practical reason this becomes difficult when the same
20 prosecutor is questioning witnesses, two, three witnesses in a row. By day he's here
21 in the courtroom questioning or intervening, and then he needs to find time to prep
22 the witnesses that are to come. And, of course, as you well know, witnesses are
23 under the care and control of the VWU, and scheduling then, there's conflict of
24 schedules.

25 So we're proposing an amendment that, yes, while it should be favoured that the lead

1 counsel should be doing the witness preparation, when that is not practicable,
2 another member of the same trial team should be able to do it in lieu of the leading
3 counsel. And that's an amendment, your Honour, to Article 6. I have some
4 wording. I think the Defence agrees on this wording. We've submitted it. And
5 the Defence, I will not speak for them, they had -- they were questioning maybe
6 some -- some issues, two limited ones, but I think we certainly agree on the principle,
7 and I think with further discussions we can probably arrive and propose a protocol
8 that would be suitable, because it follows to a T the Kenya model. So why relitigate
9 something that was already adopted in the past?

10 What I'd like to say, your Honour, is in reviewing the different protocols, and I will
11 draw the attention of the Chamber or the Prosecution's position to one of them where
12 we do not have any issues with the current wording, and as it reflects the practices in
13 the different cases, it is the unified -- sorry, the protocol on the vulnerability
14 assessment and support procedure used to facilitate the testimony of vulnerable
15 witnesses. In relation to that protocol, the Prosecution has no comments. Of course,
16 I don't know the position of my colleagues on these protocols and then we can see if
17 they propose amendments, but as it stands now, the Prosecution has nothing to say.
18 The only thing -- the additional thing I'd like to add, your Honour, is in relation to the
19 second protocol under (b), under 3(b) in your schedule, the unified protocol on
20 practices used to prepare and familiarise witnesses for giving testimony. The
21 Prosecution mentions that the Gbagbo protocol had not foreseen witness preparation,
22 therefore, the Gbagbo would have to be adapted to the Kenya model. Kenya model
23 foresees witness preparation in its protocol, so, therefore, we have no problems with
24 the Kenya model because it takes into account witness preparation.

25 But what I'd like to mention and draw the attention of the Chamber to, and for that

1 purpose I'm raising it now, if you look at the Kenya familiarisation protocol and more
2 specifically common accommodation for witnesses that are in The Hague, and this
3 can be found at paragraph 39 to 42, and I've discussed this with Mr Altit, and I think
4 there is in principle, we agree, possibly.

5 SINGLE JUDGE HENDERSON: Paragraph 30 what?

6 MR MACDONALD: Paragraph 39 of the Kenya familiarisation protocol or the
7 Gbagbo one maybe also, I don't know. I'm sorry about that. I was looking at the
8 Kenya model.

9 Essentially, the problem is that currently the norm or the principle would be that
10 witnesses are accommodated together when in The Hague. So if you have witnesses
11 coming, two, three witnesses, the next two, three witnesses are housed, if you want, it
12 doesn't matter where exactly, but they are together.

13 And I understand that the Registry or the VWU here in this case is articulating very
14 nicely why they're doing that, but as a prosecutor that will have to defend the
15 credibility of witnesses being housed together and that they can, therefore, discuss
16 their testimony in The Hague, that is problematic very much so for the Office of the
17 Prosecutor.

18 We've raised the issue in the past with the Registry, but the proposal that we've
19 submitted to the Defence and the participant is to remove or amend.

20 Now, there may be exceptional circumstances and we understand that, your Honour.

21 It is not a -- it's not a position that is not flexible that we're proposing. We
22 understand that vulnerable witnesses may have special needs and cares. But to
23 house Witness 238 with Witness 239 and Witness 240 that will follow each other, we
24 feel that that is problematic.

25 And while we understand that, and they're not maybe spelling it out outright, there

1 are financial considerations to all of this, well, I think we believe at the Office of the
2 Prosecutor that these should yield and outweigh the need for or avoid the risk of
3 witness being tainted by other witnesses while they're here in The Hague should be
4 avoided as much as possible.

5 That would be the only amendment, your Honour, in relation to that protocol.

6 So to recap, we've submitted our proposals. I think witness preparation, we're
7 pretty close to an agreement. We have no comments on the vulnerability assessment
8 protocol. And I think we believe that the Kenya model and most of these protocols
9 is quite fine with amendments taking into account practices as -- or lessons learned
10 from the Kenya or Ruto case, sorry, and also some amendments reflecting our
11 position in other cases before this Court, before the ICC, including, for instance, in the
12 Ntaganda case.

13 So maybe the discussion or to move the things forward, a deadline should be given to
14 the parties to submit to the Chamber final positions on each protocol so that we can
15 move forward, but these are maybe of less urgent necessity than, for instance, was the
16 redactions protocol. Thank you.

17 SINGLE JUDGE HENDERSON: Before I turn to the other party and participants,
18 just to be clear, when you said that regarding the protocol on vulnerable witnesses,
19 you had nothing to say. Can I take it then that you are saying that as far as the
20 Office of the Prosecutor is concerned, this is what you propose to be the protocol?

21 MR MACDONALD: Yes, with a caveat that, of course, if the participants or parties
22 would propose amendments, we would have to look at them, of course, but as is
23 would be fine.

24 SINGLE JUDGE HENDERSON: All right.

25 Now, I will come back to the issue of timelines, so you can just put that in your mind

1 so that while I hear from the other parties and likewise.

2 All right. So if I could hear from the Defence now with regard to observations on the
3 protocols.

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

5 Mr MacDonald has talked about the various protocols and, for clarity, would like to
6 look at them one at a time to give the position of the Defence. This will take some
7 time. And since I can see that it is half past 10, I do not know when the break was
8 scheduled, if it was scheduled for now, then we can do that after the break.

9 But before that I would like to say as a general introduction that we are probably very
10 close to an agreement on each of these protocols, subject to certain reservations which
11 we will explain in detail, and it is highly likely that if the parties had the possibility of
12 discussing directly on some of the pending issues, then we will quickly reach
13 agreement.

14 Would you like us to begin the presentation of our position on the first protocol right
15 now?

16 SINGLE JUDGE HENDERSON: Yes, just one moment.

17 (Pause in proceedings)

18 SINGLE JUDGE HENDERSON: Yes, Mr Altit, I really must apologise to the parties.
19 As a matter of housekeeping, I should have indicated that break, we'll take a caffeine
20 break at 11 to 11.30, yes.

21 So, Mr Altit, the floor is yours.

22 MR ALTIT: (Interpretation) Thank you, Mr President. It is Ms Naouri who will
23 present the details for each protocol.

24 MS NAOURI: (Interpretation) Based on the agenda, the Prosecutor mentioned all
25 the protocols, but probably not all. We think we should look at all the protocols in

1 the agenda, for example, the disclosure of the identity of witnesses of the other party
2 and the handling of confidential information in the course of investigations.

3 In the Kenyan case, these two protocols were put together with a third protocol, that
4 is the procedure to be followed to contact the opposing party or participant, and we
5 believe that this concerns all the exchanges of information.

6 The legal representative sent us a draft last Thursday of December in which they were
7 proposing to bring together all these protocols. I think there is a consensus on that
8 and these three issues can be dealt with together.

9 Regarding the protocol on the disclosure of the identity of witnesses of the other party
10 and participants, we will deal with this issue and then confidential information
11 during investigations. This protocol is the result of a fruitful negotiation between
12 the Prosecution and the Defence. And the protocol adopted by the Pre-Trial
13 Chamber is quite satisfactory, which it makes it possible to work during the
14 investigation while maintaining confidentiality. The Defence came up with the
15 tables that would enable a strict compliance. That is why we would wish this
16 protocol to stay in force.

17 On Wednesday evening, the Prosecution sent us its proposals for amendment in
18 addition to definitions, with which the Defence does not have any problem with that,
19 but we will only validate that when it would have been translated into French.

20 Regarding the procedure for the identification of protected witnesses proposed by the
21 procedure, it looks -- it sounds to be a bit burdensome, and we want to negotiate a
22 more streamlined procedure. We'll discuss that later.

23 The proposals from the legal representative now, these are interesting proposals.

24 Her first proposal is intended to include participants in the protocol, in other words,
25 to ensure that the protocol applies also to the participants in the proceedings.

1 The Defence does not object to this addition.

2 The second proposal from the legal representative is intended to include in the
3 protocol a provision that has to do with the disclosure of information that a witness
4 may have been subject to a sexual offence. Now, the proposal is as follows, that
5 when a witness gives an account of a sexual crime, and the witness has not mentioned
6 that crime to a family member, the investigation should not reveal that information to
7 the family member.

8 The proposal from the legal representative is of interest, and we, too, wish victims of
9 sexual assaults to be protected as much as possible. However, we do have some
10 reservations about the proposal in its current form. The current draft seems to be too
11 restrictive. In actual fact it would restrict the investigation work of both parties
12 excessively. It is absolutely necessary that when necessary, and only when necessary,
13 a party should be able to ask questions of a witness's family member in order to
14 assess the consistent nature of the testimony.

15 If the family members are mentioned in the account, because if they were present, for
16 example, it is quite possible that one or several family members actually witnessed
17 the events or were close to the place where the incident occurred and may have seen
18 the alleged perpetrators or have other information; thus, it is indispensable for an
19 investigating party to have that possibility even in the case of a sexual assault,
20 otherwise how could the Defence look into such allegations? It would be impossible.
21 Furthermore, no matter how horrid a sexual offence may be, it may not necessarily be
22 a crime against humanity. So it is very important to understand the context in which
23 the incident occurred. We have drafted possible provisions that we can provide to
24 the legal representative and the OTP in the days to come. This draft would be
25 something along the following lines: When a witness gives an account of being

1 subjected to a sexual crime and did not discuss the crime with a family member, the
2 investigating party or the participant must do all that is possible to respect the dignity
3 of the person in question.

4 And in that case the witness would be asked if he or she authorises the investigating
5 party to discuss the matter with family members, and the person would also be asked
6 how the discussion should be held so as to limit any damage to the family unit.

7 Furthermore, the witness could identify which person could be allowed access to the
8 information and which person should not have access to the information.

9 The Prosecution included in his draft protocol a provision that has to do with this
10 matter, and this provision seems to be halfway between the proposal from the legal
11 representative of victims and our proposal, thus we believe that the proposal should
12 be discussed by the parties and, it goes without saying, that the issues will be dealt
13 with tactfully, discreetly in the greater interest of the witness.

14 Now, just a word about the protocol that has to do with the use of confidential
15 material. This protocol which was adopted in the Gbagbo case, in the preliminary
16 stage, was also satisfactory to the Defence. It is also the result of negotiations
17 between Defence and the OTP. And experience has shown that the protocol
18 approved by the Chamber made it possible to carry out our work effectively.

19 The only thing that could be improved, in our opinion, has to do with the disclosure
20 of photographs, indeed. Under point D of the current protocol it says, and I quote,
21 "Concerning the use of photographs, in all cases, the investigating party must present
22 the Chamber with an application with grounds before photographs are shown to the
23 public." End of quote.

24 If we had to systematically ask leave of the Chamber before we showed a photograph
25 during an investigation that is very burdensome and would certainly hinder the

1 investigations. It would be going to considerable trouble if we had to stop and ask
2 for leave in the middle of an investigation while speaking to a witness. The
3 photograph would have to be shown at the proper moment during the taking of the
4 statement.

5 This would certainly bog down matters because we would have to halt the interview,
6 consult the Chamber, and the reply from the Judge may come late. And we must
7 point out that our time resources are limited. It's quite clear that photographs will
8 only be used in cases where there are no other ways of investigating properly. So we
9 need to use that particular investigative tool when necessary.

10 In other cases, for example, Ruto, Banda, Bemba, it was not provided for. There was
11 no provision that would -- that meant that investigators had to ask leave of a
12 Chamber to show a photograph, so we ask that this principle be applied to this
13 particular case.

14 Except for that particular change, we would like the Gbagbo protocol to remain in
15 effect.

16 As for the Prosecution's remarks, we do not object to his first, second and third
17 remarks.

18 Concerning the remark about the disclosure of photographs, the Defence would like
19 this to be reworded because it seems impractical. Finally, not keeping a copy of
20 information, the Defence agrees with the OTP. The legal representative also
21 suggested one adjustment to the protocol; she suggests adding a provision that has to
22 do with the procedure to be followed in the case, and I quote, "... of a party or
23 participant realises that he has disclosed material that should not have been disclosed
24 or should have been disclosed in redacted form. "The Prosecution added a provision
25 along those lines.

1 Now, although it is true that the provision was recently added in the Ntaganda case
2 for -- relating to the protocol having to do with investigations, we do not understand
3 why such a provision should be added here because we do not think that confidential
4 material would be used during investigation.

5 That other case -- well, that provision has to do with an accidental disclosure so to
6 speak. The idea is not to take everything that was done in the other cases, but rather
7 to draw up effective, consistent, streamlined protocols.

8 If the OTP and the legal representative wish to discuss some procedure to be followed,
9 if disclosure is done accidentally, the Defence is open to that possibility. That
10 provision could be discussed and added to the protocol having to do with disclosures
11 as was the case in the Kenyan cases, and references made to the Kenyan cases in the
12 legal representatives draft.

13 We believe that it would be quite illogical to add that to the protocol having to do
14 with investigations. On the other hand, we suggest adding to the protocol,
15 regarding confidential information, the following wording that would allow us to
16 anticipate any accidental disclosure during investigations.

17 "In the event that a party or participant is investigating and discloses material that
18 should not be disclosed, or should have been disclosed in a redacted form, but was
19 inadvertently disclosed otherwise, the party or participant that is investigating makes
20 a commitment not to showing or forwarding the document to a third party."

21 We would suggest to the OTP and the legal representative to discuss the matter and
22 submit filings to the Chamber. It would be particularly suitable to discuss this
23 paragraph. The Defence does have some hesitations about this, particularly this idea
24 that the accused person would be deemed to be a third party. It should be -- we
25 should be reminded that the accused is facing charges and thus he is entitled to be

1 fully informed of the OTP's case and all incriminating evidence. This is a
2 fundamental principle.

3 Finally, the Defence can only provide definitive approval of a draft discussed
4 amongst the parties only when it receives the French version of said protocol.

5 Now, the third protocol to be added, the protocol dealing with contacts, with
6 witnesses from the adverse party or from a witness who has dual status.

7 In the Gbagbo case, the protocol was found in decision 49, in paragraphs 29 and 31.

8 And during the preliminary stage that protocol was satisfactory to the Defence,
9 however the evidence has shown that the protocol could be improved.

10 One particular improvement could be made, namely the amount of time that the
11 witness would have to give consent, or not, to the adverse party or in the case of a
12 victim witness.

13 Now, it is provided for that meetings between the -- a party and a witness can only be
14 held after the witness has given consent. It is the calling party that has the
15 responsibility to contact the person and ask for consent for the interview with the
16 other party. There's no deadline set for meeting, or taking contact with the witness.

17 So that amount of time is not provided for and no deadline is set for the requesting
18 party -- to tell the requesting party whether consent has been given or not.

19 This could be quite time consuming, that is why the Defence suggests that a provision
20 be made that the witness be informed as soon as possible of the other parties' desire
21 and that 15 days should be allowed, and then five days for the party to inform the
22 other party of the witnesses' answer, be it "Yes" or "No" or silence.

23 Experience in the Gbagbo case has shown that this provision is very useful, and
24 I believe this was added to the Kenyan protocol. The OTP and the Defence have
25 included this point in the draft, but the Defence believes that its wording is more

1 practical.

2 In addition to this, the representative allowed -- or, suggested a few changes and
3 additions and there were great many and they changed the logic of the protocol, that
4 is why the Defence would suggest that the parties and the legal representative have a
5 week to discuss these possible additions and reminds parties and participants that
6 this is the case in the Gbagbo case.

7 It should be stressed as well that the draft from the legal representative was drafted in
8 French, whereas the OTP is partly in English and party in French. The Defence can
9 only give final approval to any draft only upon receipt of the draft in the French
10 language. Thank you.

11 I beg your pardon, that is the first point on the agenda. We can continue on the
12 other points, or leave it at that depending on when you want to have the break.

13 SINGLE JUDGE HENDERSON: Yes, we still have time. We will be coming to
14 the -- we shall be coming to the other protocols.

15 All right, let me hear from the -- so have you completed your observations?

16 MS NAOURI: (Interpretation) On the first protocol on the agenda, but I can
17 continue and conclude on all the other protocols on the agenda, knowing that the
18 following protocols are less problematic and should take less time. As you wish.

19 I believe you have our overall position now. There are 10 minutes left. I'm not sure
20 that I can conclude in 10 minutes. It might be possible.

21 SINGLE JUDGE HENDERSON: Have a go. Try and do it and then -- but if it is
22 that you can't -- you know, I really want to hear your position, so don't rush, because
23 I really want to take on board.

24 Bear in mind, of course, and this applies to the OTP, the legal representative for
25 victims, we're hearing the observations and ultimately the Court, after 10 years, is

1 trying to strive for a sort of harmonious, harmonised uniformed position, so I make
2 this -- I make mention of this having regard to one of your observations about,
3 perhaps, some of the proposals not being, perhaps, specifically relevant to this
4 specific case, but perhaps the idea is to have an overall protocol which can be applied
5 uniformly throughout the Court system. It ultimately, this is Court wise, but let me
6 hear you, Ms Naouri. So you can complete.

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

8 The idea of standardising the protocols that is the idea behind all of our analyses. Of
9 course, we want an effective and consistent protocol and we wish to discuss
10 provisions that could be improved which would be beneficial to cases under way at
11 the Court or cases that will later come before the Court.

12 Now, the protocol regarding preparation of witnesses from each party. Discussions
13 amongst the parties and the legal representative have been very useful. The Defence
14 and the OTP and the representative wish to apply procedural advances that have
15 been made in the Kenyan case and use the Kenyan protocol with an amendment
16 suggested by the protocol. The Defence will approve that once we receive the
17 French version, but other than that, we have no comments.

18 MR MACDONALD: A point if I may intervene, because the translation is not in our
19 hands, it is in Registry's hands. It is familiarisation protocol we're talking about?

20 MS NAOURI: (Overlapping speakers)

21 MR MACDONALD: (Overlapping speakers)

22 SINGLE JUDGE HENDERSON: Let us have one person speak at a time.

23 Mr Prosecutor, you just want it to be clear that you are saying that you have no
24 control over the translations, and that is in light of the observations of the Defence
25 regarding that as far as for them to approve the authoritative text, so to speak, would

1 be French, is that what --

2 MR MACDONALD: But the Kenyan protocols are in English, your Honour, so
3 therefore our amendment was in English. That's what I -- that's what I'm saying.
4 So the same thing applies to the familiarisation protocol prepared by Registry, which
5 would have to be amended to reflect the preparation phase, preparation protocol. It
6 is drafted in English from the outset, so yes.

7 SINGLE JUDGE HENDERSON: All right. We will come to that in due course
8 when we hear from Registry.

9 So let me hear from you. We have another 10 minutes.

10 MS NAOURI: (Interpretation) Concerning the familiarisation and preparation of
11 witnesses' protocol by the VWU, not by the parties, we received a draft from the OTP,
12 which is in actual fact a continuation or a repeat of the current protocol. We are not
13 opposed to this protocol, and it can remain in place.

14 The Prosecution has suggested doing away with all the provisions having to do with
15 the preparation of witnesses as was done in Kenya and make reference to the protocol
16 that deals with preparation of witnesses by parties. We agree. The OTP has
17 suggested leading the part that has to do with separation of the witness from the
18 protocol, and we are not opposed.

19 As for the Defence, we would like more clarity so that we can ensure the protection of
20 witnesses as best possible. It should be specified that witnesses shall be housed in
21 secure premises, and the VWU officer responsible for them should not be from the
22 area where the conflict emerged so that that person would not have any influence on
23 the witness.

24 The experience has shown that within international tribunals, the staff of safe houses
25 may come from the very same village as the witness, and despite all provisions made,

1 this could lead to the witness's identity being revealed. And we are speaking on the
2 basis of practical experience. Other than that, we have no comment in particular and,
3 once again, can only provide final approval to the protocol once we receive the French
4 version.

5 One word about the assessment of vulnerability and the possible support provided to
6 facilitate testimony before the Court. At the preliminary stage we had a protocol
7 that was based on the Bemba case. That particular protocol was satisfactory to the
8 Defence. In the Kenya case, the protocol was included in the protocol that has to do
9 with familiarisation of witnesses by VWU, but at the same time when that was done
10 some points were lost.

11 The Defence would suggest continue using the Gbagbo protocol and keeping it
12 distinct from the VWU witness familiarisation protocol. We would suggest deleting
13 the protocol having to do with familiarisation of witnesses, which was based on the
14 Kenyan model, and paragraph 12 and others that have to do with vulnerable
15 witnesses, because, you see, otherwise it would be redundant.

16 Finally, the Defence will give final approval of that particular protocol upon receipt of
17 the French translation.

18 Now, finally, one word about the protocol that has to do with contact and exchange of
19 information of witnesses having dual status. The Registry submitted a draft, and
20 comments were made by the legal representative of victims and by the Prosecution.

21 The draft from the Registry corresponds to other protocols used in other cases.

22 Now, regarding the proposal from the legal representative to receive the medical
23 report of the person with dual status, the Defence wishes to remind everyone that
24 medical information is covered by professional secrecy, you see.

25 As for the presence of the legal representative during the interview, this seems

1 satisfactory. As for the rest, the Defence does not oppose the suggestions from the
2 legal representative.

3 As for the corrections suggested by the OTP, the first has to do with point 4(c) and the
4 second one has to do with point 8(b).

5 Finally, the Defence would suggest that specific mention be made that the
6 Prosecution informs the Defence as soon as they learn that their witness is also a
7 victim, given leave to take part in the proceedings, and notice should also be given of
8 this confidential nature, and it would be up to the Prosecution to disclosing to the
9 legal representative the information according to which it disclosed the identity to the
10 Defence.

11 And generally speaking, we think that specific mention should be made of the
12 Defence -- that the Defence should always be informed that the witness has dual
13 status, even if the pseudonym is used and even if the witness is a Prosecution witness,
14 not a Defence witness, it should be noted that in this particular case the Defence was
15 not informed of the dual status of four witnesses, not until the very final moment,
16 during the final submissions that were filed, after the Defence made its submissions,
17 only a few days before tabling of its final submissions. This should not happen
18 again during the trial itself.

19 Finally, the Defence will give final approval of the protocol once the French version
20 has been received. Thank you.

21 SINGLE JUDGE HENDERSON: Thank you very much.

22 As I indicated to the Prosecution, the discussions will be -- must continue, and I will
23 come back to you after I hear from the other participants about a timeline by which
24 you should be able to complete. So direct your mind to it so that when we come
25 back you could be able to assist the Chamber in that regard.

1 All right. So some further housekeeping, we will take the break very shortly. The
2 times that are -- when we resume at 11.30, we will then proceed from 11.30 to 13.00
3 hours. There is the option to continue from 14.30 to 16.00, but I feel confident that
4 we should be able to complete by that time.

5 All right, so the time is just before 11. So we will take the break for 30 minutes and
6 we shall resume at 11.30.

7 THE COURT USHER: All rise.

8 (Recess taken at 10.59 a.m.)

9 (Upon resuming in open session at 11.32 a.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 SINGLE JUDGE HENDERSON: All right. Yes, Mr Prosecutor, the composition of
13 your team, does it remain the same, or is it -- do I detect a change?

14 MR MACDONALD: It has changed, your Honour. After the presentation by the
15 Defence, we decided to change and we've -- are joined now by our intern,
16 Andreina Rodriguez, and Ms Berdennikova, Huck and Varga have left us. Thank
17 you.

18 SINGLE JUDGE HENDERSON: As we continue and before I hear from the legal
19 representative, I should just say, you know, that the Chamber's really heartened by
20 what is obviously ongoing discussions - genuine discussions - to settle protocols, and
21 this is really salutary as the -- we try to get something that, you know, satisfies both
22 parties and meets the needs of the respective parties and participants while ensuring
23 that the work of the Court is done.

24 Also, in a sense, it's part of history because what the Court is trying to do is, of course,
25 take on board all of these observations but, as we strive to move away from a Bemba

1 approach, a Kenyatta approach, a Gbagbo approach, to the protocols which would be
2 protocols adopted by the Court of the ICC, which would be general, but which, of
3 course, would be tailor-made to deal with the specific issues, so what you're really
4 doing is being pioneers, part of history, as we move forward.

5 All right, so having said that, let me now hear from the legal representative for the
6 victims.

7 MS MASSIDDA: Thank you, your Honour. I will proceed as with the first in
8 taking the different points related to the different protocols on the agenda.

9 For the information of your Honour, the starting point for us has been the Kenya
10 model because we consider that the Kenya models are the most recent one
11 incorporating the majority - sorry - of the issue discussed in the different proceeding,
12 so we think that as a model we should take the Kenya model eventually to be adapted
13 to specific exception or specific instances in this present case.

14 Having said this, we will start with the first item, protocols concerning the disclosure
15 of identity of witnesses of the other party underlining confidential information in the
16 course of investigation and contact between a party or participant and witness of the
17 opposing party or participant.

18 It seems to us that there is an agreement that these three issues should be regulated in
19 one protocol. We of course agree on the principle.

20 As the Defence has just said, we have proposed French text in relation to this
21 protocols and I will provide our comments on the suggestion just put forward by the
22 Defence.

23 First point is in relation to the investigation of information of sexual violence, which is
24 the first point which has been requested for addition by us in the protocol.

25 We take note of the suggestion of the Defence that the clause might be a little bit

1 restrictive in this regard. We would like to indicate to the Defence that there is
2 actually an exception to this principle already in the Kenyan model, and they can find
3 the wording of this exception in the document which has been circulated by the
4 Prosecution last Tuesday, late in the afternoon.

5 We think that we could work on the wording already contained in that document in
6 order to find a compromise. And I'm referring to the document which was filed in
7 the Kenyatta case, 01/09-02/11 469 annex. The same clause was also included in the
8 Banda proceedings, ICC-02/05-03/09 451 annex. And it has been recently proposed
9 by the Prosecution in the Bosco Ntaganda case for inclusion. So maybe we could
10 reflect upon these lines.

11 Second remark by the Defence was in relation to what is called in the Kenyan protocol
12 inadvertent disclosure. I take the point of the Defence in relation to the right place of
13 this clause. We think in any case that we need a clause in relation to inadvertent
14 disclosure. We will be happy to further discuss where to place this clause and how
15 to eventually rephrase some parts of the -- of the clause itself.

16 Yes, and then there was the -- the last comment was in relation to, I think, section 3, in
17 our suggest proposal, which is in relation to the contacts between -- yes, party and
18 participant and the -- a witness of the adverse party and participant.

19 I understand that the Defence wishes to discuss a little bit further in relation to this
20 section again. We will be more than happy to discuss taking into account again your
21 suggestions.

22 This concludes our remark on the first point, your Honour.

23 Second point, unified protocol on the practices used to prepare and familiarise
24 witnesses for giving testimony.

25 We essentially have no main comments on this protocol. We take note of the

1 observation by the Prosecution and the Defence in relation to the separate
2 accommodation of witnesses. We do not have an objection in principle, however, we
3 think that some exception should be captured in the clause, for one very simple
4 reason, there might be instances in which the separation of witnesses could be
5 prejudicial or counterproductive to -- to the testimony itself.

6 I will give an example to make my thinking clear: If I'm not mistaken, in the
7 Lubanga trial we had actually -- one case of two witnesses, father and son, son of a
8 younger age, they were separated and this was actually counterproductive for the
9 young son. So I think that we need to cover a little bit if there is the need of any
10 exceptions, without being opposed, in principle, to separate accommodation for
11 witnesses. This will be my only remark on this point.

12 Protocol of vulnerability assessment and support procedure used to facilitate the
13 testimony of vulnerable witnesses.

14 We agree on the protocol as submitted by the VWU, so we think that we could simply
15 adopt the protocol as it stands at this point in time.

16 And finally, the protocol on proposed mechanism for exchange of information of
17 individuals with dual status. As - sorry again. We take note of the agreement of
18 the Defence of our suggested amendments in the protocol.

19 The Defence has one comment in relation to the access to the medical records -- sorry,
20 it is actually a little bit different because we are talking at point 9 of the proposed
21 protocol. "Medical examination of witnesses with dual status and disclosure of any
22 report to the legal representative."

23 So we are actually not talking in general of medical report of the persons having dual
24 status, but of a specific report of the examination.

25 Now, this kind of report are normally also disclosed as evidence in the course of a

1 proceedings. So I don't see the point of objection of the Defence. This is my first
2 remark.

3 The second remark is that has been practice of this Court to provide access to this
4 kind of medical reports to the legal representative concerned.

5 And my third remark on this specific point is that normally we make sure we, as legal
6 representative, make sure that the victims concerned consent to us having access to
7 this kind of information.

8 Now, having said this, I'm more than willing to see if this concept can be captured
9 further in point 9 of the -- of the proposed protocol.

10 Only one second, your Honour. I'm just verifying if I have provided all the
11 comments on all the issues.

12 I think so.

13 With your indulgence, your Honour, since I have the floor, I wish to provide a piece
14 of information to your Honour: We have been -- discussed with the Defence also
15 issues concerning to the participation of victims in this proceedings and we are in the
16 process of analysing a common position on several issues, including the automatic
17 recognitions of victims already authorised at the pre-trial phase of the proceedings in
18 the Gbagbo case, and the issue of review of redactions contained in the application
19 forms. Discussions are ongoing. We are in agreement on several points and I think
20 we can say that I'm confident that a submission with our agreement could be
21 provided to the Chamber, let's say, during the third week of the month of the
22 December, the week starting with 15 December.

23 Thank you very much, your Honour.

24 SINGLE JUDGE HENDERSON: Thank you very much. That's heartening.

25 All right, we have the Registry here. Perhaps the Registry can assist us with the

1 observations on -- do you have anything to add? There are at least two aspects
2 which arise, which I'll certainly want to hear you on: The Office of the Prosecutor,
3 among other things, spoke about the need for the difficulty of translations. So that's
4 one of the things I would hope I could hear you on. But, generally speaking, are
5 there any other observations that you wish to provide the Court with?

6 MS BECERRA SUAREZ: Thank you, your Honour.

7 Indeed, my colleague, Ms Oseredczuk will refer to some of the issues related to the
8 protocols mentioned this morning. With your leave, before I -- she takes the floor,
9 and in relation to the translation issue, I would like to mention that, of course, the
10 Registry will be ready to facilitate the translation of the relevant protocols that are
11 being discussed.

12 For us it would be extremely helpful if we could be informed of which specific
13 documents or which specific versions of these protocols we should translate so that
14 we can facilitate the ongoing discussions.

15 And we would also need to know what is the time frame envisaged by the parties, the
16 legal representatives, or by the Chamber by which we would need to have the
17 translations ready. And this is important in order for us to manage the competing
18 requests across the various Chambers for translations from English into French.

19 And that is all I have to say on the translation issue.

20 And with your leave, I would like to give the floor to my colleague who can address
21 specific VWU matters.

22 SINGLE JUDGE HENDERSON: Okay, thank you.

23 MS OSEREDCZUK: (Interpretation) Thank you, your Honour. VWU intends to
24 inform the Chamber about its view on the proposals made by the OTP and the
25 Defence on familiarisation and specifically on the separation of witnesses and the

1 hosting of witnesses in safehouses. So if you agree, we are going to give you our
2 comments on that.

3 And if the Chamber thinks it useful, VWU will give its point of view to the Chamber
4 on the proposals made by the parties and participants, as well as their points of
5 agreement and disagreement on the various protocols.

6 SINGLE JUDGE HENDERSON: We do think it's useful, that's why we asked you to
7 help us. Your views are valuable.

8 MS OSEREDCZUK: (Interpretation) What I am proposing is that we make a
9 written submission to the Chamber once we have reviewed all the various proposals
10 and points of agreement and disagreement on the various protocols.

11 SINGLE JUDGE HENDERSON: I see. So you're not in a position to offer any
12 observations at this stage?

13 MS OSEREDCZUK: (Interpretation) On the issues on familiarisation, I would like
14 to ask just questions to the people directly responsible for familiarisation and support.
15 And with regard to the other issues, we did not have the written proposals by all the
16 parties and participants, so we will respond to that in written form.

17 SINGLE JUDGE HENDERSON: All right. Well, the Chamber would wish to hear
18 your or receive your observations, but I'm operating as a Single Judge, so what I will
19 do is we will issue at the appropriate time an order in which you will receive the
20 directions and then you will be so guided.

21 All right. So having heard the Prosecution, the Defence, the legal representative for
22 victims on what was really your views on the protocol dealing with the disclosure of
23 the identity of witnesses of the other party and the handling of confidential
24 information in the course of investigations, how soon do you think you expect to
25 complete these negotiations? You seem to be going very well.

1 Mr Altit.

2 MR ALTIT: (Interpretation) Thank you, Mr President. To begin with, I would
3 like to say that, with your leave, the Defence would like to make certain clarifications
4 on how we see the role of VWU and maybe to add and facilitate the drafting of the
5 filing that they have proposed to us. So with your leave, we are going to make a few
6 quick observations.

7 Secondly, and to answer your question, it depends on the position of everyone.

8 Apart from the protocol on redactions, the agreements should be very fast, because
9 we agree on the essential principles and modalities. It is only a matter of details that
10 we have to discuss. And I think with the good will of everyone we will reach
11 agreement on those very soon.

12 Can we say something about VWU, your Honour?

13 SINGLE JUDGE HENDERSON: Yes.

14 MS NAOURI: (Interpretation) The first thing is that VWU, they said they were not
15 copied in the inter partes communications, and we have already proposed that they
16 should be included so that our discussions should be as productive as possible. So
17 we need to have a point of contact with VWU for that purpose.

18 Secondly, I would like to give a few examples relating to the protocol on the contact
19 with witnesses of the opposing parties. VWU would have a very important role to
20 play. In this protocol the representative, legal representative proposes that it is the
21 requesting party or participants in contact or in consultation with VWU to organise
22 such contact. So we believe that it is the unit, the VWU that is responsible for the
23 logistical aspects of such a meeting. And they have been trained for that purpose.
24 So why should we change a system that has been effective, particularly
25 with -- meeting with P-44, for example? We have the experience of how that

1 happens. And this has happened in a very effective manner thanks to VWU. So we
2 feel that should be maintained.

3 There is also the draft for the legal representative, and it states "If the witness has been
4 admitted into the protection programme of the ICC and that fact is known by the
5 party or participants wishing to meet with the witness, they have to inform the
6 protection officer in the VWU."

7 And in the Gbagbo and Kenya protocols, it is stated that when a witness is admitted
8 into the protection programme, all contacts must pass through VWU. It's not simply
9 a matter of informing the VWU. I believe that this is an optimal provision because it
10 protects, maximum protection or security for the person who will be interviewed or
11 examined.

12 There was also the wording according to which if the witness does not want a
13 member of the requesting party or the calling party, does not -- does not wish that
14 party to be present, then this can happen. (Redacted)
15 (Redacted).

16 In filing 49, annex 449, once again, we are insisting that when VWU is present, the
17 witness is protected and feels secure. So this provision really has to include the
18 permanent presence of VWU.

19 Regarding the proposals of the Prosecutor about the responsibility of objecting during
20 the examination of a witness by the opposing party, the Defence does not oppose this
21 on condition that it is clear that the witness may turn down the request.

22 Once again, VWU has to be present.

23 The proposal of the Prosecution on vulnerable victims or witnesses is not very simple.

24 We believe that there should be the systematic presence of VWU so that they can best
25 organise a meeting if the witness is established to be vulnerable.

1 Regarding modalities of contacting the person, as soon as the agreement is made
2 known to the calling party, they should immediately inform the other party so as to
3 organise a meeting. The Defence does not have the logistic human and financial
4 resources to materially organise such meetings, so it is the VWU that should be
5 responsible for that and take care of the witness.

6 Regarding the recording of the interview proposed by the Prosecutor, in principle the
7 Defence does not have an objection, but we believe the ultimate choice should be
8 made by the person being interviewed. And the presence of VWU during the entire
9 period of the interview might turn out to be insufficient.

10 So those are our observations that clearly state the crucial role of VWU in these
11 protocols. Thank you.

12 SINGLE JUDGE HENDERSON: All right. Thank you very much.

13 Now, I have a keen eye on the time. We have an hour before the lunch-break, so let's
14 swiftly move on. I recognize that there will be some element of overlap.

15 We next need to discuss the unified protocol on the practices used to prepare and to
16 familiarise witnesses for giving testimony. This protocol was filed in the record of
17 the case at the confirmation stage as annex 1 to filing 93.

18 Now, what I would like to inquire on, what the Chamber wants to know is do the
19 parties and participants have any comments in this regard: Shall this protocol
20 continue to apply to the trial phase? And before giving the floor to hear you, the
21 Prosecution has informed us, as well as the Defence and the legal representatives to
22 the victims that it wishes that the adoption of a witness preparation protocol based on
23 the Kenya model be discussed during the status conference.

24 All right, so you are now invited, in turn, to let me hear your comments, your
25 observations. So first let me hear from the Prosecution.

1 MR MACDONALD: Thank you, your Honour. During my initial presentation on
2 these protocols, I touched upon the matter, and I think the parties and participants
3 agree that there has to be one. There is a need for it, of course, under the guidance of
4 the Trial Chamber.

5 And I've discussed the issue with Mr Altit. We would propose, the Prosecution has
6 an amendment to propose which I referred to, and it is to paragraph 6, which states
7 currently, currently the protocol states, "Witness preparation should be conducted by
8 the lawyer of the calling party who will question the witness in Court."

9 That's at paragraph 6.

10 Now, the Prosecution would recommend adding, "When this is not practicable, the
11 preparation should be conducted by another member of the trial team."

12 Experience has demonstrated so far for the Office of the Prosecutor in the Ruto case
13 that lead counsel or counsel questioning the witness may be questioning witnesses in
14 a row for different reasons - for different reasons, schedule change, things happen.

15 There has to be some flexibility, because currently it's "shall," the lead, "The lawyer
16 questioning shall ..." So therefore we would recommend that amendment. And
17 that is the only amendment for the Prosecution.

18 SINGLE JUDGE HENDERSON: So that's your observations.

19 MR MACDONALD: That's the observation, your Honour, on that.

20 Now, as mentioned earlier, the familiarisation protocol, which is point two, the
21 second protocol under 3(b), the second little (i), would have to be amended in Gbagbo
22 to reflect witness preparation, because they're interlinked. And as mentioned earlier
23 and addressed by VWU and the Defence, there is a question of accommodation in a
24 common place of a number of witnesses.

25 So those are the only areas where the Prosecution sees that there has to be

1 amendments, potential amendments that are specific to the case, but also in light of
2 past practices or best practices, sorry. Thank you.

3 SINGLE JUDGE HENDERSON: Thank you. As I said, there is some element of
4 overlap, but I just want to ensure that I have it on the record so that when we rise, and
5 I go back, we have everything that we need and also to facilitate discussions.
6 Let me hear from you, either Mr Altit or Ms Naouri.

7 MR ALTIT: (Interpretation) Thank you, your Honour. As for the protocol for the
8 preparation of witnesses, the Prosecution stated that we have had discussions. We
9 agree that this is a good thing, and we have no -- no objection to the protocol as
10 amended by the Prosecution apply.

11 Now, secondly, concerning the familiarisation and preparation of witnesses' protocol
12 by the VWU. Generally speaking, a few moments ago we discussed that in detail,
13 and I will try to summarise things so that everything is clear. Generally speaking,
14 we believe that the protocol is good, and we think that it would be a good thing for it
15 to continue to apply, however -- well, first of all, yes, remove everything that was
16 suggested by the Prosecutor regarding the preparation of witnesses. And it should
17 be put in the ad hoc protocol.

18 On the other hand -- well, we agree with all the proposals from the Prosecution
19 concerning that particular protocol, including his suggestion that witnesses not be at
20 the same place at the same time. That seems to be wise counsel, yes. These are
21 proposal that are useful and practical.

22 So for those two protocols we agree entirely.

23 As for the rest, if we have some reservations, I will allow my colleague to speak to
24 them briefly.

25 MS NAOURI: (Interpretation) Sorry about that minor technical glitch.

1 Now, the protocol regarding witnesses' preparation, I believe we agree there is a
2 consensus, we agree to that first protocol, thus that means in the witness
3 familiarisation by the VWU protocol that we delete everything that has to do with
4 preparation by the parties and we would also delete everything having to do with
5 vulnerability of witnesses because, on the other hand, the Defence's position is to
6 keep a separate protocol regarding the vulnerability assessment of a witness.
7 So the Kenyan protocol, including the Kenyan protocol regarding familiarisation,
8 bringing together familiarisation by the VWU, does not -- including preparation by a
9 party and also including vulnerability assessment that should be reduced somewhat,
10 and we would have a protocol about the vulnerability of witnesses and we would
11 have this new protocol regarding the preparation of witnesses by the party.
12 As for the familiarisation of witnesses by the VWU protocol, we specified that
13 mention should be added to the existing protocol to ensure the protection of
14 witnesses as best possible. And the specific mention would be that the person
15 would be housed in a secure place and the VWU staff in charge of that person should
16 not come from the region in conflict and, thus, would not be in a position to place any
17 pressure on the witness.
18 Experience has shown, and we are talking about very practical experience, I can't
19 really go into details because it has to do with previous cases we have been involved
20 with, but you see a witness may be in a safehouse, appears to be safe, but in actual
21 fact the staff member in charge of the person came from the same village, knew the
22 person's identity and the identity of the person was ultimately revealed. This is one
23 of our major concerns. So these -- these really are issues that are of considerable
24 import.
25 As for the vulnerability assessment protocol, the Defence did not have any particular

1 suggestions to make, so the current protocol could have a few changes, but we would
2 like it to remain and it should be a standalone protocol, perhaps somewhat more
3 complete with a few paragraphs from the Kenyan protocol. Thank you.

4 SINGLE JUDGE HENDERSON: Thank you. As I said, I do recognize that we
5 would have covered most of the ground, but just to invite your comments, we're
6 dealing with, as I said, the protocol dealing with the unified protocol and practices
7 used to prepare and familiarise witnesses, now which you would have already done.
8 If there's anything in addition you wish to add do so, if not we already have what you
9 had said on record.

10 MS MASSIDDA: No, your Honour, I will stick with my previous comments, except
11 for of course supporting the witness preparation protocol as amended -- proposed
12 amended by the Prosecution.

13 Thank you.

14 SINGLE JUDGE HENDERSON: All right. Thank you.

15 So we just have two more items.

16 Before we move on, does the Registry have any observations that they wish to add
17 this point to that regard?

18 MS BECERRA SUAREZ: Thank you, your Honour. There are no observations at
19 this point.

20 SINGLE JUDGE HENDERSON: All right. So the penultimate area would be
21 the -- and, again, recognising that a lot of the submissions were dealing with all of the
22 protocols, the second to last would be the protocol on the vulnerability assessment
23 and support procedure used to facilitate the testimony of vulnerable witnesses.
24 Now, I have also noted that it was filed in the record of the case at the confirmation
25 phase, which was annex 2 to filing 93.

1 Do the parties and the participants have any comments as to whether this protocol
2 should continue to apply at this stage?
3 Mr Prosecutor?
4 MR MACDONALD: No comments, your Honour, and support the current protocol
5 the way it's drafted.
6 SINGLE JUDGE HENDERSON: Yes.
7 Defence?
8 MS NAOURI: (Interpretation) Regarding the vulnerability protocol, the current
9 protocol is sufficient. We have no particular comment. Thank you.
10 SINGLE JUDGE HENDERSON: Thank you.
11 The legal representative to the victims?
12 MS MASSIDDA: Unanimity, your Honour.
13 SINGLE JUDGE HENDERSON: It is a wonderful day.
14 All right, this is a promising start.
15 Registry?
16 MS BECERRA SUAREZ: Thank you, your Honour. No comments.
17 SINGLE JUDGE HENDERSON: Splendid.
18 Finally, concerning the proposed mechanisms for the exchange of information on
19 individuals with dual status.
20 Now, that did come up in the observations, so now is the time if you have anything
21 that you have not said - this is a specific head - you can say so now.
22 Mr Prosecutor?
23 MR MACDONALD: I've just -- we've made a proposed -- two proposed
24 amendments to the proposition of the Registry which we -- which we sent to the
25 Defence, and I acknowledge that earlier this morning our amendments to section 4(c),

1 if I'm not mistaken, and 8(b), I'm going from memory, are accepted by the Defence.

2 Now, just for the Registry to understand that unfortunately I had not copied Registry,
3 but I did so this morning and not knowing the point person, I sent it to Mrs Natacha
4 Schauder, but I believe she may be out of the office, and I copied Madam Dahuron
5 and Bossette . So just to -- there -- there is an email out with our proposal for
6 Registry to look at, but -- so that's our position.

7 SINGLE JUDGE HENDERSON: The Defence?

8 MS NAOURI: (Interpretation) Regarding the witnesses with dual status protocol,
9 in actual fact we specified that we agreed with the amendments from the Prosecution
10 to points 4(c) and 8(b).

11 On the other hand, we think it's important to add something to the protocol, perhaps
12 a section that would have to do with communication between Defence and the party.
13 There is section between the Prosecution and the Defence. It is important for that
14 clause to include the following:

15 "That the Prosecution inform the Defence as soon as they become aware that a witness
16 is also a victim authorised to take part in the proceedings. Secondly, that the
17 Defence be informed whether or not the person's identity is confidential. And
18 thirdly, the Prosecution should disclose to the legal representative the information
19 that they had disclosed to the Defence, the identity of the victim."

20 And generally speaking, in order to do as we did during the preliminary phase, there
21 should be a general clause saying that the Defence should always be informed when a
22 victim has dual status, even when that has not been disclosed to the Defence and even
23 when it is a Prosecution witness because, in this particular case, we learnt on 4
24 April 2014 from the legal representative that four witnesses actually had dual
25 status - four Prosecution witnesses were also victims - and that was after the Defence

1 had filed its observations on the Prosecution's submissions that we were not able to
2 take that information into account. And it came just a few days before we submitted
3 our final submissions.

4 SINGLE JUDGE HENDERSON: And that's why we will have these issues settled
5 before the trial.

6 All right. The legal representative for the victims. Any observations in addition to
7 what you have made before?

8 MS MASSIDDA: No, your Honour. Thank you.

9 SINGLE JUDGE HENDERSON: And finally, the Registry?

10 MS BECERRA SUAREZ: Thank you, your Honour. We don't have any substantive
11 observations on the protocol.

12 However, I just wanted to indicate that after the hearing we will send an email to the
13 parties and the legal representatives to clarify the point of contact within the VWU in
14 relation to the protocols. Thank you.

15 SINGLE JUDGE HENDERSON: All right.

16 All right, before concluding today's status conference, the Chamber wishes to
17 mention, to observe that the -- in relation to the eCourt protocol, it hasn't seemed to
18 have been raised by anybody, so does the Chamber assume that there are no
19 problems with the adoption of the eCourt protocol insofar as this case is concerned?
20 Let me start with the Defence.

21 MS NAOURI: (Interpretation) At this particular stage we've had no problem with
22 the eCourt protocol in its current form. We raised one issue, namely a
23 possibility -- during the last status conference, the possibility of adding metadata,
24 whether there needed to be discussion between the parties. The Registry said that if
25 it was objective metadata that was possible, but we had a -- we have a meeting right

1 now with the Registry to think about the metadata that should be mandatory for the
2 eCourt protocol and other information that could be added later. So we're working
3 on that.

4 But right now there's no concrete proposal to add information to the eCourt protocol,
5 but that may be coming along later on in the proceedings.

6 SINGLE JUDGE HENDERSON: Wonderful.

7 Mr Prosecutor?

8 MR MACDONALD: We're welcome to join in on a discussion to which we have not
9 been convened, if there is a need for us to be present.

10 I'd just like to add that eCourt is the only protocol that is Court wide, PTC, Trial
11 Chambers, so when changing metadata it affects other cases, or it updates for future
12 cases, so that's why there is a tripartite Chamber, Prosecution, Defence and Registry,
13 obviously, working group on this subject. Thank you.

14 SINGLE JUDGE HENDERSON: Yes, thank you.

15 Anything from the legal representative for the victims?

16 MS MASSIDDA: No, your Honour. We will be ready, of course, to apply eCourt.
17 We are represented in the Registry working group on the matter, so if we have any
18 concern we can always raise the issue with them. Thank you.

19 SINGLE JUDGE HENDERSON: Thank you.

20 And of course the Registry?

21 MS BECERRA SUAREZ: Thank you, your Honour. There are no concerns right
22 now to the application of the eCourt protocol. I have heard what Mr MacDonald has
23 just said and we will include the Prosecution in these discussions. Thank you.

24 SINGLE JUDGE HENDERSON: Thank you.

25 Well, we have concluded our discussions on all of the items on the agenda that was

1 listed.

2 Of course, there's flexibility, we have some time, are there any issues that either of the
3 parties or participants want to raise? And, yes, as we want to settle as many issues
4 as possible as we move forward.

5 Let me continue with the order, so I'll start with the Prosecution.

6 MR MACDONALD: There is the -- we don't want to add anything, your Honour.

7 We had the opportunity to add topics. The Prosecution has prepared for the topics
8 that were added.

9 The reason why I'm standing up, your Honour, is I'd like to address the Chamber by
10 saying that today is Mr Stang's swan song before the ICC. It is the last time he will
11 be appearing for the Office of the Prosecutor most likely in front of the Chamber.

12 He's due to leave the office in a few days, unfortunately for us. He's going back to
13 Canada, Saskatchewan, to continue as a prosecutor. So I'd like to thank him very
14 much for his contribution and wish him well in his -- back home. Voilà.

15 SINGLE JUDGE HENDERSON: Well, I will certainly, after I hear from the other
16 side, I will come back to Mr Stang. So we will -- well, you have to remain, because
17 you still work.

18 The Defence, is there anything that you want to add before we go, bearing in mind, as
19 I said, we have a few minutes? And ultimately our purpose here is to iron out as
20 many problems as we can as we strive to move the case forward to trial readiness.

21 Anything else?

22 MR ALTIT: (Interpretation) Thank you, your Honour. The Defence has nothing
23 in particular to add. And the Defence will certainly miss Mr Stang and wishes him a
24 good return back to his home.

25 SINGLE JUDGE HENDERSON: Thank you.

1 The legal representative of the victims.

2 MS MASSIDDA: I have nothing to add, your Honour, except that of course we will
3 also miss the acuteness of Mr Stang. So good luck for your future endeavours.

4 SINGLE JUDGE HENDERSON: Registry.

5 MS BECERRA SUAREZ: Thank you, your Honour. There are no observations
6 from the Registry, other than confirming that we will review the relevant protocols in
7 the versions that we'll receive as quickly as we can. Thank you.

8 SINGLE JUDGE HENDERSON: All right. I think that covers everybody.

9 Well, Mr Stang, you -- I haven't -- you haven't appeared before me for very long, so
10 you leave before I've had the full benefit of your appearances before me at the ICC.
11 But from what I hear you're leaving to, well, of course, this wonderful place, but to go
12 back to your home to prosecute.

13 And, of course, in the common law system, a prosecutor is a minister of justice and
14 one who must of course act in the highest traditions of the Bar. I have no doubt from
15 what I have seen that you will continue to excel. So on behalf of the Chamber, I wish
16 you good luck and all of the best.

17 So that brings to conclusion the business.

18 As I said before, insofar as the redaction regime is concerned, the protocol decision,
19 that will come shortly, and shortly means shortly.

20 Now, finally, in order to keep some control over the proceedings, we, the Chamber,
21 would like to have, to schedule another date some time perhaps maybe in February or
22 thereabouts. I would imagine, particularly the Prosecution, you are captive, you
23 already are here.

24 But the arrangement where we got your schedule and you were able to schedule it,
25 did that work with you, Mr Altit? Did it work fine?

- 1 MR ALTIT: (Interpretation) Yes, it was just fine.
- 2 SINGLE JUDGE HENDERSON: Good. So thank you everybody for coming and
- 3 for your valuable assistance.
- 4 This matter is adjourned to a date to be fixed.
- 5 THE COURT USHER: All rise.
- 6 (The hearing ends in open session at 12.24 p.m.)