

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Charles Blé Goudé
5 - ICC-02/11-02/11
6 Presiding Judge Geoffrey Henderson, Judge Cuno Tarfusser and
7 Judge Olga Herrera-Carbuccia
8 Status Conference
9 Friday, 13 February 2015
10 (The status conference starts in open session at 10.02 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE HENDERSON: Good morning, everyone.
15 Can you please call the case, please.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Côte d'Ivoire in the case of The Prosecutor versus
18 Charles Blé Goudé, ICC-02/11-02/11.
19 We are in open session.
20 PRESIDING JUDGE HENDERSON: Thank you.
21 I would like to first of all welcome all of the parties and the participants and
22 Mr Blé Goudé to this first status conference of Trial Chamber I in this case.
23 I will start by introducing the Chamber; the members of the Chamber. On my right
24 is Judge Cuno Tarfusser and on my left is Judge Olga Herrera Carbuccia. I am
25 Judge Geoffrey Henderson and I'll be presiding in this case.

1 Just as a quick matter of housekeeping, as we start this morning, we will so arrange
2 our sittings from now, from 10, to 11.30, we will then take a short break, and then
3 from 12 to 13.30. And, if necessary, we will then continue after the 13.30 break, after
4 a lunch period.

5 Now, before asking the parties to introduce themselves, I would like to remind all the
6 speakers in this matter to speak slowly, to pause for a few seconds between speakers.

7 This is necessary in order to ensure that the transcription services as well as the
8 interpretation is accurate. I also would like to take this opportunity to thank the
9 reporters and the transcriptionists for helping us today.

10 So, Mr Prosecutor, can you kindly introduce yourself for the purposes of the record.

11 MR MACDONALD: Good morning, Mr President, your Honours. The Office of the
12 Prosecutor is represented this morning by Mrs Claire Henderson, Mr Louis Rugambage,
13 Mrs Maria Berdennikova, Mrs Florie Huck, Mrs Yasmine Chubin and myself, thank you.

14 MR KNOOPS: Good morning, Mr President, your Honours. My right side
15 Ms Carry Knoops-Hamburger, legal assistant in this case. In my back, Miss Marion Carrin,
16 she's from the Bar school Lille, case manager. In the public gallery, unfortunately she
17 couldn't make it from Texas, Ms Antonina Dyk, our second case manager. She just arrived
18 from the States. And my co-counsel, Mr Claver N'Dry, he is here as well, with
19 Serge Gbougnon, legal assistant. That's the team so far, with Ms Phoebe Oyugi, she left for
20 Kenya. And myself I'm -- my name is Geert-Jan Knoops, I'm from the Bar Amsterdam, with
21 my wife and legal partner, and we're representing since short Mr Blé Goudé. Thank you.

22 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

23 The legal representative for victims?

24 MS MASSIDDA: Good morning, Mr President, your Honours. Victims in this case are
25 represented by the Office of Public Counsel for Victims. Appearing today next to me

1 Mr Enrique Carnero Rojo, legal officer. Behind, Mr Patrick Tchidimbo, case manager and
2 legal assistant, and Ms Marta Bo, visiting professional, and I am Ms Paolina Massidda,
3 principal counsel.

4 PRESIDING JUDGE HENDERSON: Thank you.

5 And do we have anyone from the Registry? Yes, for the record.

6 MR VANAVERBEKE: Good morning, Mr President, your Honours. The Registry at this
7 status conference is represented by Aida Camara, Head of Translation, Esteban Peralta-Losilla,
8 Chief of the Counsel Support Section, Natacha Schauder, Acting Head of Operations, Victims
9 and Witnesses Unit and, behind me, Soraya Brikci, legal co-ordinator, Victims and
10 Participation and Reparation Section, and myself, Pieter Vanaverbeke, Office of the Director
11 of the Division of Court Service.

12 PRESIDING JUDGE HENDERSON: Thank you.

13 Right. At the outset, I would like to recall that the purpose of today's status
14 conference is to essentially discuss steps which must be taken before the trial
15 can -- before the trial can begin to, among other things: One, ensure that we adopt
16 such procedures as are necessary to facilitate the fair and expeditious conduct of the
17 proceedings. This is pursuant to Article 64(3); and, two, to hear from you
18 specifically the information that is necessary for us to set a trial date. And this is of
19 course pursuant to Rule 132.

20 Now, the Chamber has already received submissions from the Prosecution, the legal
21 representative of victims, as well as the Registry on a number of issues listed in the
22 agenda. The Chamber has noted that the Defence, the Defence team did not make
23 any substantive submissions on the agenda, but rather focused on the issue of
24 adequate time and facilities for the preparation of Mr Blé Goudé's defence.
25 Certain items suggested by the LRV and the Defence in its request 201, filed on

1 26 January, were added to the final agenda for today's status conference, which was
2 issued on 11th of this month, that is to say filing 214.

3 The Chamber finally notes that the Defence filed some additional material on the 9th
4 as well as 11th. These are filings 213 and 215 respectively.

5 With regard to the Defence request n. 201, the Chamber has noted that the Defence
6 seeks: One, additional time and facilities to prepare for trial; two, an extension of
7 time to respond to the joinder request; and, three, translation of all relevant
8 documents for extension of time to respond to the joinder request filed on
9 4 February 2015. These were filed on the 4 February 2015.

10 A decision was rendered on 6 February. This is filing 209. The remainder of the
11 request, namely the time and facilities required to prepare for trial and the request for
12 translation into French, has been addressed by the parties and participants in their
13 submissions in preparation for the status conference and has been added to today's
14 agenda.

15 The Chamber wishes to indicate that it has noted the LRV's suggestion to include in
16 the agenda of today's status conference the issue of adoption of protocols in the
17 current proceedings. It also notes the Registry's willingness to file certain protocols
18 in the record of this case. However, pending a decision on the joinder request and
19 considering that the agenda of today's status conference is already fairly long, of some
20 weight, the Chamber considered that it perhaps is more appropriate for this issue to
21 be dealt with separately at a later stage.

22 The Chamber therefore seizes this opportunity to recall that with regard to the joinder
23 request, the Defence's submissions are due by 19 February, just a few days from now,
24 and that upon receipt of these observations the Chamber will issue its decision.

25 As you will have seen, the commencement date of the trial will be dealt with as the

1 last item on the agenda. In this connection, I would wish to emphasise that
2 according to Article 64(8)(a) of the Statute, at the commencement of the trial, the Trial
3 Chamber shall read out the confirmed charges and shall afford the accused an
4 opportunity to make his plea: That being an admission of guilt or not guilty.

5 As the Chamber considers that the trial commences on the first day of trial on the merits of the
6 case and not at the status conference, we will read the charges and provide the accused an
7 opportunity to enter a plea on that day. The accused of course may enter a plea at any time
8 before then if he so wishes.

9 Now, before moving onto the agenda items, the Chamber wishes to address two
10 issues: Firstly, certain general comments about the conduct of proceedings, and
11 secondly a request on behalf of the Defence that we received through the Registry
12 only yesterday, only yesterday.

13 Now, as to the first, as it has done in other proceedings, this Chamber, as is the case of
14 the practice of all Chambers, wishes to make some general comments on the
15 expectation for the proceedings and how it wishes the proceedings to be conducted.

16 In order to promote the fairness and expeditiousness of the proceedings, the Chamber
17 encourages inter partes communication. The parties are free to seize the Chambers
18 of matters that cannot be agreed upon between them, but they should discuss and
19 attempt in good faith to agree on a procedure before bringing the matter to our
20 attention.

21 Now, to assist efficient inter partes communication, the Chamber urges of course the
22 parties to be civil to each other and beside their interaction in the courtroom, that also
23 extends to the communication by email and, of course importantly, the filings
24 employed -- the language employed in your filings.

25 As to the filings themselves, the Chamber stresses that these should be as concise as

1 possible. Parties and participants need not necessarily exhaust the full page limits
2 stipulated by the ICC regulation. Sometimes brevity and conciseness is your friend.
3 As to the notification of the filings, the Chamber recalls that publicity is the rule. The
4 Chamber is also well aware of the approach of the Pre-Trial Chamber I as set out in its
5 decision 83. However, in case of filing of confidential documents, the Chamber
6 instructs the parties and participants that from today they should always notify the
7 parties and the participants, including the legal representative of victims of their
8 filings.

9 If the party or participants submitting the filing has a good reason not to do so, it
10 should indicate pursuant to Regulation 23 bis of the regulations of the Court, the
11 status of the filings as "Confidential and ex parte" and the reason for the said
12 classification in the filing itself to enable the Chamber to make its ultimate
13 determination.

14 Now, in general it is the rule that emails to the Chamber should not contain any
15 substantive matters or legal arguments. Such issues and requests should be
16 addressed and made in formal filings. Naturally, if a matter requires urgent
17 attention and can only be brought to the Chamber within an actionable time frame by
18 email, this can be done. However, it should be an exception, and the Chamber may
19 direct the party concerned to place the matter on the record by way of a filing at a
20 later stage.

21 All email communications directed to the Chamber should use the Trial Chamber I
22 Blé Goudé communication address, which was already used by the staff of the
23 Chamber to send you emails. Sending your emails to this address will automatically
24 copy the message to the legal team assisting the Judges.

25 Now, the Chamber does not need to be included in inter partes exchanges between

1 the parties and participants. However, when seizing the Chamber of an issue, all
2 parties and participants should be copied on the email communication with the
3 Chamber, and this must be done unless there is a specific justification for doing
4 otherwise.

5 With respect to time frames, the Chamber wishes to indicate that, while ensuring the
6 rights of Mr Blé Goudé are respected, it will make sure that the proceedings are
7 conducted in a diligent way. The Chamber may therefore respond -- shorten the
8 response deadlines and will from its side ensure that decisions are made within due
9 course, but it is obvious that to achieve expeditiousness the Chamber needs the
10 assistance from the parties and the participants.

11 And finally, on this first point, the Chamber will of course receive filings in either of
12 the working languages of the Court; however, we wish to notify the parties and
13 participants that the primary working language of this Bench is English and therefore
14 all decisions and orders will be issued in English.

15 Now, as to the second matter, this relates to a request made by Mr Blé Goudé himself.

16 Mr Blé Goudé has respectfully requested leave to address the Chamber during the
17 status conference. The Chamber has considered this request and the Chamber notes
18 that Mr Blé Goudé is ably represented by an experienced Defence counsel and that
19 the practice is that his concerns would and should be articulated through his attorney.

20 Nevertheless, the Chamber has carefully considered this request and we note that this is the
21 first time that the accused has appeared before us. In these exceptional circumstances, the
22 Chamber will permit the accused an opportunity to address the Chamber with the clear
23 understanding that, of course, this is a court of law and that he is not permitted to, if he is so
24 minded, to make statements that we would construe as not being appropriate for a court
25 setting. He will have this opportunity when we have completed the items on our agenda.

1 Now let us go to the specific items on the agenda of the status conference. For each
2 of them I will first recall the main points raised by the parties and the participants in
3 their written submissions and then I will give the parties and participants the
4 opportunity to discuss these items further.

5 As mentioned above, we have noted the position of the Defence, as stated in its filing 204 and
6 as apparent from filings 213 and 215, that it does not consider itself to be in a position to make
7 submissions on the agenda items. However, it will anyway be given the opportunity to do
8 so today to make such submissions if it so wishes.

9 The Chamber requests that you do not repeat the arguments that are contained in
10 your written filings. We have already, I should tell you, read them, we have taken
11 cognizance of them, and that you are to use your limited time judiciously to either
12 expand on those submissions or to respond directly to other submissions. Repetition
13 doesn't really bolster or enhance the argument.

14 So let's start with item (a) time and facilities for the Defence to prepare for trial.

15 As a preliminary matter, the Chamber notes with satisfaction that since the Defence
16 filed its request in filing 201, the Defence has expanded and the team now consists of
17 now seven members. The Chamber has noted that the Defence requests to be
18 granted 15 to 18 months to prepare for trial. It has submitted that considering the
19 volume and the complexity of the case such an amount of time is necessary to give
20 itself time to be familiarised with the proceedings.

21 The Defence has further requested that all the filings and decisions that are relevant to the
22 case be translated into French, an issue which we will deal with later on in the agenda this
23 morning.

24 The Prosecution has submitted that the Defence request to be granted 15 to 18 months
25 to prepare for trial should be rejected as it is based on the faulty premise that the lead

1 counsel and co-counsel were newly appointed in the Defence team.

2 The legal representative for victims has mainly argued that the time requested by the
3 Defence is unreasonable, disproportionate and excessive, considering the facts that
4 lead counsel has been part of the team since almost five months and that he is,
5 therefore, familiar with the case and the Court procedural rules.

6 So, Mr Knoops, you have the opportunity now to address us on this issue and to
7 attempt to persuade us that 15 to 18 months is reasonable. Now, in making your
8 submissions I note that in annex 1 of your filing, 213, you refer to the time that has
9 elapsed between the confirmation decision and the date of trial in a schedule, in an
10 annex, and perhaps it would be helpful in this case if you can trace us, walk us
11 through the steps as to why you would need 15 to 18 months rather than -- as
12 opposed to just perhaps appearing to arrive at that date in a way in which we cannot
13 understand.

14 So the floor is to you, Mr Knoops.

15 MR KNOOPS: Thank you, Mr President. Honourable members of the Chamber, I have
16 noted your -- the emphasis you laid on 15 'til 18 months.

17 Thank you, your Honours. Your question is reasonable. In the position of the
18 Prosecution, the victims and the Chamber, I would have asked the same question to
19 the counsel which supposedly was already for more than five months working on the
20 case.

21 Let me, Mr President, members of the Chamber, at the outset emphasise that our
22 request was in no way meant to delay proceedings, but to accelerate at the end of the
23 day a trial, criminal trial which can benefit from the situation that a Defence is ready
24 for trial. There are no interruptions to be expected during a trial.

25 Defence which is not ready and is forced to go to trial, and it's my experience in my

1 28 years counsel over the world, you encounter moments whereby you have to ask
2 the judges to stop or to delay proceedings. This is what we try to prevent.

3 So our team, newly established, we have thoroughly reflected on this very important
4 question, because we are mindful that it is also the liberty of Mr Blé Goudé which is at
5 stake. He wants to leave as a free man to his family, to his people which he believes
6 still need him.

7 So there is a dilemma, but of course your Honours will realise that a Defence again
8 which is ready for trial could have a contribution to the trial without any other
9 interruptions.

10 Mr Blé Goudé told me, Mr President, when I met him in December and he asked me
11 to represent him in a trial, and I was aware about this enormous task, this responsible
12 task I was putting on my shoulders, he said to me, "Mr Knoops, I want to go home.

13 Of course I have no interest in delaying proceedings. My family is waiting for me.

14 My people are waiting for me. So this is not a strategy for delaying things. This is
15 my life and I need a Defence team who can help me in this trial."

16 So this was the first step. Your Honours know that upon my assignment in January,
17 I, and it's in the documents confidentially, that I made this caveat as lead counsel for
18 the moment that we are in court like today and have to ask the Chamber for adequate
19 time and facilities.

20 The second introductional remark before I go into your very important and
21 reasonable question is that we believe, we strongly believe, after having scrutinised
22 the jurisprudence of the ICC, the ICTY and also the guidelines of the European Court
23 on Human Rights - and you've found in our filing some references to some
24 cases - that the time frame of 15 till 18 months is a time frame which is from the
25 perspective of the Defence not unreasonable.

1 At the least you can detect from the jurisprudence, and I refer to the annexes 1 and
2 2 - the two tables we have introduced last Monday and yesterday and annex 2 is the
3 table which is already presented by the Gbagbo team - that on an average basis,
4 12 months from the start of the status conference, the first status conference,
5 12 months is the average time which is allocated to a Defence team, average.
6 I refer in specific to the decision of the Chamber in the Ruto case where 15 months
7 actually was at the end of the day granted. Instead of April, it became
8 September 2013.

9 Mr President, I'm practising 28 years. I have never filed requests to a judge which
10 was legally or ethically unsound, at least in my assumption. We have with our
11 newly established team thoroughly thought about the main question: If we are
12 going to represent Mr Blé Goudé in this very important trial for his life, what do we
13 realistically need assuming that we are a new team? And this indeed a point I'm
14 going to address later, because in the annexes before you, you will find the facts that
15 this lead counsel wasn't already almost five months working on the case or four
16 months as the Prosecution asserts, to the contrary. I'll come back to this issue in a
17 few moments, Mr President.

18 So the first conclusion we would like to address to the Chamber is the following: If
19 your Honours will decide upon this request of the Defence, please bear in mind the
20 notion that a Defence which is ready for trial can ultimately make a trial more
21 effective. In other words, judicial economy, a key word right now at the
22 ICTY -- judicial economy will ultimately benefit from a trial team - a Defence trial
23 team - which is ready for trial without expecting requests for delay of disclosures,
24 delay of cross-examinations, requests to recall witnesses back from abroad, et cetera.
25 This is my main and introductory argument for the Chamber.

1 My second argument, Mr President, is of course the key question: What is a
2 reasonable time which fits within the Statute to have adequate time and facilities to
3 prepare one's defence? We are in your hands; the hands of the Chamber.
4 We know the jurisprudence. Of course, the Prosecution is right, victims'
5 representations are right, that every case has to be merited on its own. We can never
6 say, "Mr Ruto got 15 months so therefore Mr Blé Goudé should also get 15 months."
7 These are guidelines just to show the Chamber in the Annexes 1 and 2 that, on an
8 average basis, before this Court a time frame of 12 months at the least is not
9 unreasonable.

10 Also bearing in mind I believe -- I'm not familiar with the evidence in this case yet,
11 but my learned friend of the Prosecution submitted in his submission for the agenda
12 of today the amount of documents. Your Honours have seen there's over 6,000.
13 I've made a rough calculation that, if you read 50 documents a day - you have to
14 speed-read I think - you are involved with 131 days just to read the current evidence
15 of the Prosecution. That's almost four months just to read the 6,500 et cetera
16 documents which the Prosecution says, "We already disclosed this in the case of
17 Mr Blé Goudé," not to speak about upcoming disclosures.

18 It's a simple calculation, and we're not speaking about reading the documents in the
19 Gbagbo case which also in case there is no joinder is of course of perennial concern for
20 the Defence.

21 Mr President, you rightly said the team of Blé Goudé consists of seven members. Is
22 that as compensation for the time frame we're asking? Is a time frame of four/five
23 months reasonable in light of the fact that the Prosecution is already preparing this
24 case for more than three years?

25 We're speaking about the principle of equality of arms, as endorsed by the Appeals

1 Chamber in Tadic, 15 July 1999, the paragraphs 44 and 53, where the Appeals
2 Chamber for the first time implemented the jurisprudence of the European Court of
3 Human Rights, the principle of equality of arms which is not enshrined in Article 6
4 but is interpreted in Article 6.

5 And interesting, Mr President, the Appeals Chamber noted that this principle of
6 equality of arms should be given a liberal interpretation. Why? Because an
7 international trial - an international criminal trial - is something different from a
8 domestic trial.

9 The responsibility for me as counsel, having the burden of this case on me and that of
10 my team, is not comparable to a domestic trial. It's a very heavy burden, and my
11 ethical code, Mr President, according to my own ethical standards, dictate that I shall
12 not defend a person whom I in all honesty and consciousness cannot properly
13 represent, nor can my colleagues from Ivory Coast do the same.

14 I would have submitted, Mr President, this request to the Chamber were this rule not
15 to exist. We're facing, therefore, also with my ethical obligation to only defend
16 Mr Blé Goudé when I'm given adequate time and facilities for his defence.

17 I believe this principle is also reflected in Article 13 of the Code of Conduct of the ICC,
18 whereby counsel is given a duty to refrain from legal representation once he cannot
19 diligently defend the accused.

20 So I'm asking you, Mr President, when you adjudicate this request please bear in
21 mind that in a time frame less than 12 years -- 12 months ethically I would reconsider
22 a mandate of a lead counsel in general, because all my brothers at this Court have told
23 me, as this is my first appearance before the ICC, "The case of Mr Blé Goudé is so
24 huge within one year you cannot do it."

25 So for me -- and it's not meant, Mr President, to pressurise the Chamber, and I

1 apologise if I've made that impression. It's just to show the dilemma.
2 Mr Blé Goudé has made a choice. His choice is to have counsel of his own choice.
3 This is the reason why he also wants to address the Chamber at the end of the
4 conference, if your Honours just give him permission to do so. That means that
5 we're facing also this huge dilemma.
6 I'm grateful, Mr President. I'm grateful to my colleagues on my left side of CSS.
7 I'm grateful for the Registry for what they've done so far for our team.
8 I know it's rather unexceptional that a team here consists of seven members, although
9 in all honesty two are pro bono. I know it's exceptional. I know that everyone is
10 trying to facilitate our team and we are very grateful for that. We're grateful,
11 Mr President, to you giving us extra time to respond on the joinder. We're very
12 grateful.
13 So our request is not to be interpreted as a non-gratitude to the Chamber, but we
14 believe it's not sufficient for us to be ready for trial in the time frame of for instance
15 July, August, September; dates already mentioned in the Gbagbo case, et cetera.
16 Now, shortly going into the main question why 15 'til 18 months. I think,
17 Mr President, there are four topics I would briefly like to address, because if you're
18 going to judge this motion we need to know the facts. Never -- my teacher,
19 Professor Bassiouni, told me, "Never assume facts in evidence."
20 It was assumed very simply that Mr Claver N'Dry and myself, we were already
21 working for four months in this case. Now, you have seen the annexes. The
22 annexes simply show the accurate time frame of our involvement. I'll come back to
23 that in a minute.
24 I think the four items which are relevant for the Chamber are the position of the OTP,
25 the position of the former team, position of the current team and the future. I'll

1 briefly go through these four topics.

2 First, the position of the Office of the Prosecution. Mr President, I already referred to
3 the fact that the Prosecution, having asked on 12 December 2011 for the arrest of
4 Mr Blé Goudé, has a huge advantage on our Defence. That's true. It cannot be
5 denied. They're investigating this case over three years and still investigating the
6 case. You have seen, Mr President, in the submissions of yesterday that the
7 Prosecution referred to the investigations which are still ongoing. I will not go into
8 detail because some parts are confidential. So this is a fact.

9 Now, Mr Blé Goudé came before this Court in March last year and so it's less than one
10 year. It's less than one year since he's here. That's already remarkably fast,
11 considering that the confirmation hearing was held in September/October.

12 So the discrepancy between the preparation time of the Prosecution on the one hand
13 and the Defence I think is self-evident. We believe this should be a very important
14 factor to take into consideration.

15 Now, your Honours know that Mr Blé Goudé when he was arrested in Ghana in
16 January 2013 waited 14 months - waited 14 months - under at the least harsh and
17 what he has submitted himself at the first appearance degrading circumstances. For
18 instance, he spent 12 months, I've read in the transcript, in a kitchen.

19 Prosecution did have time to investigate his case during Blé Goudé being in detention,
20 and he being not incommunicado, in other words he was incommunicado with his
21 counsel, he had no time to prepare any defence there. I think this is an important
22 factor - particular factor - in this case.

23 Now, about the position of the previous Defence team. Of course when I read the
24 transcripts I would say, "Well, this Mr Knoops, he apparently ...", the words of
25 Mr MacDonald, thank you for this compliment, "... was able to present a sound

1 argument during the confirmation hearing.

2 But, your Honour, no, and it's in the transcript of 30 September 2014, page 35, line 11
3 till 15, you find my introduction, Mr President, to the Chamber. I say literally, "I'm
4 standing here before you with the illusive title as 'assistant pro bono' or 'pro bono
5 assistant counsel,' and I'm only here to address the Chamber on one legal point, the
6 gravity. My colleagues ..." -- as the transcript reads on page 35, "My colleagues will
7 deal with the evidence and the facts."

8 Of course you have a letter before you from the Registry saying, "Well, this
9 Mr Knoops and Mr N'Dry were given a password for Ringtail and TRIM before the
10 confirmation hearing through the previous case manager, but your Honours have in
11 paragraph 8 of this very letter of the Registry the proof that those accounts were only
12 activated in January.

13 You have before you that exhibit number 6, confidential annex number 6, the letter of
14 Mr Blé Goudé - I will not refer to it in open session - in which he explains to the
15 Chamber what happened with the change of the Defence.

16 Now I'll ask you, Mr President -- and we've made hard copies for your Honours of
17 the bundle with the seven annexes. And if you would be so kind to look for me with
18 me to annex number 3 -- sorry, apologies. Annex number 5. Annex number 5. It's
19 a public annex, by the way.

20 PRESIDING JUDGE HENDERSON: Which filing is this?

21 MR KNOOPS: It's the filing of yesterday, excuse me, but for your Honours we have made a
22 bundle with all the annexes - the seven annexes - for your convenience and for -- actually
23 courtesy copies also for Mr MacDonald and Madam Massidda. You have copies? No?
24 Well, we have made 30 copies and so there should be one for you. Sorry.

25 PRESIDING JUDGE HENDERSON: Yes?

1 MR KNOOPS: Thank you, Mr President.

2 If the Chamber would be so kind to look at Annex 5, which is a public annex, a table

3 presented by Ms Marion Carrin, case manager, actually detailing - even abstracted

4 from - the access to Ringtail and TRIM, so even when we do take into account that in

5 my previous position and the previous position of Mr Claver N'Dry we would have

6 given at the time of our previous assignment these Ringtail log-in codes, which we

7 were not given at that time and the proof is before the Chamber, but leave us -- let

8 us -- let us discuss this without going into that detail.

9 You will find in annex 5 the exact working days Mr Claver N'Dry, current co-counsel, and

10 myself were actually on the Blé Goudé case. I think, Mr President, the table speaks for itself.

11 We have also included the calculation of the working days from the assignment date 'til the

12 current status conference. And remarkably, and that's what I'm saying, you never should

13 assume facts which are not in evidence. These are the facts.

14 And I really hope that in the future we will deal within this courtroom with facts to verify

15 facts, because if one has verified the facts of this case, one would have noticed that Maître

16 Claver N'Dry and me were only, in terms of working days, 75 working days for Claver N'Dry,

17 89 working days in the case of Blé Goudé assuming that there was Ringtail access at the first

18 day of the assignment, because, Mr President, 19 December of last year, the previous Defence

19 team was dismantled - you have the evidence before you - meaning that Mr Blé Goudé was

20 also without counsel, without legal representation from 19 December 'til 7 January. That's

21 almost 20 days. Well, you can say that's not a lot, but in the calculation of the four respective

22 five months which are assumed into evidence as counsel, current counsel, being already in the

23 case, 20 days is a lot.

24 And we have a letter which we didn't brought yet into evidence, but if the Chamber wishes,

25 we can produce this letter confidentially, of 5 January of Mr Blé Goudé to the Registry, in

1 where he alerts the Registry for this problem that he is at that time without legal
2 representation. We're speaking about the time frame of 19 December 2014 'til 7 January.

3 Mr President, these days which you find in the sheet, annex 5, don't even include the
4 situation that after the confirmation hearing the team members of the previous team
5 didn't, of course, work anymore on the case, because they were waiting for the
6 judgment, for the decision.

7 You'll find in the transcripts that my presence during the confirmation hearing was only on
8 29 September and the 30th. After the submission by Maître Claver N'Dry, I left the
9 courtroom. I wasn't during the whole confirmation hearing present, which underlines that
10 the nature of my mandate during the confirmation phase, just assigned two weeks before, was
11 simply to assist the then Defence team on one legal aspect relating to the gravity of crimes
12 against humanity, which you find in page 35 of the transcript of 30 September, lines 11 till 15.

13 These are the facts, your Honour. These are the facts.

14 Mr President, briefly going into the third item, the current Defence team, the position
15 of the current Defence team, your Honours find, if you'll be so kind to look into your
16 bundle, annex 3, which was already filed yesterday, but for the Court's convenience
17 we have bundled all the annexes into one hard copy document, which is presented to
18 you today. My colleagues were so kind to actually make this Annex 3, which gives
19 an overview of the dates of technical access to the ICC systems, especially Ringtail
20 and TRIM, and there you find that still for not all members this access has been
21 granted.

22 Some members were just recently given that access, which stipulates the situation that
23 the last four weeks, Mr President, I was working here, I was on a daily basis just
24 involved with organisation of the team. Does anyone in this courtroom know what
25 it is to lead a Defence team in a case like this with the interests at stake, with the life of

1 this man at stake to compose a Defence team in four weeks? I would say there are
2 not many Defence teams who have set up a team in four weeks and start running and
3 are able to file in two weeks a motion to the Chamber whereby the Prosecution says,
4 "Well, you see, Mr Knoops knows the proceedings."

5 We filed this motion to the Chamber as soon as practical possible to alert the Chamber
6 and my learned friend of the Prosecution and victims of the situation, not to delay
7 things, but to discuss it in time so that everyone in time can say the Defence has
8 alerted us in time to this dilemma.

9 And, Mr President, I can assure you, and it's my ethical duty, I'm ethically bound to
10 never lie to the Judge. In those last four weeks after my assignment on 7 January I
11 was at the least I think 80, 90 percent occupied with the organisation. I was just able
12 to read the full transcripts of the confirmation hearing and the transcripts of the
13 Gbagbo confirmation hearing of eight days, it's about 800 pages, and it cost me five
14 days to read these transcripts thoroughly just to show you that the amount of
15 documents we are facing in light of the advantage the Prosecution has is huge.

16 And, Mr President, we beg you, we pray the Chamber to take this into account.

17 I just said, Mr President, Ms Antonina Dyk, she just arrived from Texas, she's from the Bar of
18 Texas, she's just appointed. She was an intern for four months in the Blé Goudé case, but she
19 has to be trained as a case manager. To be a case manager in this case, and my learned
20 friends can acknowledge this, is a huge task. The training we got a few weeks ago was for
21 two hours just on Ringtail. And the instructors were not giving us training on TRIM because
22 it's a different training.

23 Now, I worked predominantly at the ICTY and ICTR which is a different system. In
24 other words, the case managers which are at the heart of the Defence case, they still
25 need to undergo training. It's not to blame somebody, but to state that we are still

1 not running. I think our team effectively can start running dealing with the contents
2 of the case maybe at the beginning of March, and that is quite optimistic, and then we
3 work day and night, which we already do now.

4 We're not here for wasting time of your Honours. We're not here to waste the times
5 of the Prosecutor or the victims. And we acknowledge the victims have a right also
6 to know as soon as possible what is going to happen with this case. Mr Blé Goudé is
7 not here to waste time of the Court. He wants to go home, but for that he wants to
8 have a fair trial. He wants to have time. He wants to have his team ready, which
9 will make us all benefit at the end of the day. This is the main purpose of our
10 discussion today.

11 Your Honours, I believe the ruling you made on the joinder, which we respect and we
12 can fully understand, should not be used by learned friends of the Prosecution and
13 the victims to say, "You see, your Honours already decided that there was sufficient
14 time because Mr Knoops and Maître Claver N'Dry were already for four or five
15 months on the case." I believe that the context of a joinder is totally different from a
16 preparation of a trial. I can understand why your Honours did say the Defence can
17 file on the 19th a response to a joinder, maybe not in detail, but at the least they know
18 something about the case, but something different from the preparation of a trial of
19 the magnitude we are facing here.

20 So I would like to stress that your Honours' ruling of 6 February on the joinder give
21 us one week extension of time should not be interpreted as having the Defence also
22 sufficient time for the preparation of the case itself. Your Honours, 15 till 18 months,
23 you find in paragraph 23 of our initial motion a calculation which is simply based on
24 the experience of myself and my colleague with other cases. And of course, we can
25 discuss indeed maybe the arbitrariness of 15 to 18 months. Why not 12 to

1 15 months?

2 But I would say, I would submit, I would suggest that less than one year is for us totally

3 unrealistic to be ready for trial. And I say it already now so that nobody can blame this

4 Defence team for not alerting the Chamber and my friends on the opposite side for not have

5 warned everyone, warning not in a negative way, but making it a point of discussion.

6 I said, your Honours, the Prosecution referred in its submission for today's agenda to

7 an amount of 6,560 documents already disclosed prior to the confirmation hearing. I

8 didn't even had a chance to look at it, to be honest with you, because of the rush we

9 had to take to set up this team, which in my view was remarkable compared to other

10 Defence teams in which I worked.

11 I say to you this calculation I made on an average basis, 50 documents a day, and you

12 have to speed-read and really understand the grasp of the evidence, gives you a time

13 frame already of 131 days, which is more than four months, and we are just speaking

14 about the current disclosures. In other words, 15 'til 18 months, not speaking even

15 about the Defence investigation, is in our estimation not unrealistic, not

16 disproportionate, taking into account, one, the position of the Prosecution in the last

17 three years being still not ready for trial, which they assert in their submissions of

18 Monday; secondly, the composition of previous Defence team in which

19 Maître Claver N'Dry and my person that have a very modest role which is overstated

20 by my learned friend and he's very generous to me by saying Mr Knoops was able to

21 present a sound argument. Thank you for that, maybe. Well, the Court didn't

22 accept it so maybe it wasn't that sound after all.

23 But anyway, I hope I've convinced your Honours that my contribution to the confirmation

24 was a modest one on one point of law without knowing the evidence.

25 And you find in my annex 1 to the motion, a confidential annex, your Honour, a letter

1 to CSS, my learned friend to my left side, in which I confirm that the only document
2 in my possession at the time was the DCC, and it also confirms that at that time I
3 didn't have access to all the Court materials.

4 The third item the current Defence team, which is still in its compositionary stage and
5 is justified in light of these three components also in light of the future disclosures,
6 that a time frame of 15 till 18 months in our estimation is not unreasonable taking into
7 account the annexes 1 and 2, which gives at the least an average time to prepare from
8 the first status conference of say one year 'til 15 months, being mindful of the fact that
9 those cases of course are not all comparable. But the basic tenet is clear.

10 I hope that my submissions were able to persuade you, Mr President, that we're
11 standing before you - we are in your hands, we are in the hands of the Chamber, we
12 are very willing and happy to cooperate. Mr Blé Goudé, he wants to cooperate and
13 he wants to go home. He has no interest in obstructing the system. He has no
14 interest in delaying proceedings. That's why I said and close with the sentence:
15 This request is not a request for delay, it is request to be ready for trial. And once we
16 are ready, the trial can commence without potential interruptions because the Defence
17 has to, in the intermediary, request the Chamber for all kinds of delays in terms of
18 investigation, disclosure, cross-examinations, et cetera.

19 And Mr President, I'm in your hands. You're an experienced Bench. You are also
20 academically trained. You know the jurisprudence also of the European Courts of
21 Human Rights, which are mentioned in some instances in the initial motion.

22 We leave it into your hands if you think 15-to-18 months is too much, but, at the least, your
23 Honour, you would agree with me that a time frame within one year from now is for this
24 newly established Defence team bearing in mind our ethical oath to my Bar and also to the
25 Bar here. It's not realistic. It's -- I would never use the word "impossible", but if this trial, if

1 this case of Blé Goudé would go to trial before the end of the year, I can assure you we are not
2 ready.

3 The two Ivorian lawyers Mr Serge Gbougnon and Maître Claver N'Dry were here for
4 two weeks, they returned last week. We spoke at length about a plan, planned
5 action, investigation plan, et cetera.

6 Where do you begin in a case like this with 40,000 documents, with almost 1200 videos, with
7 more than 400 victims' applications? Where do you start? And we concluded, based upon
8 our professional judgment, and we said to each other, if this case goes to trial within one year,
9 we are not fit as lawyers, legally nor ethically, to give a proper representation of
10 Mr Blé Goudé.

11 And again, it's not to pressurise the Chamber, but it's simply our observation. And I hope,
12 Mr President, we have presented you, based on the history of this case, the history of the
13 former Defence team, the position of the current Defence team, and the future and what's
14 going to disclose, we hope we have persuaded you that our request is not unreasonable.
15 Thank you.

16 PRESIDING JUDGE HENDERSON: Thank you very much, Mr Knoops.
17 That has been helpful.

18 Mr MacDonald, perhaps -- we have 20 minutes, perhaps we can hear you and you can make a
19 start. Are you in a position?

20 MR MACDONALD: Thank you, your Honour. Indeed, I'm in a position to answer a few
21 things. I just want to mention to Mr Knoops, and I'm very sorry for this, I've just forwarded
22 to your ICC, EPN address an email from former counsel, Mr Kaufman, that I was just
23 reminded of the content. And I think it would be important that you take note of this
24 content and maybe we can address its content after the break. It's an email in which
25 Mr N'Dry was also copied by Mr Kaufman back in December when he was withdrawing from

1 the case.

2 I just want to address a few things very quickly, and then we can move on to the next

3 point of the agenda. I want to clarify or demystify maybe something that is unclear

4 when I read -- or listen, sorry, to Mr Knoops' arguments.

5 Essentially the body of evidence, the totality of the evidence in the Gbagbo case or the

6 Blé Goudé case is the same. There may be variations between certain documents being

7 disclosed as Rule 77 in one and incriminating in the other. If ever the cases were to be joined,

8 this will be formalised, uniform is -- I mean, it will be -- the same categories of disclosure will

9 be for the same documents in -- in the joint case, but for a limited number of documents

10 they're different.

11 So what I mean to say is basically the entirety of the body of evidence is the same.

12 Currently it is true as per our filing, our observations for this status conference, that

13 there is a number of documents that were disclosed on 6 February or in mid-January

14 that were not disclosed in the case of Mr Blé Goudé yet. Why is that? It's because

15 we're waiting for the Chamber to obviously decide on the question of the protocols on

16 redactions. But once that is clarified, then we can disclose immediately. It's a

17 redisclosure with the same redactions.

18 Now, so whatever material that Mr Knoops has to read in Blé Goudé, he doesn't need

19 to read the Gbagbo documents. That's what I mean to say. The Blé Goudé

20 documents are exactly the same.

21 I want to also demystify another thing, this concept of the quality of arms and the

22 question of the Prosecution being at an advantage.

23 Well, first of all Mr Blé Goudé himself has been on this case from the very beginning.

24 He's quite a source of information. He's an intelligent man obviously. And he's

25 there to help his counsel. So he's been personally informed of the evidence by

1 receiving it, and apparently has access to it at the detention centre via the Ringtail
2 system.

3 It's all in a language that he understands, French. It's his mother tongue. And
4 anything that may be in English was already translated in terms of evidence,
5 pursuant to Rule 76 evidence that is, or, in any event, he understands English very
6 well. We can note that he's not using the headphones.

7 All that to say that Mr Blé Goudé is there to help his counsel also on factual issues
8 because he was also an important person present on site in 2000, in 1999, all the way
9 up to 2011, when he fled Côte d'Ivoire.

10 So equality of arms, the Prosecution has a burden to prove a case beyond a reasonable
11 doubt. So obviously we investigate a situation, we put this together and we disclose
12 it to the Defence.

13 And yes, indeed, to do that it takes time and we're still doing it because, indeed, this is a
14 complex case. And unfortunately it started where we had indeed Mr Gbagbo transferred to
15 the Court while the Prosecution was at the beginning of its investigation. While it may have
16 had sufficient grounds to arrest and seek this transfer, it still was a long way off to
17 demonstrate or prove its case beyond a reasonable doubt.

18 So I want to also to put that in perspective. Now, when I listen to Mr Knoops -- and
19 I understand the position he's in is not an easy one, but it's for him to decide if he
20 wants to represent Mr Blé Goudé. He's not being forced to represent Mr Blé Goudé.
21 He does have ethical obligations. We all do. And indeed in every legal system in
22 the world you do not represent a client until, unless you think you believe you can
23 adequately represent him. That's a basic principle.

24 So knowing this, when Mr Kaufman withdrew in December, when Mr Blé Goudé
25 approached him already back then to represent him, he was well aware before this

1 hearing of the body of material that would be needed to be read, to be prepared.
2 Now, I need to remind the Chamber there is a confirmation decision in the case of
3 Mr Gbagbo that was issued a long while ago. There is a confirmation decision that
4 was also issued in this case. You have a quite-detailed document containing the
5 charges in the Blé Goudé case. With all of those material, you already understand
6 what are -- what is the factual basis, what are the crimes, which incidents we're
7 talking about and which modes of liability Mr Blé Goudé is facing.
8 I think the Chamber mentioned something very important at the beginning
9 when -- when the Chamber mentioned that we would not be addressing certain issues
10 because the joinder request has to be dealt with first. And I think this is a
11 sound -- sound decision, but we can come back maybe on the impact of disclosure it
12 may have in order for the Defence of Mr Blé Goudé to be -- to prepare for trial.
13 But currently Mr Blé Goudé has been represented since the early days in March. He
14 has been involved in this case. And Mr N'Dry was also involved in the case in
15 August, and Mr Knoops in September. While maybe now with the evidence that we
16 have that indeed he didn't have access to the material itself, he nevertheless had
17 access to the case. He had access to information - sufficient information - to
18 understand what this case was about. And he did stand up in a courtroom and
19 made legal arguments.
20 Now he's saying that it takes 15-to-18 months to prepare. I understand, you need
21 time to prepare. But he also sought close to seven months, you may recall, to answer
22 the joinder request. And now he's saying in this courtroom that, all right, it's
23 sufficient, I have an extra week to answer, while the decision was issued -- the
24 confirmation decision was issued in December and we file on 16 December,
25 19 December in both cases -- or 22nd, sorry, in the case of Blé Goudé in particular, this

1 joinder request. Already two months ago.

2 So I know that to read transcripts, 800 pages, it takes five days, yes, if you are multitasking,
3 maybe, but if you are only doing that, I think you can do it, you know, pretty close to a day.

4 In any event, these cases are indeed complex. These are huge cases. They are. We
5 all know that. They're difficult. They're challenging. But it's for Mr Knoops to
6 decide if afforded the right number of months to prepare that is sufficient for him to
7 represent Mr Blé Goudé. And we can envisage, your Honour, different scenarios
8 with or without a joinder.

9 In any event, independently of a joinder, if the Chamber, after due consideration to
10 the representations made by Mr Knoops, a trial that would begin in end of September,
11 beginning of October, that's in basically nine months, plus the time Mr Knoops has
12 been on the case thinking about it in one way or another, well, you're close to the
13 15 months he's seeking, actually, and which I think would -- if there is a joinder,
14 would be quite reasonable considering what Mr Altit -- the representations he made
15 in the past before this Chamber where he was seeking a start as -- beginning of a trial
16 in even December, November, or end of November, December.

17 So therefore while his client may have been in detention for the last three years or more, he
18 was still considering that this was a reasonable date for the start of a trial for a detained
19 person, his client.

20 So all in all, your Honour, I think we're not far off if you look at what is reasonable,
21 and I can understand also Mr Knoops' position at the moment as being a potential
22 argument for the joinder response he's about to file. This question of time obviously
23 is one that is relevant for that issue too. So I think we all understand that.

24 So therefore these are the comments we're to make, your Honour. We're not to tell
25 you what is reasonable or not, you are to decide that question, but I think I wanted to

1 make these comments to maybe put back the question in its proper context.

2 Now, I would encourage Mr Knoops to read this email, because I may have to come
3 back after the break or give a chance to Mr Knoops to discuss it with him, but in light
4 of that email we can go also in partial closed session when we come back to discuss
5 that content.

6 But right now there are some allegations and it's -- I've read the material obviously
7 filed for this status conference, including the letters of Mr Blé Goudé, and there is one
8 absentee here, Mr Kaufman. We're alleging certain things, and Mr Kaufman is not
9 even privy to this, which has an impact on his ethical duties and his code of his own
10 conduct. So if we were to make such allegations, make such comments, he may
11 want to be privy to what is being said in order to properly respond, because he's
12 being possibly attacked under his -- the ICC Code of Conduct of Counsel.

13 I don't want to heighten or elevate or go in a direction that is not needed to answer
14 these questions, but those are also considerations that one has.

15 Thank you.

16 PRESIDING JUDGE HENDERSON: So do I take it that you have not completed your
17 response to this particular aspect?

18 MR MACDONALD: That's correct. There's only one point that I would like to come back
19 on is what was Mr Blé Goudé's understanding of his representation by Mr Kaufman and since
20 when he knew that? Therefore, maybe he could have taken -- taken steps much earlier in
21 order to be ready for trial, if there was to be a trial.

22 It's very cryptic what I'm saying at this stage, I understand, because I want
23 Mr Knoops to be able to have a look at this email, to read it, discuss it with his client
24 and then we can come back after the break briefly and the Prosecution can briefly
25 introduce possibly this topic as to since when should Mr Blé Goudé have been

1 looking for subsequent representation and when was he informed of that, that it
2 would happen?

3 PRESIDING JUDGE HENDERSON: Now the Court will -- the Chamber will take the break,
4 it's almost that time, but in deciding this issue the Chamber would not consider it necessary to
5 litigate any -- because I recognise that you're being rather cryptic in how you are addressing
6 this, but matters as between counsel and his client and between them it is not necessary to
7 perhaps litigate that at all before this Court. We are just interested in getting the necessary
8 material to, at the end of the day, determine how much time the Defence needs to properly
9 prepare their case respecting the full principles of fairness and fundamental rights.

10 MR MACDONALD: Indeed. I understand, your Honour. I understand and that's not the
11 purpose obviously but, when the counsel copies the Prosecution on discussions - on such
12 discussions - which may impact on your decision, then therefore we feel that it's important to
13 maybe bring this to your attention.

14 But that's why I would -- I think the first step is maybe for Defence counsel to speak
15 to his client and we'll take it from there. Maybe it won't be necessary to come back
16 with this issue, but it's just that you also have material on file coming from an accused
17 who is saying certain things and we may have different information. Therefore,
18 that's also a question that may be of interest to the Chamber in that sense.

19 Thank you.

20 PRESIDING JUDGE HENDERSON: All right.

21 Well, the time being 11.25, we did say we would take the mid-morning break at 11.30.
22 We are a bit early, but we -- matters have arisen. So we'll take the break and -- just a
23 moment.

24 All right. We have much to do today, so we'll try and come back for 11.55.

25 THE COURT USHER: All rise.

1 (Recess taken at 11.24 a.m.)

2 (Upon resuming in open session at 11.58 a.m.)

3 THE COURT USHER: All rise.

4 Please be seated.

5 PRESIDING JUDGE HENDERSON: All right. So we will resume the hearing of the status
6 conference.

7 Mr MacDonald, you were at a point where you said you had not yet completed, but
8 you wished to have given your learned friend on the other side an opportunity to
9 consider some material, which I must say is not before us and therefore as counsel,
10 we -- you would both know that we can't deal with anything and rule on anything
11 that is technically not before us.

12 So proceed, please.

13 MR MACDONALD: Yes, your Honour. We -- I understand fully, we're springing up
14 something on the Chamber, the Prosecution is, that is. I've forwarded the email. I've asked
15 my colleague to consult with his client if it could be shared at this stage with the Chamber, if
16 needed. And so I don't know if Mr Knoops can -- can answer that question at this stage. I
17 understand that looking by the length of the first session and the remaining items on the
18 agenda, we are likely to be back this afternoon.

19 So we still have some time today to come back to this issue if we cannot resolve it now. So
20 either we -- if we can file the document, we file it. If we cannot file it at this stage, or
21 whatever, we just continue with the agenda items I would propose.

22 PRESIDING JUDGE HENDERSON: Any observations, Mr Knoops, at this point, or would
23 you wish to proceed to hear the Registry?

24 MR KNOOPS: Mr President, members of the Chamber, we have no objection when the
25 email of Mr MacDonald is provided to the Chamber confidentially, although we are of the

1 opinion that it doesn't change any of our arguments. But that's of course for the Chamber to
2 decide. But we have no problem when this email is being presented to the Chamber, albeit
3 confidential. Thank you.

4 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops, for your assistance.

5 Mr MacDonald -- I mean, we are labouring under a time constraint. I wonder
6 whether if this is something that you consider relevant, is it something that you
7 would wish to just file and make available to the Court for the record and you could
8 continue with your other arguments, or is it something that we would need to hear
9 you further on?

10 MR MACDONALD: What I would propose, your Honour, I forwarded the email to
11 Madam Bossette, who can print it, the Chamber can then have a copy of it, and we can go
12 very quickly in partial closed session, and I'll say -- I'll deal 30 seconds with that email, and
13 then we can move on, or continue on this topic, but that's what I would propose we do
14 immediately.

15 PRESIDING JUDGE HENDERSON: I will just consult with my colleagues on the Bench.
16 (Trial Chamber confers)

17 PRESIDING JUDGE HENDERSON: Right. So we will go into closed session momentarily.
18 And when we do so, we will then hear you, Mr MacDonald. I beg your pardon, private
19 session.

20 (Private session at 12.02 p.m.)

21 (Redacted)

22 (Redacted)

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Status Conference

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13 Page 32 redacted – Private session

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13 Page 33 redacted – Private session

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16 (Open session at 12.10 a.m.)
17 THE COURT OFFICER: We're in open session, Mr President.
18 PRESIDING JUDGE HENDERSON: (Microphone not activated)
19 I beg your pardon.
20 Mr MacDonald, having addressed us, you have completed. We will now hear from the legal
21 representative for the victims.
22 MS MASSIDDA: Thank you, your Honour. I will be brief. I will not be making
23 submission on the last point raised by Mr MacDonald.
24 We have heard the further explanation by my learned colleague Mr Knoops in relation to the
25 need to prepare for the defence. As we have stated in our submission, we don't question the

1 right of the accused to be prepared for trial. We just question the amount of time that
2 Mr Knoops is asking in order to be able to start trial.

3 I will simply repeat now my written submission, because I think that Mr Knoops has
4 simply elaborated further on its previous submission, and I think that our written
5 submission of 9 February entirely cover all the matters which has been addressed this
6 morning by Mr Knoops. Thank you.

7 PRESIDING JUDGE HENDERSON: Thank you.

8 The Registry, is there anything that you wish to add to this?

9 MR VANAVERBEKE: Your Honour, nothing to add.

10 PRESIDING JUDGE HENDERSON: Thank you.

11 Mr Knoops, anything in reply to what has been extensively submitted?

12 MR KNOOPS: No. Just one clarification. It was a very interesting point Mr MacDonald
13 raised. He was saying, well, the Defence now apparently says that we didn't need time to
14 prepare for response for joinder for six months. But if you read in our submissions,
15 paragraph 23, my idea of the approach of the case was initially first read the materials, then
16 you can properly respond to a joinder.

17 So the time frame for me remains 30 days, not six months for the joinder. But in my system
18 of preparing a case, it would have been logic that the Defence first digests the files, whether
19 there are -- whether these are indeed the same cases, et cetera, the same facts, same
20 transactions, then asking 30 days to respond on the joinder. So I think it's misstating our
21 view that we asked six months for a response to a joinder. That makes it rather, excuse me to
22 say it, rather ridiculous. It makes our argument rather ridiculous. So I hope that is quite
23 clarified.

24 A second point, what the Prosecution in my view also overlooks is, again, the annex 1
25 to the initial motion, which is confidential, in which the Defence, the new Defence,

1 clearly stipulated the caveats with the assignment, which reinforces actually our
2 position. Thank you.

3 PRESIDING JUDGE HENDERSON: Thank you.

4 All right. So we will move on to the other items on the agenda. So I now turn to item (b) on
5 the agenda: Timing, volume and modalities of disclosure of evidence pursuant to Rule 76 of
6 the Rules.

7 Now, before I give the floor to the parties, the Chamber would like to emphasize that
8 it is particularly interested in ensuring that disclosure is completed as accurately and
9 as expeditiously as possible.

10 As was said previously, the Chamber expects that the parties shall try to engage, at the
11 earliest opportunity, in inter partes communications to resolve any such issues. In the -- and
12 I have to emphasize, the exceptional circumstance that the parties are unable to achieve
13 agreement on questions related to disclosure, the Chamber will resolve any issues that
14 remain.

15 Now, the Prosecution has updated us on the status of disclosure. It has indicated
16 that it is in a position to disclose promptly all currently outstanding material in its
17 possession to the Defence if the redaction protocol adopted in the case against
18 Laurent Gbagbo is also adopted in the present case.

19 Now, with respect to items falling under Rule 76 of the Rules, the Prosecution has
20 specifically indicated that it has already disclosed a substantial amount of material
21 totalling some 7,812 items to the Defence in the case against Laurent Gbagbo, a
22 substantial proportion or substantial portion of which has already been disclosed to
23 the Blé Goudé Defence prior to the confirmation hearing.

24 The OTP, the Prosecution, has also indicated that just over 700 incriminating items can be
25 disclosed shortly assuming that the Chamber adopts an identical redactions protocol as is the

1 case in the Gbagbo case, in particular 69 statements and witness related material currently in
2 the Prosecution evidence list in the Gbagbo case have been disclosed to the Blé Goudé
3 Defence. Material pertaining to 31 further witnesses remains to be disclosed. And finally,
4 the Prosecution has indicated its intention to call a certain number, between two and six
5 expert witnesses.

6 Now, can the Prosecution provide the total number of witnesses it intends to rely on
7 at this stage? Mr MacDonald?

8 MR MACDONALD: Your Honour, the exact number I cannot give you at this stage. What
9 I can give you is the following: As you know in the Gbagbo case, we've indicated our
10 intention of relying at this stage on 101 witnesses. There is also pending the transcriptions in
11 relation to a number of witnesses that are not on that list as per our Regulation 35 submission
12 in Gbagbo, either 760 the number, or 61. Mr Knoops we made sure to copy him on the
13 notification page to inform him. So -- and, as noted just now, there are a number of expert
14 witnesses that may be called to testify. So -- and our investigations are still ongoing for a
15 number of additional potentially insider witnesses and crime-base witnesses.

16 That's what I can say at this stage. With precision, will it be 110, 115? I cannot give
17 you that number at this very moment.

18 Also, and independently of the number of witnesses that may be on the list of
19 evidence, one has to understand obviously that it is prior to any discussions being
20 undertaken with Defence counsel. A number of witnesses are there simply for a
21 question of chain of custody or collection of evidence in certain premises; mainly
22 investigators for instance. Experts will provide reports on injuries. These may be
23 admitted, so we don't have to call a witness. We file the reports. So also beyond
24 the numbers themselves, this number may go down.

25 So the purpose is to provide an initial list that provides a complete picture and we

1 work from there to try to see if we can arrive at agreements.

2 Now obviously this is -- and I understand it's all pending also on the question of the

3 joinder of the cases. It's very much linked. One cannot disassociate it from that.

4 So that's what I can say at this stage.

5 What I can say at this stage, your Honour, is any material that was provided in

6 Gbagbo so far can be immediately disclosed to the Blé Goudé Defence team with one

7 exception, and that's a Witness 414 at this moment, and we're working on that. I can

8 discuss this issue as mentioned in an ex parte session if need be, but we're working on

9 a resolution as soon as possible of that current situation.

10 So beyond that, if the redaction protocol is the same we can disclose it, and actually

11 what I would propose, your Honour, maybe it's easier that way, is that we disclose

12 this material as soon as practicable to the Defence with the current redactions as

13 applied in Gbagbo and we take it from there. If it's modified in the future, then we

14 will adapt depending on the situation. If these cases are joined, well, I understand

15 that then the question becomes moot. If they're not joined, maybe the situation

16 becomes different.

17 But there is one thing I want to say now and I'm saying it in public session.

18 Currently the cases are not joined. The confidentiality level have to be respected by

19 both teams, meaning the Blé Goudé Defence team and the Gbagbo Defence team. So

20 there are differences, smaller, minute ones, but information sharing between the two

21 Defence teams at this stage on confidential documents cannot take place. So that's

22 what I can say to the Chamber at this stage.

23 So we can bring the total number of witnesses' identity that can be disclosed as to

24 incriminating evidence to 101 as soon as we get your approval, your Honour.

25 PRESIDING JUDGE HENDERSON: I can distill from that that the Prosecution will make its

1 best efforts to pursue agreed evidence to reduce the number. 101 witnesses, even as a
2 ballpark figure, is a large number.

3 MR MACDONALD: I understand, your Honour. As again I know it's a large figure, I
4 understand that, but this is also maybe a case that is different from other cases. This is a case
5 that is based on circumstantial evidence also. In order to build your -- the prosecution, in
6 order for the Prosecution to build its case, it has to establish -- it has to provide a complete
7 picture and has to place its pieces of evidence in order for the Chamber to appreciate beyond
8 a reasonable doubt or not this evidence, this case.

9 So some witnesses may be very short. Others may be longer. There may be
10 admissions. There's a large number of documents on the list of evidence of the
11 Prosecution, but again the Prosecution to give you an example went to the
12 Department of Defence, or went to the residence of Mr Gbagbo, seized X number of
13 documents that we feel are relevant.

14 This case, like I've mentioned before, your Honour, has four components of what
15 constitute the group that acted together. There is the FDS that themselves are split
16 into different groups, you have the youths, you have the militias and you have the
17 mercenaries, and all we allege these constitute the forces that committed the crimes in
18 question.

19 So in order to establish that, including with the crime base in relation to four incidents
20 for Mr Gbagbo, five for Mr Blé Goudé, and to do the linkage that is necessary to the
21 inner circle, it is indeed a huge enterprise. We will do our best to reduce this
22 number, but at this early stage the Prosecution cannot give you an exact number. I
23 have to speak to my colleagues.

24 PRESIDING JUDGE HENDERSON: Right. Now, also in your submissions you spoke
25 about further investigations which you said you expect to be completed within two months.

1 Can you indicate whether these would result in the addition of further witnesses?

2 MR MACDONALD: Yes, they would. They would result in further additional witnesses.

3 Some are -- some are not, it's not the case for some, but for others, yes, it is.

4 So that's what I can say here at this stage, your Honour. Our investigations being

5 confidential, I cannot indicate what exactly we're doing and on which topics.

6 Also, your Honour, there's one thing that needs to be understood. We're not, how

7 should I put this? The challenges that the Office of the Prosecutor faces to be able to

8 bring the evidence to prosecute such cases is quite great.

9 In national systems, in the worst case scenario you may have multiple murders.

10 Here there are chapeau elements that we need to establish: The widespread

11 systematic nature of an attack pursuant to a policy of a State or organisation.

12 That in and of itself is one challenge. Additionally, you need to have cooperating

13 witnesses that will come and testify. Enforcement or compelling a witness to

14 cooperate or a person to provide evidence and cooperate as we've seen in Kenya is

15 slowly finding its way in the jurisprudence of the Court, but so far the process has

16 been voluntary.

17 We're not forcing - the Office of the Prosecutor is not forcing - any individual to

18 cooperate with its investigations. So this takes time. A witness that said "No"

19 maybe two years ago is now willing to say "Yes." A location that you could go to

20 now was not accessible. Maybe now it is accessible.

21 So while I understand Mr Gbagbo has been in detention for over three years and that

22 Mr Blé Goudé has been in detention before the ICC for just under a year, to build such

23 a case and here to understand the politics involved and how society is polarised in

24 such a nature and in order to distill this for the Chamber in the presentation of its case,

25 it does take time. It does take time, because ultimately we want the Chamber to

1 understand the whole background and that is the Prosecution. It's the onus is on us.
2 So this is why, your Honour, is -- if we could prove a case with a smaller number of
3 witnesses obviously we would do it.

4 PRESIDING JUDGE HENDERSON: Thank you.

5 For the benefit of the Chamber, can you clarify Footnote 20 of your submissions?

6 How many items falling under Rule 76 and already disclosed to the Defence in the
7 Gbagbo case remain to be disclosed to the Defence in the Blé Goudé case?

8 MR MACDONALD: Rule 76 relates to statements of witnesses.

9 PRESIDING JUDGE HENDERSON: Yes.

10 MR MACDONALD: What we're saying is there's 31 witnesses and their corresponding
11 statements or interview transcripts and annexes to those. The number that we've given, your
12 Honour, is that currently there's 700 items of incriminating -- of an incriminating nature,
13 meaning they include everything beyond also Rule 76; so documents, videos, that we want to
14 rely on beyond the material related to those 31 witnesses.

15 I cannot give you the exact number of specific items to witnesses. What I can give
16 the Chamber is the total item of incriminating evidence, which is just over 700. It
17 fluctuates again because there's maybe small differences between the Gbagbo and
18 Blé Goudé cases, but we're talking, you know, just over 700 or so and that's the
19 answer I can provide you with.

20 You know, usually one crime-base it's one statement with a few annexes. An insider
21 it could be 10, 12 transcripts so -- and their annexes. So then in this case we
22 can -- listen, I presume that at this stage there's at least 350 to 400 documents that are
23 specifically relating to Rule 76 material. Now I can -- I think we can safely give or
24 take, but it's certainly around the 350 to 400 figure.

25 PRESIDING JUDGE HENDERSON: All right.

1 Moving on, the -- you, Mr MacDonald, had mentioned that material related to
2 31 - that is 31 further witnesses - have not yet been disclosed. I understand that the
3 Prosecution is ready to disclose such material as well as any remaining incriminating
4 items shortly, if the Chamber adopts an identical protocol as the one that we have
5 adopted in the Gbagbo case.

6 Could you please confirm that this is in fact so, Mr MacDonald?

7 MR MACDONALD: Yes, your Honour, with the following caveat, and I want to come back
8 on for the Chamber's understanding. When we say "in our possession," and for instance our
9 possession as of the date of 6 February when it was in the Gbagbo, on the same day we
10 receive material we can't disclose that material. It's impossible.

11 PRESIDING JUDGE HENDERSON: We understand that.

12 MR MACDONALD: So with that caveat, anything that was currently in our -- disclosed to
13 Mr Gbagbo it's a re-disclosure for us, and if it has the same redactions it could be done pretty
14 quickly, usually in a matter of days, but with the competing - unfortunately competing - tasks
15 that one may have, as you know we've finished a review of 2,100 documents for the metadata,
16 just the metadata itself, it's not even content of the document, it's information attached, our
17 knowledge based unit KBU needs to process that.

18 So this is why we're saying as soon as practicable, but it can be done pretty quickly.

19 Within a week's time from the Chamber's decision for sure it can be disclosed, or
20 earlier if we can. Now, for new material that we're currently analysing and that is
21 coming in, new transcript that have transcription is done and over, the Prosecution
22 needs to register this material, then needs to read it, needs to apply redactions. This
23 process is done manually. We need to put the category according to the protocol on
24 redactions. This takes time. There's manual operations that need to be taken care
25 of. So of course if we could disclose it quickly we would, but sometimes it's simply

1 not possible.

2 And I must say, your Honour, when we were discussing this back in November in the
3 Gbagbo case, the whole question of the redactions protocol, the protocol adopted by
4 the Chamber changed the whole process on this case quite significantly, including
5 with the knowledge-base unit independently that it was based on the Kenya model
6 because additional categories, well, additional fields, and so on, and inserting
7 pseudonyms is not possible sometimes.

8 So this is why it took us time to do that. And to go back to such, as the Chamber can imagine,
9 6,500 documents you have to go back to, not all of them need redactions, but half of them
10 have or close, so it took -- it took time.

11 But to answer the question specifically is if you gave us the go ahead today, by next
12 Friday, Mr Blé Goudé will be in possession of the material that was disclosed on the
13 6th, certainly on 6 February to the Gbagbo Defence team, which is just over 700
14 documents. Any additional material that we're now reviewing if we can disclose
15 those on that date, we will, but it's a long -- it takes more time to process those
16 because they're new. They're new to the Prosecution division, they're new to the
17 knowledge-base unit and this takes a little bit of time.

18 PRESIDING JUDGE HENDERSON: Thank you. This is directly to Mr Knoops. Now, the
19 Chamber notes that the redaction protocol adopted in the Gbagbo matter, which established a
20 redaction regime, which was filed on 15 December last year, and stresses that it would be
21 inclined to adopt the same regime in the present case with the aim of reaching some level of
22 consistency, uniformity, if you may. And this so at the trial level.

23 Now before taking a decision on this, the Chamber would like to get from you,
24 Mr Knoops, whether the Defence would agree that pending the adoption of such a
25 redaction system in the present case disclosable material redacted in accordance with

1 the system used in the Gbagbo case can be disclosed to Mr Blé Goudé as currently
2 redacted.

3 MR KNOOPS: Thank you, Mr President. The preference of my team, it's from our
4 perspective, is that considering also the potential confidentiality discrepancies between the
5 Gbagbo case and Blé Goudé case, considering those potential discrepancies or dilemmas, the
6 disclosure of materials would be due after the Court did set the final protocol in our case.

7 That would be my preference.

8 Because I'm actually not familiar with the system yet to make assessment whether a document
9 which is given to my team is a document which is solely for Blé Goudé or for the Gbagbo case.
10 I simply do not have right now the overview to make that assessment. Maybe I've
11 understood it wrongly.

12 PRESIDING JUDGE HENDERSON: Okay. Perhaps -- what I want to say is what the
13 Chamber has adopted in the Gbagbo case is a particular regime which addresses the issue of
14 redactions and disclosure. What the Chamber wants to get from you is, not getting into
15 confidentiality between -- as between the two cases, what we want to know is in the
16 Chamber's effort striving for trial division uniformity in systems --

17 MR KNOOPS: Yes.

18 PRESIDING JUDGE HENDERSON: -- protocols, whether you will have any difficulty in
19 receiving the material that's disclosable to you using the redaction protocol as has been set out
20 in the Gbagbo? So it's really the system we're speaking about. Do you follow?

21 MR KNOOPS: I understand your practical solution. We would not have a problem with
22 that, although we would like to reserve our right to also comment on the protocol. Until so
23 far our Defence team did have a chance to look at protocols which were set, the Gbagbo case
24 nor for the potential victims' participation, so we are in the hands of Court. We are willing to
25 cooperate because we are also mindful of our position in this new case, but at the same time I

1 would like to reserve the right that we could make changes as a new Defence team in any
2 existing protocol. And I understand from your Honour that you are not making a decision
3 yet on the final protocol in the Blé Goudé case.

4 PRESIDING JUDGE HENDERSON: And we would never, Mr Knoops, I would wish to
5 assure you, take such a decision without inviting the observations of the Defence.

6 MR KNOOPS: Thank you, Mr President.

7 PRESIDING JUDGE HENDERSON: So rest quite comfortably assured of that.

8 MR KNOOPS: Thank you. Thank you.

9 PRESIDING JUDGE HENDERSON: All right. In light of that, Mr MacDonald, do you
10 think that you could provide an indication of a realistic final disclosure deadline? If we were
11 to -- do you follow?

12 MR MACDONALD: Yes. You mean pending, including our ongoing investigations, the
13 two months mentioned?

14 PRESIDING JUDGE HENDERSON: Yes.

15 MR MACDONALD: Yes. We were -- we are currently on Friday, 13 February, and I don't
16 have a calendar, but at the beginning of April, or mid-April, or after the Easter holidays, then I
17 think that would cover what the pro -- the next disclosures.

18 Again, there may be a few items depending on -- even though we may want to schedule, and
19 we're attempting to schedule at the front end, interviews that require transcripts, because of
20 the length it takes to receive such transcripts, we're -- we're not -- we're -- we understand that,
21 so we try to plan it but it's not always possible. It depends on the availability of witnesses.

22 But yes, we would recommend, your Honour, a disclosure deadline that would take two
23 months as of today. So it would bring us in April, after, I would suggest, after the -- either
24 within the Court recess because during that period there is a two-week court recess, or right
25 after, or at the end of the Court recess.

1 PRESIDING JUDGE HENDERSON: Thank you. So before we close this particular aspect of
2 the agenda, is there anything else you would wish to raise? If not, I will move on.

3 MR MACDONALD: Yes, there is. If you'll allow me very briefly, on the question, on this
4 topic, the Prosecution wants to inform the Chamber that in relation to expert witnesses,
5 usually the profile that the Prosecution is of -- the people they're looking into hiring as experts,
6 there is one left.

7 And it's been quite a challenge. And mainly these people are researchers in the field, and
8 they have sometimes concerns. So it's proving very challenging to be in a position to hire an
9 expert on a specific issue. We're doing our best. And these people are also usually
10 university professors or teaching, so therefore their time is -- they're busy people.

11 So we will update the Chamber in due course, including my colleague, if and when we're in
12 the process of hiring such a person. It's not done yet, but it may go beyond this deadline of
13 April, but it would be for one witness on a very specific issue and a report would be drafted.
14 Nevertheless -- and the intention of the Prosecution would be to call this witness to explain
15 certain things to the Chamber.

16 So, therefore, it is possible then in relation to one expert, important we feel for this
17 case, expert, it may go beyond any deadline that the Chamber may set for the last
18 disclosure. So of course we would inform the Chamber via Regulation 35. Voilà.

19 PRESIDING JUDGE HENDERSON: Thank you.

20 Mr Knoops, is there anything that you wish to before we move on?

21 MR KNOOPS: No. Thank you very much, your Honour.

22 PRESIDING JUDGE HENDERSON: Right. We will then next move on to item (c).
23 Before I do that, Mr MacDonald, perhaps in light of what mister -- Mr MacDonald --

24 MR MACDONALD: Yes.

25 PRESIDING JUDGE HENDERSON: -- in light of what Mr Knoops has indicated, perhaps

1 you can in fact begin your disclosure to Mr Knoops of the material following the Gbagbo
2 guidelines, bearing in mind the reservation that Mr Knoops has made.

3 MR MACDONALD: Exactly. Yes, we can, your Honour --

4 PRESIDING JUDGE HENDERSON: Yes, you can.

5 MR MACDONALD: -- and we'll do that starting next week. We'll see when we can do it at
6 the earliest opportunity, and with the -- the only caveat that in relation to two witnesses that
7 will not be possible.

8 PRESIDING JUDGE HENDERSON: I follow. All right.

9 So let's move to item (c): Whether the Prosecution anticipates issues concerning the
10 protection of witnesses and other persons, the disclosure of identities of witnesses as well as
11 referrals to the Court's witness protection programme.

12 Now, the Prosecution informed the Chamber and the Defence that it anticipates that
13 there may be ongoing security risks impacting on its investigations and the protection
14 of witnesses and other persons throughout the trial.

15 It further provided an update on the disclosure of witnesses' identities. It indicated that the
16 identity of three witnesses has not yet been disclosed. It submits that the identity of two of
17 them, namely P-49 and P-316 can be disclosed as soon as the Chamber has ruled on the
18 redaction protocol to be applied.

19 Further, the Prosecution informs the Chamber that it is in a position to disclose
20 P-238's identity pursuant to Rule 77. If P-238 accepts to testify, the Prosecution
21 would promptly re-disclose his statement as incriminating evidence. It further
22 indicated that none of the Prosecution witnesses it intends to rely on for trial are in
23 the ICC Protection Programme, but that it continues to assess the security situation of
24 its witnesses and that it will inform the Chamber of any changed circumstances.

25 The Prosecution finally accepted -- I beg your pardon, indicated that it will seek

1 in-court protective measures for several witnesses and that it will file appropriate
2 submissions in due course. The Registry in its submissions encouraged the parties to
3 follow the procedures established in Regulation 8(1) and 96(2) of the Regulations of
4 the Registry for issues concerning the protection of witnesses and referrals to the
5 ICCPP programme.

6 The Victims and Witnesses Unit remains available to assist the parties and to provide them
7 with a protection referral form to facilitate any request.

8 So that's encapsulated the submissions. Mr Prosecutor, is there anything you wish
9 to add to that?

10 MR MACDONALD: I hate these robes. No, your Honour.

11 PRESIDING JUDGE HENDERSON: The Registry?

12 MR VANAVERBEKE: Nothing to add.

13 PRESIDING JUDGE HENDERSON: Mr Knoops, the Defence?

14 MR KNOOPS: Thank you, your Honour. No.

15 PRESIDING JUDGE HENDERSON: All right. Moving onto item (d) on the agenda:
16 Material already disclosed and intended to be disclosed by the Prosecution pursuant to
17 Article 67(2) of the Statute and Rule 77 of the Rules.

18 The Prosecution has indicated that it is in a position to disclose promptly all
19 outstanding Article 67(2) and Rule 77 documents in its possession, namely,
20 approximately 15 documents falling under Article 67(2) and 500 falling under the
21 ambit of Rule 77. The Prosecution will continue its ongoing review of newly
22 collected evidence and of evidence already in its possession for Article 67(2) and
23 Rule 77 material to ensure timely disclosure.

24 Mr Prosecution, is there anything that you wish to add to this?

25 MR MACDONALD: Same comment applies as to the incriminating evidence, we can

1 disclose it next week with everything in one go.

2 PRESIDING JUDGE HENDERSON: Thank you.

3 Mr Knoops?

4 MR KNOOPS: Nothing to add, your Honour. Thank you.

5 PRESIDING JUDGE HENDERSON: Thank you.

6 Moving on to items (e) and (f). We will deal with them together. Update on the victims'
7 applications and the procedure for allowing victims to participate in the trial proceedings as
8 well as transmission of lesser redacted versions of victims' applications to the Defence.

9 Now, in this regard the Chamber has received detailed submissions from the legal
10 representative of victims. She has informed the Chamber that out of the 470 victims
11 admitted to participate in the pre-trial proceedings, one passed away and his status as
12 victim was terminated by the Pre-Trial Chamber. Two more victims passed away in
13 2014 and their status as victim still needs to be terminated.

14 For the 467 remaining victims who were admitted to participate in the pre-trial
15 proceedings, the legal representative considers that she -- that they should be
16 automatically admitted to participate at the trial stage without their applications
17 having to be submitted and considered de novo.

18 With regard to the victims who did not participate to the pre-trial proceedings, the legal
19 representative considers that the application system should preserve the individualised
20 character of victims' participation and that the standard six pages form should be used in the
21 case.

22 The LRV submits that if the Chamber wishes to simplify the system, the simplified one page
23 form used in the case of The Prosecutor versus Bosco Ntaganda can be used.

24 The legal representative emphasizes that she is opposed to the approach adopted in
25 the Kenya cases. She informs the Chamber that she has no objection to the

1 transmission to the Defence of lesser redacted versions of victims' application forms
2 and that with regard to the new victims, it will be in a position to review the
3 applications and inform the Chamber by mid-March of the categories of redactions
4 which may be lifted.

5 Finally, she informed the Chamber that the LRV is available to continue representing
6 the interests of the victims at the trial.

7 Now, the Prosecution has informed the Chamber that considering that the charges
8 were confirmed with respect to all five incidents charged, it considers that victims
9 admitted to participate in the pre-trial proceedings should be authorised to
10 participate at trial without filing a new application.

11 With regard to the new victims it considers that the start date of trial is an appropriate cut-off
12 point, cut-off date, for further applications from victims for participation.

13 In its filing the Registry provided an update on the number of victims' applications
14 and on the procedure for allowing victims to participate at the trial. The Registry
15 has indicated that to date 469 victims were admitted to or admitted in the proceedings
16 and that it was expected a further 250 to 350 applicants would be admitted. In any
17 case, the total number of witnesses should not exceed 850.

18 As to the system to be adopted for the admission of victims to participate at trial, the Registry
19 recommends that considering the similarities between the Blé Goudé and the Gbagbo case,
20 the same procedure ought to be adopted in both cases. As in its submissions filed prior to
21 the first status conference in the Gbagbo case the Registry put forward two options: The
22 system adopted by the Pre-Trial Chamber in the Ntaganda case and the registration system
23 adopted in the Kenya case.

24 So let me turn to the legal representative. We have another five minutes. I think
25 our time will be up at 1. It's 1.30? Oh, I beg your pardon.

1 Yes. Do you have anything you wish to add further, representative to the victims?

2 MS MASSIDDA: Thank you, your Honour. I will not use the 35 minutes. I'll just use five
3 minutes of your time. I think that my submissions were quite extensively. I will just make
4 three observations in relation to the submission by the Office of the Prosecution and by the
5 Registry.

6 The first one is in relation to the possibility of a cut-off date, as is put by the Office of the
7 Prosecution in its submission before the start of the trial. I would like to recall that victims
8 have a right to apply also throughout the trial and therefore we are of course opposed to any
9 cut-off date for the end of submission of application by victims.

10 This seems to us clearly in accordance with the legal text of the Court, in particular
11 Regulation 86(3) of the Regulations of the Court.

12 My second observation is in relation to the submission of the Registry, and I'm
13 referring to paragraph 19 of Registry submissions, number 211, in which the Registry
14 is essentially advocating for the adoption of the Kenyan model of participation, as
15 stating that it would be possible in order to facilitate oversight from the Chamber to
16 request the Registry, and I quote, "In cooperation with the Common Legal
17 Representative to prepare periodic reports on the activities of the Registry and the
18 Common Legal Representative in relation to victims, statistics on the victims'
19 application" so on and so forth and I will stop my quote here.

20 Now, I would like to draw respectively the attention of the Chamber on this issue,
21 because it seems to me that very recently in the decision on victims' participation in
22 the Bosco Ntaganda, the Chamber has adopted to some extent an hybrid system
23 including the obligation and of the Registry and the Common Legal Representative to
24 provide the Chamber with periodic report. And I'm referring to paragraph 24(ix) of
25 the decision issued in the Bosco Ntaganda case on 6 February 2015, document

1 number 01/04-02/06-449, in which the Chamber, as requested, and I quote, "The
2 reports must be prepared in cooperation with the legal representative of victims, who
3 are to provide the VPRS with detailed information relating to their activities amongst
4 the victims" end of quote.

5 I would simply like to draw the attention of the Chamber that very often these will be
6 impracticable for the very simple reason that legal representative of victims are bound
7 by the privileged relationship with victims. So in the majority of the cases it will not
8 be possible for the legal representative to provide detailed information of the
9 activities that the legal representative undertake or will undertake with victims.

10 I wanted simply to flag this issue with the Chamber, because I think it could have some
11 implication on our professional obligation under the code of professional conduct in case of
12 course the Chamber will consider this second option suggested by the Registry.

13 My third and last comment relates to the issue of lesser redacted application to be
14 provided to the Defence. I'm not sure it was clear in my submission and that the
15 reason why I am readdressing the matter. We are willing at this point in time to
16 provide the Defence with lesser redacted application of victims participating in the
17 proceedings who are not dual status. So we will review all the applications in
18 relation with the participation victims.

19 We will review at a later stage the application of victims who are dual status once the
20 Prosecution will confer the list of witnesses to be called for trial, because we consider,
21 your Honour, that we have an obligation to maintain the confidentiality of all
22 information, and we will disclose only lesser redacted application of the dual status
23 once we are sure that these people are really dual status and not before.

24 Another information which I think it's useful for the Chamber and which was not
25 conveyed to the Chamber in the Laurent Gbagbo case, before deciding on less

1 redacted application to be provided to the Defence, victims have been in the
2 Laurent Gbagbo and will be in the Blé Goudé case consulted. So the lifting of
3 redaction is also done in agreement with the victims themselves.
4 And finally, and I think this is an important point already made by the Chamber in
5 the Laurent Gbagbo case, we will undertake the review of the application in close
6 coordination with the Registry, with VPRS, I think it's probably most efficient than the
7 way it was done in the Laurent Gbagbo case, with the caveat, your Honour, that
8 sometimes we might have information that we cannot share with Registry, because
9 we have a different access to the record of the case and therefore there might be lifting
10 of redaction which seem unjustified in the eyes of Registry but which at the end are
11 justified because of the knowledge that we have of the case record. Thank you very
12 much.

13 PRESIDING JUDGE HENDERSON: Thank you very much.

14 Mr Prosecutor, any views?

15 MR MACDONALD: No, your Honour.

16 PRESIDING JUDGE HENDERSON: Very well. Are you in a position to indicate the
17 quantum, the number of dual status witnesses at this point?

18 MR MACDONALD: In the Gbagbo case, once disclosed, it's going to be 11, your Honour, so
19 far.

20 PRESIDING JUDGE HENDERSON: That's the Gbagbo case. But in this case?

21 MR MACDONALD: It's currently eight, but it's going to become 11 next week.

22 PRESIDING JUDGE HENDERSON: Mr Knoops, any observations?

23 MR KNOOPS: Your Honour, three, three observations.

24 PRESIDING JUDGE HENDERSON: Yes.

25 MR KNOOPS: First of all, as your Honours might understand, it's a repetition, we were not

1 able to digest all the protocols in the last four weeks when this team started to run in this case.

2 So we would like to reserve our right to comment on any protocol.

3 Secondly, it's my understanding that in the Gbagbo case, no protocol has yet been

4 determined by the Chamber. It would be a suggestion from our side that the

5 decision of the joinder would first be awaited, because if the case would be joined, it

6 seems logical that one protocol is adopted for both accused persons for both cases.

7 If there is no joinder, our team might have a different view on any protocol. So it

8 would be my practical suggestion, but in any event, it is my third observation without

9 going into details of the case which I'm not familiar with yet, I would suggest that at

10 the least suggestion of the Prosecution to have indeed a cut-off date is -- although I

11 understand the position of the representation of the victims, would serve at the least

12 the principle of adequate preparation for a trial.

13 So it would be our preference, without going into details, that at the least there should be

14 some kind of a cut-off date, otherwise the Defence is pending trial confronted with potentially

15 other victims' applications, but again this is weighing the interest of the Defence against the

16 interest of the victims. But in general my suggestion would be, speaking for our new team,

17 to wait for any substantive comments until the joinder decision has been made by your

18 Chamber.

19 Thank you.

20 PRESIDING JUDGE HENDERSON: Thank you.

21 From the Registry, any observations?

22 MR VANAVERBEKE: Nothing to add.

23 PRESIDING JUDGE HENDERSON: We can now move on to item (g) on the agenda:

24 Languages to be used at the trial.

25 The Prosecution has indicated that it expects that most of its witnesses testify in

1 French, with some of them testifying in Dioula and English.

2 The legal representative of victims has informed the Chamber that she is not yet in a
3 position to identify the victims for whom she may seek the Chamber's authorisation
4 to call as witnesses, or to appear to present views and concerns, but nevertheless she
5 has indicated that the most common languages used by the victims are French, Dioula
6 and Bambara.

7 The Registry on its part has indicated that it has consulted with the parties and the
8 participants in relation to the languages to be used in the proceedings. It has
9 informed the Chamber that, with regard to Dioula and Bambara, a roster of freelance
10 interpreters has been established which will make it possible to have simultaneous
11 interpretation throughout the trial. However, for languages other than English and
12 French, the Registry stresses that a period of six weeks' notice prior to the expected
13 commencement of the testimony should be observed, and this is in order to organise
14 travel and visa issues as well as briefing and preparation. The Registry has
15 suggested that it would be most helpful if the witnesses who speak the same
16 language be grouped by their language.

17 Now, Mr Prosecution, do you have any observations on that?

18 MR MACDONALD: No, your Honour.

19 PRESIDING JUDGE HENDERSON: Mr Knoops -- thank you.

20 Mr Knoops?

21 MR KNOOPS: No, your Honour. Thank you.

22 PRESIDING JUDGE HENDERSON: The LRV?

23 MS MASSIDDA: No, your Honour.

24 PRESIDING JUDGE HENDERSON: Well, Registry, you wouldn't have any comments on
25 your own views?

1 MR VANAVERBEKE: None at all, Mr President.

2 PRESIDING JUDGE HENDERSON: Okay, let's now move to item (h): Translation of
3 relevant documents into French.

4 The Defence has suggested discussion -- discussing the more general issue of
5 translation into French of all filings and decisions relevant to the case. In this regard

6 the Chamber has noted the Defence submissions that, despite the fact that

7 Mr Blé Goudé has stated on the record that he speaks and understands English, it is
8 not a language that he fully understands and speaks within the meaning of

9 Article 67(1)(f). This is in particular because his language of instruction was French;

10 a language of which he therefore has a better command in particular with regard to

11 complex legal documents.

12 The legal representative of victims has stated that she fails to understand why

13 Mr Blé Goudé does not speak and understand English since he has stated that he does.

14 She has indicated that she would not oppose that the accused be provided with the

15 translation of certain documents the Chamber would deem necessary if it is verified

16 that he does not indeed speak English.

17 Mr Knoops, are there anything -- is there any observation or any submission you wish

18 to direct?

19 MR KNOOPS: Yes, very briefly, Mr President, your Honours.

20 I'm mindful of the jurisprudence of the European Court of Human Rights, which

21 doesn't grant an absolute right for the accused to have his full case file being

22 translated into his native language.

23 The European Court of Human Rights in Strasbourg has ruled that this only counts

24 for the indictment and the own statements of the defendant, which is also in

25 accordance with the case law of various Supreme Courts in the world such as our

1 own Supreme Court here in The Hague.

2 Now, the tenet of this request is the following: Your Honours have observed that for
3 instance when it concerns rulings/decisions of a Chamber on issues of
4 substantive -- of procedural law, it's even for a person like Mr Blé Goudé, who
5 studied in Manchester, who took his degree in Manchester, difficult to grasp the legal
6 language. After all we have an ordinary English dictionary and we have a legal
7 dictionary, the same in French, that already indicates that legal language is not always
8 similar to ordinary English or French language.

9 In the confirmation of charges decision the Court has ruled in the Gbagbo case, which
10 was also adopted I believe in the Blé Goudé case, that the time limit for a potential
11 appeal started to run as of the receipt of the French translation by the accused, which
12 is vital to preserve their rights because if I have to discuss a ruling of your Chamber
13 akin to for instance the confirmation of charges decision, which was about 90 pages in
14 the Blé Goudé case, and I have to explain to a French native speaking person a legal
15 phenomenon such as indirect co-perpetration, it takes a lot of time and still I'm not
16 sure whether the accused fully grasps - fully understands - the core of this
17 phenomenon.

18 So the point we've made in our motion, Mr President, is that in case the Court in the
19 future will rule on important substantive issues and also issues of procedural law
20 which directly affects also the right of the accused to appeal them, it's my submission
21 that these should at the least be served to the accused in the French language.

22 We cannot simply say because somebody took a degree in Manchester and indeed at
23 the first appearance said that he understands English -- we cannot simply assume that
24 this also includes and embraces the difficult legal language such as on the modes of
25 liability or other legal phenomena.

1 So my request -- I can limit my request to the Chamber in that, if the Chamber is
2 going to rule in the future on issues of procedural or substantive law, these should be
3 served in French because of the right of the accused to appeal them and the Defence
4 has no time within three or five days to go through a document with the accused and
5 explain him everything from English into French. This is my submission.
6 Thank you.

7 PRESIDING JUDGE HENDERSON: Now would you be prepared to -- in terms of
8 translation services, because there are competing demands -- well, I'll hear from the Registry
9 in due course, but what is your position with respect to partial translations? And by that I
10 mean in any -- by that I mean documents which are -- they will contain the procedural history,
11 it would recite the various submissions and then it would contain the analysis.
12 The key part that you really need to explain and seek instructions from is not the
13 procedural history. It's not a repetition of the submissions. It's really the analysis.
14 In principle, would you have any objection to a partial translation which would
15 address the -- and this is given the resource difficulties/challenges, of just treating
16 with the analysis?

17 MR KNOOPS: Mr President, I fully agree with your solution. I understand also the
18 restraints the Court is facing. We, as Defence, we're here to cooperate. That's why I
19 addressed the Court this morning in this way. It's indeed about the submissions, the
20 decision of the Court itself, without procedural history and other introductory remarks which
21 are not relevant ultimately for a defendant to make a decision whether or not he should
22 appeal such a decision.

23 I would though pray for the option that, if the Chamber would adopt such a model
24 partial translations on the substance of the decision are being served to the defendant
25 in his own native language, that the time limit for the appeal would start to run as of

1 the receipt of this partial translation. I think that would be a fair compromise,
2 because the translation is exactly to speak with the defendant on the pros and cons for
3 a potential appeal. Otherwise, with all due respect, a translation has no purpose in
4 the stage of the trial.

5 Thank you.

6 PRESIDING JUDGE HENDERSON: Thank you.

7 Mr MacDonald?

8 MR MACDONALD: Your Honour, I just -- we want to flag an important decision from the
9 Appeals Chamber on this very topic in the Gbagbo case itself where it was denied. Delays
10 do not run starting from the date of translation. If the Defence needs time because of the
11 language issues, then it need -- it needs to seek additional time pursuant to Regulation 35.
12 And I refer the Chamber to the decision of the Appeals Chamber 489, or the Appeals
13 Chamber number OA5, and more specifically at paragraphs 9/10. What the
14 Chamber basically decided is that for some documents that relate to serve to inform
15 Mr Gbagbo -- and I quote from paragraph 12, I'm sorry, and I'll just cite very quickly,
16 "Therefore, in the case at hand, the Appeals Chamber must first determine whether
17 the translations sought by Mr Gbagbo relate to documents which would serve to
18 inform Mr Gbagbo of the nature, cause and content of the charges against him within
19 the meaning of Article 67(1)(a)."

20 And here in this case they said, "No," and this was the appeal of the Prosecution. It's
21 the document supporting the appeals Prosecution of the confirmation decision on the
22 issue of what constituted a widespread or systematic attack and how the Prosecution
23 had to prove that. And in this context the Chamber said "No," and later on when
24 you read the decision they say that it's more a question of seeking additional time.

25 Mr Blé Goudé -- even in French Mr Blé Goudé is not a jurist, he's not a lawyer, so

1 therefore he needs a lawyer to explain him the law. In English it's the same.

2 Therefore, even in your own language, you will not sometimes understand what you
3 read and this is why you have a lawyer.

4 Now Mr Blé Goudé, while we dispute the fact that he has a degree from Manchester,
5 he did study there, yes, he did follow English classes and you have him on video in
6 this case on the Prosecution's list of evidence speaking very well in English,
7 conducting an interview with a journalist, and he said so in the courtroom when he
8 first appeared, "Yes, I understand English."

9 I can understand his preference for the French language - I can understand that, it's
10 his mother tongue - but the thing is is that he has Mr Knoops to explain to him the
11 legal concepts that are at stake. That's why he has a lawyer.

12 So I would carefully -- I would encourage the Chamber to carefully have a look at
13 decision 489 of the Appeals Chamber on this very issue because it goes beyond this
14 case.

15 Just to finish, your Honour, the implications of any decision on the matter go to the
16 heart of this institution and its future cases. So here understand and to be very clear,
17 we're talking about the case record, CMS case record numbers, we're not discussing
18 the evidence of the Prosecution. That is dealt with under Rule 76. We're talking
19 about submissions, filings, decisions. Nevertheless, the Appeals Chamber has
20 already ruled on this previously. So there is a body of jurisprudence.

21 MR KNOOPS: Maybe there is no, Mr President -- I'm sorry.

22 PRESIDING JUDGE HENDERSON: I'm going to come back to you in a while. Let me hear
23 from the LRV and then I can always come back. Yes.

24 MS MASSIDDA: Thank you, your Honour. There is actually a precedent in relation to
25 what my learned colleague has just said in relation to the fact that one thing is explaining or

1 does it mean the technicality in English and another one in the language that an accused can
2 speak fully and understand.

3 Now, I'm referring to the decision in the Katanga proceedings, ICC-01/04-01/07-522,
4 paragraph 61, and I will read it out --

5 PRESIDING JUDGE HENDERSON: Yes.

6 MS MASSIDDA: I quote, "Given the addition of the word 'fully,' and the drafting history,
7 the standard must be high. Therefore, the language requested should be granted unless it is
8 absolutely clear on the record that the person fully understands and speaks one of the
9 working languages of the Court and is abusing his or her right under Article 67 of the
10 Statute." And this is the part which interests us I think: "An accused fully understands and
11 speaks a language when he or she is completely fluent in the language in ordinary,
12 non-technical conversation; it is not required that he or she has an understanding as if he or
13 she were trained as a lawyer or judicial officer," end of quote.

14 PRESIDING JUDGE HENDERSON: Thank you.

15 Registry, any observations?

16 MR VANAVERBEKE: No comment.

17 PRESIDING JUDGE HENDERSON: Mr Knoops, you were chomping at the bit.

18 MR KNOOPS: Sorry for that, Mr President.

19 PRESIDING JUDGE HENDERSON: Yes.

20 MR KNOOPS: Just one observation. I'm not sure, and that's of course the advantage of my
21 learned friends from the Prosecution bench and the victims in terms of knowledge, I'm not
22 sure whether the jurisprudence they refer to did cover the model you, Mr President, just
23 suggested, namely, the model whereby the partial translation on the substance, if you may, a
24 summary of the core of decision is to be presented to the accused, I'm not sure whether the
25 Appeals Chamber ruled on such a specific model. If not, I would invite your Chamber to

1 create jurisprudence on this issue, because I think it goes to the essence of the case.
2 I understand budgetary constraints. I understand the potential danger of delay in
3 appeals decisions. But this Court is primarily here to endorse a fair trial. And I
4 believe speaking English is one thing, but understanding legal English is another
5 thing. Therefore, the model, Mr President, yourself suggested is a model which at
6 the least should be considered. And even an Appeals Chamber is always, as we
7 know from the ICTY, open to reversals. Thank you.

8 PRESIDING JUDGE HENDERSON: But, Mr Knoops, what both the Prosecutor and the LRV
9 are essentially submitting is that if it is that the accused is essentially fluent in a language and
10 understands the proceedings, then even if it's taken to its logical conclusion, the partial model,
11 the partial translation itself is unnecessary, because your role is to explain the technical stuff.

12 (Trial Chamber confers)

13 PRESIDING JUDGE HENDERSON: (Microphone not activated) I beg your pardon.

14 We are going to now begin, turn our attention to the crucial item, which is the
15 commencement date of the trial. The Chamber acknowledges that this issue is
16 closely linked with item (a), namely, the time needed for the Defence to prepare for
17 trial. It has understood from the Defence filing 201 and from the submissions that,
18 Mr Knoops, you made this morning that you, that the Defence has requested that the
19 trial begins in 15 to 18 months from the date of the filing, which would lead for a start
20 date sometime between the end of April and the end of July in 2016.

21 The Prosecution has indicated that a number of unresolved issues, in particular the
22 pending Joinder Request, affects its ability to propose a start date for trial.

23 The Legal Representative of Victims submits that should the Joinder Request be
24 granted, a request that she supports, the trial should start in September of 2015. In
25 the event that it is dismissed, the LRV argues that it should start as soon as is

1 practicable.

2 So, Mr Knoops, I should perhaps -- I have a keen eye on the time. Let me just
3 consult.

4 (Pause in proceedings)

5 PRESIDING JUDGE HENDERSON: So I'm looking at the time. Mr Knoops, parties,
6 participants, our cut-off time is really 13.30. It's just two or three minutes from now. So
7 what we will do is we will take the break now and we resume at, I've just been told it's 3, we
8 resume at 3, that's 1500 hours, and we then go from 1500 to 5.30 -- 4.30, 4.30, sorry, in my
9 exuberance, 4.30. It's a Friday afternoon. And that should be more than adequate time for
10 us to complete this issue, which is really the crux of why we're having this status hearing.
11 All right. So before we rise, is there anything else?

12 So we will resume at 3 and go for one-and-a-half hours from that point.

13 THE COURT USHER: All rise.

14 (Recess taken at 1.26 p.m.)

15 (Upon resuming in open session at 3.02 p.m.)

16 THE COURT USHER: All rise.

17 Please be seated.

18 PRESIDING JUDGE HENDERSON: (Microphone not activated)

19 Sorry, good afternoon.

20 Court is back in session. Just for the record I understand that the Registry has been
21 reconstituted, so if we can just have for the record the appearances?

22 MR VANAVERBEKE: Yes, Mr President. The Registry at this session is represented by
23 Aida Camara, translation, and Fatiah Balfas, Victims and Witnesses Unit, and myself,
24 Peter Vanaverbeke. Thank you.

25 PRESIDING JUDGE HENDERSON: Thank you.

1 We were at the stage when we stopped for lunch where we were dealing with the
2 commencement date of the trial, which is really the last item on the agenda.

3 I have been pronouncing your name wrong, Mr Knoops. It was -- I was saying Knoops, but
4 it was Knoops.

5 So perhaps I'll hear from Mr MacDonald first, the Prosecutor first, as to any observations
6 which you wish to make on the appropriate trial date.

7 MR MACDONALD: Your Honour, I think it's a question, as we indicated in our written
8 submission, that hinges first on the question of joinder. If there is a joinder, then I think we'll
9 have to unavoidably have a new status conference and then discuss amongst the different
10 parties involved a suitable date to start.

11 Now, if the cases are not joined like I mentioned earlier this morning, we feel that in light that
12 our investigations, and we're asking mid-April, then we feel that a date to start this trial may
13 be advisable in September or October.

14 But one issue that is a serious issue is if the cases were not to be joined like we mentioned, it is
15 not necessarily this Prosecution team that would be prosecuting that case, and maybe another
16 team or a different composition, also with maybe a different Chamber. If it is the same
17 Chamber, how are we running these cases in parallel?

18 So I think there is a number of issues that are maybe better left unresolved at this
19 stage until we have more clarity as to a joinder or not. But in any event, again, like I
20 was indicating this morning, if there was to be a joinder, we feel that a date end of
21 September, beginning of October to hear this joined case would be reasonable.

22 You've set the case for 7 July to start the Gbagbo case as of now. Mr Knoops has arrived.
23 He needs additional time. And starting then a trial in end of September, beginning of
24 October would seem reasonable in the circumstances. But again, this is a hypothetical based
25 on will there be a joinder or not, and is this to the Chamber, in the decision that you'll need to

1 take, a reasonable amount of time to afford the Defence to prepare this case?

2 So I will leave it at that for now, your Honour.

3 PRESIDING JUDGE HENDERSON: Thank you.

4 Mr Knoops, I had the benefit of -- I had the benefit of listening to or reviewing my
5 notes during the lunch, and in fact, you had made extensive submissions on your
6 state of readiness and possible trial date. So unless there is anything else in addition
7 to what you had said this morning, I don't know, is there anything else which you
8 would wish to add?

9 MR KNOOPS: Thank you, Mr President.

10 Indeed, we have nothing to add. I think the notes speak for themselves, unless your
11 Honour wished me to comment on a specific issue or give you a specific clarification?
12 If the Chamber is sufficiently informed, on my part I simply refer to the observations
13 of this morning.

14 Thank you.

15 PRESIDING JUDGE HENDERSON: Yes, you were quite extensive and we have understood
16 your submissions.

17 MR KNOOPS: Thank you. Thank you, Mr President.

18 PRESIDING JUDGE HENDERSON: The --

19 MR KNOOPS: Mr President --

20 PRESIDING JUDGE HENDERSON: Yes? Yes?

21 MR KNOOPS: Thank you. Excuse me. Maybe just one remark, if I may?

22 PRESIDING JUDGE HENDERSON: Yes.

23 MR KNOOPS: Just one brief remark. My apologies for the interruption.

24 I listened carefully to the submissions of my learned friend for the Prosecution, which
25 were very helpful also for our team to have a better understanding of the Prosecution

1 case and the upcoming disclosures.

2 I think for the Chamber, when assessing the legitimacy of the request of the Defence,
3 it's important to underline the observation of the Prosecutor that this is a case which
4 to a certain extent relies on circumstantial evidence.

5 The Prosecution pointed to four parts on which the case will be built. I think this
6 would reinforce our argument that, if the case is quite complex for the Prosecution,
7 it's even more for Defence. So this is, in my submissions, an additional argument for
8 time frame we have submitted to the Chamber.

9 That means the implication of this observation of the Prosecution is simply -- and also
10 for the Defence in terms of its preparation and investigation will require extensive
11 work which has yet to be done.

12 So this observation of my learned friend I think is of much assistance of today, the
13 observation simply that this case is a complex case built to a large extent, or to some
14 extent, on circumstantial evidence, and I think this is an argument which we can now
15 also put forward to the Chamber in terms of reinforcement of the time frame we
16 submitted to the Chamber.

17 Thank you.

18 PRESIDING JUDGE HENDERSON: Thank you. Thank you, Mr Knoops.

19 The legal representative for the victims?

20 MS MASSIDDA: Thank you, your Honour.

21 We maintain our submission in our written filing. We think that at this point in time
22 if there is a joinder, September - end of September/beginning of October - seems to us
23 a realistic date for the start of the trial. If there is no joinder, well, we would say as
24 soon as practicable.

25 Thank you.

1 PRESIDING JUDGE HENDERSON: Thank you.

2 Does the Registry have any observations?

3 MR VANAVERBEKE: No, your Honour. We don't have any observations.

4 PRESIDING JUDGE HENDERSON: All right, thank you. Very well.

5 Now, at the outset this morning I -- the Chamber had indicated that we had received
6 a letter from Mr Blé Goudé in which Mr Blé Goudé had sought to address the Court
7 directly although he is ably represented by learned counsel, the person who would
8 normally be his voice in court, but in these exceptional circumstances, Mr Blé Goudé,
9 we will allow you to address us.

10 It is a courtroom and therefore I would expect that you would address us on matters
11 that are pertinent and legal. With that clear stipulation and of course you may
12 proceed, but your time is limited. So the Court would -- would wish to hear you
13 now.

14 Mr Knoops, you would have had the benefit of hearing or knowing what your client
15 wishes to say. Is this something that would require open or --

16 MR KNOOPS: Thank you, Mr President, for alerting me, actually Court Management.
17 Indeed there is one portion which requires us to go very briefly in closed session - and I
18 assume that Mr Blé Goudé, because we discussed it before the session, will indicate when he
19 thinks it's appropriate to go to closed session - which will deal with the particular documents.
20 It will be --

21 PRESIDING JUDGE HENDERSON: No, Mr Blé Goudé cannot speak at large --

22 MR KNOOPS: That's true, yes.

23 PRESIDING JUDGE HENDERSON: -- and unrestricted.

24 MR KNOOPS: Yes.

25 PRESIDING JUDGE HENDERSON: Just so that he understands this.

- 1 MR KNOOPS: Maybe I can --
- 2 PRESIDING JUDGE HENDERSON: The Court will rein him back in --
- 3 MR KNOOPS: Yes.
- 4 PRESIDING JUDGE HENDERSON: -- and stop.
- 5 MR KNOOPS: Yes.
- 6 PRESIDING JUDGE HENDERSON: Yes, very well.
- 7 MR KNOOPS: Maybe I briefly can instruct my client to make first an interruption when he
- 8 believes it should be closed session, but I can briefly instruct him again if you have a moment?
- 9 (Pause in proceedings)
- 10 PRESIDING JUDGE HENDERSON: I beg your pardon.
- 11 Mr Knoops, I omitted to deal with the last item on the agenda, which really should
- 12 precede Mr Blé Goudé's speaking - in fact it must - and that had to do hearing from
- 13 you whether you wish to raise any issues regarding Mr Blé Goudé's detention.
- 14 Now the Chamber had decided to include this item on the agenda of today's status
- 15 conference, and in that specific regard, although the Chamber had heard nothing
- 16 from you, the Chamber recalls that the accused's right to apply for interim release
- 17 pending a trial of which he was informed at the first hearing before the Pre-Trial
- 18 Chamber is a right that he has.
- 19 And the Chamber notes that since 22 March 2014, the day on which he was
- 20 surrendered to court, the Defence team for reasons, which are whatever reasons, has
- 21 not made any such application for interim release. It does not have to, but it is the
- 22 first time that he's appearing before us and so in that regard the Chamber simply
- 23 included this item on the agenda to determine if - if - the Defence has any
- 24 submissions to make on this point in that regard.
- 25 MR KNOOPS: Mr President, I'm very grateful. I wasn't daring to interrupt, because I

1 noticed that there was still a point left on the agenda.

2 Thank you for addressing this point. I would say at this moment two things. First
3 of all, there was one private issue relating to the detention conditions of
4 Mr Blé Goudé which has already been dealt with by the Registry very aptly and very
5 correctly, and we would like to extend our gratitude to the Registry for dealing with
6 this private matter relating to the detention conditions. It's I think not now the time
7 to bring it up to the Chamber because it has been dealt with to the satisfaction of the
8 accused person.

9 My second observation is the same observation as you've just made, Mr President, on
10 the pre-trial detention is of course also brought to the attention of the new Defence
11 team. That's why I in paragraph 23 of my submissions, the submission of 26 January,
12 included a reference to the work the new team has to face also in terms of the
13 detention, detention conditions and a potential request for interim release.

14 At this moment, your Honour, I can only say that we are fully aware of the right of
15 the accused to seek for interim release. It's yet for our team too early to assess at this
16 moment the possibilities - it will also I think depend on what the Chamber is going to
17 decide on the joinder and the future of this case - but we are grateful that your
18 Honour has alluded us to this point and we suggest that our team will in due course,
19 maybe at the next conference, inform the Chamber of any upcoming requests from
20 our team either concerning the detention conditions, or a potential request for interim
21 release.

22 Right now it's for our team really too early to make any submissions on this. I hope
23 you understand. We're aware of the rights of Mr Blé Goudé and also the
24 implications of our request in terms of time, so we will make sure that this right is
25 also being adequately paid attention to, and your Honour has I think made a correct

1 observation that as of 22 March the matter has not yet been brought to the Chamber
2 to its attention, but we -- at least we predict that this matter may be of importance for
3 any of the upcoming conferences.

4 For this moment, Mr Blé Goudé again is very grateful for the support he received
5 from the Registry as to his detention conditions and this is my only remark I would
6 like to make maybe as last remark for today's session.

7 Thank you very much, Mr President.

8 PRESIDING JUDGE HENDERSON: Thank you, Mr Knoops.

9 Mr Blé Goudé?

10 MR BLÉ GOUDÉ: (Interpretation) Thank you, Mr President. Thank you, your Honour.

11 I would like to express to you my sincere respect. Thank you, your Honour. I
12 would like to express to you all my respect and to thank you for giving me the floor
13 exceptionally as you, yourself, have pointed out.

14 Mr President, I could have refrained from taking the floor and as you pointed out this
15 issue relates to my life and to the life of my country, but I will stay within the scope of
16 the agenda.

17 My Defence team requested reasonable time for them to be able to prepare an
18 adequate defence for me. In a case such as this, the Prosecution seems to oppose this
19 motion with frivolous arguments such as, "Blé Goudé is intelligent, he has experience
20 and so his counsel can benefit from his assistance and advice."

21 Mr President, I'm sorry. This is the first time that I'm hearing this; that is reversing
22 the roles of an accused person and his counsel. What I know is that it is the client
23 who benefits from the assistance and advice of the counsel and not the opposite.
24 We are not having philosophical arguments here. Is it man who makes history, or is
25 it history that makes man?

1 We are in a legal proceeding and the Rome Statute is made up of provisions that we
2 have to be inspired by.

3 Mr President, a trial does not have as objective to convict a suspect that must be rid of.
4 A conviction is not the objective of a trial. The objective of any trial is the search for
5 the truth. A conviction can only be a consequence of that procedure.

6 So, Mr President --

7 PRESIDING JUDGE HENDERSON: The Court is aware of its role and its function, so you
8 can rest assured that you need not lecture us on what is our role.

9 MR BLÉ GOUDÉ: (Interpretation) Very well, Mr President. Thank you. I can proceed
10 now by saying that, you see, the Prosecution a short while ago talked about the relationship
11 between my counsel and myself in order to justify his arguments rejecting the Defence
12 motion.

13 Mr President, I am shocked, I am surprised that there is an email exchange between
14 my lawyer and the OTP without my being informed. As curious as that might seem,
15 it is today that I'm learning that the OTP has emails that my lawyer allegedly sent to
16 them. So I feel that my rights have been violated. But because of the respect that I
17 have for him, I will not elaborate on that.

18 And I would like to respectfully request now that we go to the private session so that I can
19 demonstrate that what the Prosecutor has said is not correct, because I have all the materials
20 here to support my arguments.

21 I repeat once again that what the OTP is stating is totally untrue, and with your leave, your
22 Honour, I will ask that we go into private session so that I can tell you my opinion on this
23 matter. Thank you.

24 PRESIDING JUDGE HENDERSON: Yes, we'll go into the private session at this stage.

25 (Private session at 3.24 p.m.)

Status Conference

(Private Session)

ICC-02/11-02/11

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14 (Open session at 3.29 p.m.)
15 THE COURT OFFICER: We're in open session, Mr President.
16 PRESIDING JUDGE HENDERSON: Thank you.
17 All right. So that has concluded the business on the agenda. But there was
18 reference this morning made to an email, a copy of which was furnished to the
19 Chamber. So as a matter of housekeeping we would need to formally treat with this
20 document and have it made as a formal filing as part of the Court record. Can this
21 be done through the Registry, because the Court would make that order?
22 THE COURT OFFICER: Certainly, Mr President. The document will be registered under
23 the number ICC-02/11-02/11-HNE-21 and will bear the level of confidentiality "confidential."
24 Thank you.
25 PRESIDING JUDGE HENDERSON: Thank you.

1 All right. So we have concluded the items on the agenda. Now, in the course of the
2 discussions this morning, Mr MacDonald, Mr Knoops, there was discussion regarding
3 practicable measures that could be undertaken for disclosure and in particular that all
4 disclosable material could be redacted in accordance with the system adopted in the Gbagbo
5 case, that was in the Gbagbo case, can be disclosed to the Defence in this case pending our
6 decision on the system to be adopted. Do you recollect that, Mr MacDonald?
7 So the Court then would express the wish that this in fact is pursued so that at least
8 we get a head start in that regard. And I say so formally for the record.
9 So before we conclude today's proceedings I take it that there is nothing else that any
10 of the parties wish to raise at all?
11 Mr Knoops, Mr MacDonald, Madam LRV, Registry?
12 That being the case, the Chamber will, in due course, announce the start date of the trial and
13 any other relevant deadlines in due course. The Chamber has listened extremely carefully to
14 the observations of both parties and the participants regarding the impact that a joinder
15 decision will have on the trial date and the identification of a trial date. We shall have that, I
16 assure you, also uppermost in our minds, and we will render a decision in that regard in due
17 course.
18 Finally, the Chamber would like to inform the parties that in order to keep control
19 over the proceedings when we do in fact set the trial date and the deadlines, among
20 other things, the Chamber considers it necessary to stay apprised of the progress
21 being made in the preparation for this trial, and for that reason we propose to hold
22 from time to time status conferences. These will be scheduled during which the
23 parties and if necessary also the participants will be asked to provide updates.
24 That being the case, we have concluded all of the business on today's status conference. I
25 would like to thank each and everybody for the very helpful submissions. It took

- 1 considerably longer than we had planned, but as Mr Knoops and Mr MacDonald is an
- 2 experienced trial attorney, in fact, everybody who has been in trials would know that
- 3 investment upfront always in the trial process is the ultimate beneficiary.
- 4 So thank you very much and we will be convened in due course. Thank you.
- 5 THE COURT USHER: All rise.
- 6 (The hearing ends in open session at 3.33 p.m.)