

Hearing (Open Session)
Defence, OTP, OPCV and Court-Appointed Expert

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Geoffrey Henderson, Judge Olga Herrera Carbuccion and
7 Judge Bertram Schmitt
8 Trial Hearing - Defence, OTP, OPCV and Court-Appointed Expert
9 Thursday, 19 November 2015
10 (The hearing starts in open session at 2.29 p.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE HENDERSON: Right. Good morning, everybody.
15 Would the court officer please call this case.
16 THE COURT OFFICER: Thank you, Mr President. The situation in the Republic of Côte
17 d'Ivoire in the case of the Prosecutor versus Laurent Gbagbo and Charles Blé Goudé, case
18 reference ICC-02/11-01/15.
19 We are in open session.
20 PRESIDING JUDGE HENDERSON: Thank you. Right. Just for the record, can counsel
21 please introduce themselves for the record beginning with the Prosecution.
22 MR MACDONALD: Good afternoon, your Honours. The Prosecution team is represented
23 by the same people as the last hearing, except with the exception, sorry, of Mrs Garcia has
24 been replaced by Mrs Krummenacher. Thank you.
25 PRESIDING JUDGE HENDERSON: For Mr Gbagbo.

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1 MR ALTIT: (Interpretation) Good afternoon, your Honour. With me today we have
2 Ms Naouri, Ms Baroan, Professor Jacobs, Barbara Le Guennec, and Ms Swiderski and myself.
3 I am Mr Emmanuel Altit.
4 PRESIDING JUDGE HENDERSON: The legal representatives for the victims.
5 MS MASSIDDA: Good afternoon, Mr President, your Honour. There are no changes in the
6 Legal Representative of Victims team. Mr Enrique Carnero-Rojó, Ms Ludvica Vetrucchio,
7 Mr. Patrick Tchidimbo and myself, Paolina Massidda, we are appearing today.
8 PRESIDING JUDGE HENDERSON: Right. I don't think we have anybody from the
9 Registry here; although, they have indicated that they are on standby.
10 Let me just get from the court officer -- clarify our hours of sitting to be sure.
11 Right. Just for the record, so we'll be sitting from 2.30 to 4.30 with a half an hour
12 break, and we continue at 5 and then from 5 to 7. And before we begin the business,
13 just as a bit of history, this is perhaps the second to last sitting that we will have in
14 this courtroom, so it's a bit of history in the making. Right. Thank you.
15 Now, I will also note for the record that Mr Blé Goudé on the previous occasion had
16 waived his rights to be present at this hearing and to make any submissions which he
17 may have wished to make on the modalities of attendance on that issue. So today
18 the Chamber will hear expert testimony from the third and the final expert on the
19 issue of Mr Laurent Gbagbo's fitness for trial.
20 And I do note for the record that Mr Gbagbo is here this morning. Welcome, Mr Gbagbo.
21 He will also be examined on any accommodation that he may need to facilitate his
22 attendance at trial if the Chamber finds that he is in fact fit for trial.
23 And just by way of reminder, the purpose of the hearing today is to allow the parties
24 and possibly the participants to question the experts on the content of their
25 report -- this expert on the content of his report, which was submitted to the Chamber

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1 on 29 October this year as filing 325, as well as the methodologies that he used to the
2 extent that it impacts their relative respective interests.

3 As most of the filings are relating to this topic are currently classified in the Court's
4 record as confidential, and this is so due to the private nature of the matters to be
5 discussed today, today's hearings will be conducted in closed session. The Chamber
6 will ensure, in due course, that reclassification takes place when appropriate such that
7 public versions of the filings leading up to this hearing will be included in the case
8 record.

9 So having given you that introduction, we will have to now move into private
10 session -- I beg your pardon, we will move into closed session.

11 (Closed session at 2.36 p.m.)

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21 Please be seated.

22 PRESIDING JUDGE HENDERSON: Yes, Ms Pack.

23 MS PACK: Your Honour, I'll be dealing with submissions on behalf of the Prosecution.

24 PRESIDING JUDGE HENDERSON: All right. Thank you very much.

25 MS PACK: Thank you.

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1 PRESIDING JUDGE HENDERSON: All right. Now, before we begin, what I would do is I
2 think perhaps my recollection was that the Defence would go first. No?

3 MS PACK: Actually, I thought that you had said -- your Honours had said that the
4 Prosecution would go first. That was what I thought.

5 PRESIDING JUDGE HENDERSON: Okay.

6 Mr Altit, I wanted to ensure that you had the last say. That's what I wanted to do.

7 MR ALTIT: (Interpretation) Thank you. But we shall respond, so in our view, everything
8 is fine.

9 PRESIDING JUDGE HENDERSON: Very well.

10 Ms Pack?

11 MS PACK: Your Honour, the only thing that I would ask is that it remains as yet unclear to
12 the Prosecution whether or not we are responding to a request from the Defence for your
13 Honours to find that Mr Gbagbo is unfit to stand trial.

14 I appreciate that your Honours, of course, have to be satisfied that Mr Gbagbo is fit, but it
15 would be helpful in terms of saving time and the length and scope of my submissions in
16 particular as to the law as to fitness if the Defence were to clarify before I start that particular
17 issue, that particular question. Is it going to be requested that your Honours make a finding
18 of unfitness?

19 (Trial Chamber confers)

20 PRESIDING JUDGE HENDERSON: Okay. What I will do, I will do it this way, Ms Pack:
21 It is at really the Chamber's behest that we had raised this issue to satisfy us on the issue of
22 fitness, but what I want to do is I will ask Mr Altit directly.

23 Mr Altit, is it that you wish at the end of the day for the Chamber to find that
24 Mr Gbagbo is unfit?

25 MR ALTIT: (Interpretation) Your Honour, we are here to discuss fitness because the

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1 Prosecution made that request. So I think it's logical for the Prosecution to set out their view,
2 and then we shall respond thereto. I think this is quite logical, given that the Defence -- that,
3 indeed, the Defence will have the final word, but I must remind all that the issue of fitness
4 was raised by the Prosecution, if you recall the earlier discussions before treatment -- his
5 treatment, because, to our mind, fitness was an issue only once we had a clear view of his
6 state of health after he received treatment. To our mind, the whole issue of fitness is
7 secondary.

8 First of all, he must receive treatment. And why? Why do we say this? Because we are
9 basing ourselves on the findings of the experts, including Mr Dumez, whom we heard from
10 earlier this afternoon. Our position has been clear.

11 During the proceedings the Prosecution has said, "Oh, no, we must raise the issue of fitness.
12 Is he fit or not?"

13 Of course we have a position now after hearing the experts, after pondering all of these
14 matters, but our position is somewhat nuanced. We believe that logic, itself, judicial logic
15 included, would determine that since it was the Prosecution that raised the issue, they should
16 make their views known, and then we shall respond.

17 PRESIDING JUDGE HENDERSON: What I will do is I will put it this way: At the
18 conclusion of this procedure, the Chamber would want -- the Chamber will make a
19 determination on the reports and on the evidence that it has heard before it on whether, A,
20 Mr Gbagbo is either fit or not fit for trial; and B, in the event that the Chamber has found him
21 fit, on the possible modalities of his trial.

22 So in that regard, what I will do is I will hear submissions, Ms Pack, from you, and I'll hear
23 from Mr Altit. Is that clear?

24 And just to focus the submissions and to put everything in context, the Chamber has
25 before it three reports which it had made an order to have the accused, Mr Laurent

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1 Gbagbo, examined, and the reports each come to a particular conclusion.
2 The experts have also, at the behest, at the request of Mr Gbagbo have come and they
3 have been examined on a methodology and they have given evidence.
4 So to focus the submissions, what I want to hear from the both of you is, is there anything that
5 disturbs the report or the findings or that has undermined these reports as the Chamber
6 considers this issue of firstly, fitness?

7 Ms Pack?

8 MS PACK: Thank you, your Honours. In that case I'll address the law on fitness, but
9 briefly, and then the findings and conclusions of the experts, but only insofar as anything has
10 arisen during the hearings that disturbs the findings with which you are, in any event,
11 familiar from the reports and then the Prosecution's submissions as to fitness and then
12 modalities.

13 Your Honour, the Defence have asked for a clear view as to Mr Gbagbo's health, and,
14 of course, that view couldn't be clearer on the basis of three medical experts,
15 independent medical experts instructed under order of the Court.

16 The real issue before you today relates to the practical modalities for the proceedings,
17 how Mr Gbagbo's health needs may best be accommodated to facilitate his attendance
18 and effective participation in the proceedings because the evidence in the form of the
19 reports, which you are familiar with and which haven't been disturbed as to their
20 findings in examinations by the parties, show that Mr Gbagbo is capable of exercising
21 his rights effectively and of meaningfully participating in the trial, that he is fit to
22 stand trial.

23 Now, I'll deal with the law very briefly because of course your Honours will be
24 familiar with it.

25 I would refer you in any event in the first instance to the Prosecution's 2012 submissions on

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1 the law, which were ex parte of the Legal Representative, but she has very kindly indicated
2 that I may refer to them. And I just refer to that submission by its number, ICC-02/11-01/11.
3 And sorry, the filing number is 214 and it's confidential, CORR. And that is the 17 August
4 2012 submissions. I would rely on paragraphs 15 to 19 as to the law.
5 And I would also, your Honours, refer you to the Pre-Trial Chamber's determination on
6 fitness as to the law, the 2012 determination, 2 November 2012, and the filing number in the
7 single case is 286-redacted, RED. And I would refer, your Honours, in particular to
8 paragraphs 42 to 56 of the trial -- Pre-Trial Chamber's determination on fitness.
9 Your Honours, you will also be assisted, of course, by the recent elaboration of the
10 law very recent in the Hadzic case at the ICTY, that's Prosecutor and Hadzic, and the
11 reference there is IT-04-75-T. The date of the decision is 26 October 2015 and it's
12 entitled Consolidated Decision on the Continuation of Proceedings.
13 And I will ask the Prosecution case managers to pass to the usher three decisions which I will
14 only refer to very briefly but just so all the parties have them, Hadzic and the two Strugar
15 decisions which I will refer to. So if they may be passed to the usher and then handed
16 around. We have copies available.
17 Just while I'm continuing, if there is -- or, court officer, that would be -- I'd be very grateful.
18 Thank you.
19 And just for the record, the decisions in Strugar to which I would refer your Honours,
20 of course decisions with which you will be familiar, Strugar, S-T-R-U-G-A-R, it's the
21 Decision re Defence Motion to Terminate Proceedings, a decision of the Trial
22 Chamber. The Court reference is IT-01-42-T. The date, 26 May 2004. And the
23 other decision is the appeals judgment in Strugar, IT-01-42-A. And the date of that
24 decision is 17 July 2008.
25 Now, your Honours, I'll carry on with the law and we can perhaps go back to the specific

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1 paragraphs, if necessary, as I go through the submissions, because I want to be brief.

2 Paragraph 55 of the Strugar appeals judgment, the applicable standard in determining fitness
3 to stand trial, of course, is that of, quote, "meaningful participation which allows the accused
4 to exercise his fair trial rights to such a degree that he is able to participate effectively in his
5 trial, and has an understanding of the essentials of the proceedings."

6 An accused person's fitness to stand trial turns on whether his capacities are, quote,
7 "viewed overall and in a reasonable and commonsense manner, at such a level that it
8 is possible for him or her to participate in the proceedings (in some cases with
9 assistance) and sufficiently exercise the identified rights." And, your Honours, as

10 you receive the decisions, the relevant paragraph there is 55 of the Strugar appeals.

11 As the Pre-Trial Chamber found in its November 2012 fitness decision, on -- from the
12 catalogue of fair trial rights enumerated in Article 67(1) of the Rome Statute, a number
13 of relevant capacities can be discerned which are necessary for the meaningful
14 exercise of these rights, these fair trial rights. That's para 50, paragraph 50 of the
15 fitness decision, the 2012 fitness decision.

16 Now, these capacities include, as your Honours set out in paragraph 13 of your own
17 order to conduct an examination under Rule 135, that's the 13 September 2015 order,
18 and the reference is in the joint case filing number 253 confidential, and those
19 capacities include: To understand the purpose, including the consequences of the
20 proceedings; to understand the course of the proceedings, including the nature and
21 significance of pleading to the charges; to understand the evidence; to testify or give
22 an unsworn statement should the accused so choose; and to instruct counsel in the
23 preparation and conduct of the Defence.

24 And I'd refer you also, and you have it before you, to the Hadzic Trial Chamber
25 decision, paragraphs 37 and 38. There's no need to turn it up now, but that also

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1 refers to the test as elaborated in Strugar.
2 It is these capacities which you instructed the experts in your order to address. They
3 involve at their heart two central questions. First, does Mr Gbagbo have the capacity
4 to understand the relevant facts and procedures in this case? The capacity to
5 understand. And second, does he have the capacity to communicate these facts to
6 his counsel and to give a statement? The capacity to communicate.
7 Now, your Honours, the jurisprudence indicates that the capacity to understand
8 requires that an accused is able to comprehend what others explain, not more. There
9 is no need for an accused to fully comprehend the course of proceedings.
10 In other words, an accused must understand the general thrust of what is contained in the
11 Prosecution evidence, including what is said in Court. He must have an understanding of
12 the essentials of the proceedings. There is no need for an accused to have any legal
13 knowledge or the capacity to exercise analytical reasoning.
14 And of course, an accused may avail himself of the assistance of other persons, such as a
15 lawyer.
16 The legal threshold for a capacity to communicate requires that the accused must
17 have the ability to recount his version of the facts, to point out any statements with
18 which he disagrees and to explain what he wants to be presented in court. Then it is
19 for the lawyer to evaluate these facts, to develop a defence strategy, and to present the
20 case in court on behalf of his or her client.
21 Mr Gbagbo is not required to possess all the legal and strategic capabilities of a
22 trained lawyer or a judicial officer. Processing the wealth of complex information
23 inherent in international criminal proceedings is the role of Defence counsel.
24 And, your Honours, you'll find support for these propositions in the jurisprudence that I've
25 passed up to you, notably in Hadzic, at paragraph 40 and also the authorities cited to in that

1 paragraph, the Strugar appeals judgment, paragraphs 47, 55, 60, and the Strugar Trial
2 Chamber decision, paragraph 37. And we would also refer, your Honours, to the ECHR,
3 European Court of Human Rights authorities cited in the Strugar appeals judgment at
4 paragraph 47.

5 Your Honours, that's it on the law. I'm keeping it brief.

6 Turning to the conclusions of the experts. Now I will try to keep this to the oral
7 evidence that your Honours have heard over the past two hearings. Broadly, these
8 three independent experts of the highest order, all certified by the French Court de
9 Cassation, with many years of experience in their respective fields conducted their
10 work under supervision of the Chamber, attended court, examined by counsel.

11 The Trial Chamber should rely upon their findings and conclusions, which
12 demonstrate that Mr Gbagbo is fit to stand trial. The real issue that they disclose is
13 one of the practical modalities, how best to accommodate Mr Gbagbo's health needs.

14 On the issue first of Mr Gbagbo's cognitive functions, the evidence -- and I won't take
15 you to the reports, but just to summarize them -- they show two things: First -- in
16 fact, they show four things. First, that there is no impairment of Mr Gbagbo's
17 cognitive functions reducing his capacity to understand and communicate, no
18 impairment which reduces his capacity to effectively participate in the proceedings.

19 Second, the psychiatric conditions have either resolved or have at a minimum
20 substantially resolved. And you heard the additional evidence related to that from
21 the doctor today, Dr Dumez, and his evidence related to the remaining symptoms of
22 PTSD.

23 Third, Mr Gbagbo has a propensity to tiredness. This is related to his age and a lack
24 of social and relational stimuli. It's not a pathology.

25 Fourth, the propensity to tiredness is not a fitness issue. Rather, it is something your

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1 Honours may wish to take into account as I've said in considering arrangements to
2 facilitate Mr Gbagbo's attendance.
3 Your Honours, just for the references on the findings and conclusions on cognitive
4 functions, you have of course Dr Ludes' conclusions in his report, at page 13 in the
5 English and page 14 in the French, no impairment, and further detail at page 12 in the
6 English and page 13 in the French. And I'm referring to the numbering at the top of
7 the pages as per the Registry filing numbering.

8 Dr Lamothe, you have his response to question 12 in his report, in the English page 9,
9 French page 9, "Mr Gbagbo is no longer suffering post-traumatic stress syndrome"
10 and what he says about requisite functional capacities at question 13, page 9 in the
11 English, page 9 in the French.

12 Now the Chamber will recall, and this is perhaps worth noting, that Mr Gbagbo was
13 capable, indeed, of giving specific instructions to counsel during his questioning of
14 Dr Lamothe, challenging, if you recall, the content of the conversation they had
15 during Dr Lamothe's examination of Mr Gbagbo. And you will find the reference to
16 that in the transcript of the 12th of November, in the English at page 25, at lines 10 to
17 13.

18 In oral evidence, Dr Lamothe maintained the conclusions stated in his report, and the
19 reference you'll find for that is on the 12th, page 34, lines 7 to 12.

20 PRESIDING JUDGE HENDERSON: Ms Pack.

21 MS PACK: Yes.

22 PRESIDING JUDGE HENDERSON: Not meaning to stymie you, but if you could just slow
23 down just a bit so we can ensure that we have the translations and the interpretations keep up
24 with you. You are going at a bit of a clip. Thank you.

25 MS PACK: Thank you, your Honour. I'm grateful for the indication that I should slow

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1 down substantially.

2 I was just addressing you on the oral evidence of Dr Lamothe. He was told that the

3 Prosecution was calling 100 witnesses, the statements were up to 600 pages long,

4 there would be thousands of pages to analyze and hundreds of hours of testimonies.

5 And he said, and this is at page 24 of the English transcript, lines 6 to 10, that

6 Mr Gbagbo's capacity of understanding are, quote, "enough to grasp the crux of those

7 testimonies and understand the truth of them. I believe that there may be details

8 that he can specifically oppose and that there are other details that he may think are

9 needless to make available to this Court."

10 Just turning to Mr Dumez's evidence on the cognitive capacities, he's just testified so I

11 don't need to go in any detail through his evidence, but I would just remind you of

12 two findings, because he was entirely consistent with his report but elaborated a little

13 on the topic first of PTSD; and that he said, and this was at page 15 of the transcript of

14 today's hearing that it is still there, but, quote, "at a very slight level."

15 And on the issue -- and asked whether a stressful trial would not trigger new

16 symptoms, he quite clearly said no. And that was at page 16 of the transcript today.

17 And at pages 23 and 24, asked about cognitive capacities, I will summarize as I read

18 the transcript in front of me. He indicated that Mr Gbagbo is, quote, "Perfectly

19 capable of understanding, analyzing, putting things in perspective, relating

20 everything to his own personal experience when it comes to all the aspects of the

21 trial."

22 So his evidence was entirely consistent with the conclusion as stated in his report, the

23 conclusions as stated in his report. And I would refer you to paragraphs 50 to 51 in

24 particular just to note that he does suggest some accommodation to Mr Gbagbo's

25 health needs, and he says in his conclusions that the examination that he undertook

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1 revealed a propensity to tiredness related to Mr Gbagbo's age and a lack of social and
2 relational stimuli (Redacted). So he says it
3 would be easier for him to participate in hearings if they were scheduled in a way that
4 take account of that factor.
5 Now, as for his physical capacity, you heard from Dr Ludes. The evidence of
6 Dr Ludes shows, in short, that Mr Gbagbo suffers two categories of physical problem,
7 but that these problems do not prevent him from participating effectively in his trial.
8 (Redacted)
9 (Redacted)
10 (Redacted). To facilitate Mr Gbagbo's participation, accommodation should be made
11 to reflect his physical conditions, including allowing breaks over the course of the day,
12 as indicated by Dr Ludes.
13 And as for the detail of his evidence, I should address (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Dr Ludes' conclusions, page 13 of the English of his report, page 14 in the French, are
14 that his examination revealed nothing clinical to prevent Mr Gbagbo from attending
15 trial, and he identifies some recommendations, and that, of course, is irrelevant to the
16 issue of practical modalities. He maintained or confirmed his conclusion in oral
17 evidence, and I would refer you to page 77 of the English transcript at lines 6 to 10.

18 Some concluding observations on the issue of Mr Gbagbo's fitness, your Honour.

19 I'm aware of the time. The issue of course is that the Chamber should ensure that

20 Mr Gbagbo's health needs are accommodated, but this doesn't mean that he is unfit to
21 participate in the proceedings. The fact that this trial will be long, tiring, with a
22 number of witnesses, thousands of pages of evidence is not a sufficient basis for
23 finding that this accused is unfit to stand trial.

24 PRESIDING JUDGE HENDERSON: Okay. I'm aware that your time has really drawn to an
25 end, so I will ask you a direct question: On the issue of modalities of his attendance, do you

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1 have any specific submissions on that directly?

2 MS PACK: Your Honour, there -- not every recommendation by the experts can
3 necessarily -- are necessary, nor will your Honours necessarily be able to accommodate every
4 recommendation. I'm thinking in particular of the recommendation that was perhaps made
5 by Mr Dumez earlier today, although it wasn't that clear, that afternoon sessions might be
6 preferable.

7 Now, not every recommendation like that is, I would say, a recommendation that is a
8 requirement to ensure that Mr Gbagbo may effectively participate in the proceedings
9 and is necessary to facilitate his attendance and participation.

10 However, there are recommendations, accommodations suggested by Drs Ludes and
11 Dr Dumez which should be taken account of in our submission, and they are the
12 recommendation that of 1.5 hour sessions over the day, obviously, daily hearings
13 broken down into those sessions.

14 There is the recommendation of Dr Ludes that (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 As for other arrangements, it may be more useful for the Defence and Registry to
25 address you on that. Those were the recommendations that came out of the

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1 evidence of the medical experts that I would wish to address you on.

2 PRESIDING JUDGE HENDERSON: Right. Now your time really has come to an end, so is
3 there anything specifically in closing?

4 MS PACK: No, your Honour. The only issue that we should perhaps briefly address is the
5 question of burden and standard. We would be guided by the approach of the Pretrial
6 Chamber in their 2012 decision, paragraph 56. We would not suggest that the burden of
7 proving fitness or unfitness falls today on either of the parties. Rather, it is our aim to assist
8 the Chamber in the exercise of its obligation to ensure that proceedings do not take place
9 against an unfit accused person.

10 Second, as to the standard, of course, the language of Article 64(8)(a) would suggest
11 that the Chamber should be satisfied that the accused is fit to stand trial. We submit
12 that the Trial Chamber -- for the Trial Chamber to be so satisfied there must be
13 evidence of sufficient specificity and probative value that Mr Gbagbo is fit to stand
14 trial.

15 So no further submissions, suffice to say Mr Gbagbo is an elderly man, but the
16 medical evidence demonstrates that he suffers some physical problems, as identified
17 by Dr Ludes, and tiredness, but that his cognitive and physical capacities, viewed
18 overall in a commonsense manner, are at such a level that it is possible for him to
19 participate in the proceedings and sufficiently to exercise his fair trial rights. And
20 the issue that you really have to consider today is modalities.

21 Those are our submissions, your Honour, unless I can assist any further.

22 PRESIDING JUDGE HENDERSON: We have your submissions. Thank you very much,
23 Ms Pack.

24 MS PACK: Thank you.

25 PRESIDING JUDGE HENDERSON: Let me hear now from the Legal Representative for the

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1 Victims. Is there anything you wish by way of submissions to advance?

2 MS MASSIDDA: Thank you, your Honour. I will briefly address the Chamber in relation
3 to the issue of fitness to stand trial and I will then present the views and concerns of victims as
4 they presented these views and concerns to us.

5 PRESIDING JUDGE HENDERSON: Now, I'll tell you that you had indicated with -- you
6 had indicated you would need 10 minutes.

7 MS MASSIDDA: Yeah.

8 PRESIDING JUDGE HENDERSON: And I'm going to make you stick to your 10 minutes.

9 MS MASSIDDA: I think I can even make it in maybe 8 or 9. I will try.

10 Mr President, your Honours, the reports of the medical experts are for us unequivocal
11 on the fact that Mr Gbagbo is fit to stand trial and able to follow and take part in the
12 proceedings.

13 This conclusion was reiterated by all experts during the examination in courtroom.

14 The experts also indicated that the foreseen arrangements for hearings will allow

15 Mr Gbagbo to adequately follow the proceedings while preserving his health.

16 Now, if you -- if we ever look at the practice developed by other international

17 tribunals -- and we only refer to two decisions, one already referred by the Office of

18 the Prosecutor, the recent decision on 26 October 2015, in the ICTY in the Hadzic

19 case -- what is important in determining the fitness of an accused to stand trial is

20 whether the capacity of the accused are, and I quote, "viewed overall and in a

21 reasonable and commonsense manner at such a level that it is possible for him or her

22 to participate in the proceedings and sufficiently exercise his rights."

23 This is a part which was quoted by the Office of the Prosecutor, but actually the decisions

24 goes a little bit further and this is the part which I consider most relevant.

25 "The level at which an accused must be able to exhibit these capacities in order to

1 exercise his rights need not be at his notionally highest level or at the highest level
2 that a particular accused has ever enjoyed in respect of each capacity. Rather, the
3 accused must have an understanding of the essentials of the proceedings.

4 Consequently, there is no need for an accused to fully comprehend the course of the
5 proceedings."

6 And I'm referring, your Honour, to the Goran Hadzic case, decision of 26 October 2015
7 already quoted by the Office of the Prosecutor and for which we have a printed copy,
8 paragraph 39 and 40.

9 Applying this principle in that case on 26 October 2015, the Trial Chamber was stating
10 the proceeding to ensure the fundamental principle of respect for human dignity and
11 the presumption of innocence found that health conditions related to a malignant
12 brain tumour with an expectation of survival of 12 months are compatible with the
13 fitness of an accused to stand trial and this -- because the accused understood the
14 essentials of the proceedings and his ability to communicate and instruct counsel was
15 not at stake. The same decisions, paragraph 7 and 55.

16 The Defence has several times argued that Mr Gbagbo should have an extensive
17 comprehension of the legal aspect of his case.

18 Now, I wish only to quote a decision from a Trial Chamber from Extraordinary
19 Chamber of the Courts of Cambodia, which is the only authority actually not
20 included in the list of authorities provided by the Office of the Prosecutor and for
21 which we have a copy here. It's the Nuon case at the ECCC.

22 And I, quote, "An accused represented by counsel cannot be expected to have the same
23 understanding of the material related to his case as a qualified and experienced lawyer.
24 Even persons in good physical and mental health, but without advanced legal education ...
25 require considerable legal assistance ... Accordingly, what is required for an accused to be

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1 deemed fit to stand trial is a standard of overall capacity allowing for a meaningful
2 participation in the trial, provided that he or she is duly represented by counsel."

3 I refer to case 002, Second Decision on accused Nuon Chea's Fitness to Stand Trial,
4 Trial Chamber No. E256/5, 2 April 2013, paragraph 14.

5 Nothing in the medical report suggests that Mr Gbagbo is unable to understand the
6 essentials of the proceedings and to provide instruction to his lawyer. On the
7 contrary, the expert have clearly indicated that Mr Gbagbo's capacity are not hindered
8 or precluded by his medical condition which even improved since the first medical
9 reports in 2012 and the subsequent ones in 2014.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted). And I would refer to

16 today's English realtime transcripts at page 16, line 21, page 22, line 20, and page 23,
17 line 7.

18 What we submit, your Honour, is that a decision on the fitness to stand trial has to be
19 taken on the basis of results of a medical examination today.

20 The possible or probable deterioration of Mr Gbagbo's condition in the future is
21 simply speculative in nature and should not be taken into account at this point in
22 time.

23 Turning now briefly to the concerns of the victims participating in the proceedings.

24 First of all, your Honours, victims are aware since quite a long time of the ongoing discussions
25 about Mr Gbagbo's conditions because this matter is frequently addressed by the media in

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1 Côte d'Ivoire. This issue is still a matter of serious concern for the victims, who essentially
2 wonder about the possible consequences that the health condition of the accused may have on
3 the course of the proceedings.

4 In particular, victims have indicated that Mr Gbagbo's health problems were known
5 since the time he was president of Côte d'Ivoire and that this issue never impeded
6 him to discharge his obligation as president.

7 Victims also expressed fear that the Defence may use this issue as an excuse to delay the
8 proceedings.

9 More importantly, victims' concerns is that justice is done and that the trial proceed as
10 expeditiously as possible in order to determine the truth of what happened during the
11 post-electoral crisis.

12 Victims have expressed the view that instead of risk the suspension of a trial, they
13 would not oppose arrangements to accommodate Mr Gbagbo's presence at trial and
14 therefore to preserve the continuation of the proceedings, provided that
15 medical -- independent medical experts certify that said arrangements are absolutely
16 necessary and that the Chamber is satisfied that said arrangements are the only
17 reasonable measures allowing for the conduct of the proceedings.

18 Having read the medical reports and heard the testimony of the experts in the
19 courtroom, we are of the opinion, your Honours, that the medical examination of the
20 accused clearly concludes that he's fit to stand trial and that the arrangements already
21 suggested by the Chamber plus some adjustment suggested by the experts, like the
22 monitoring and the continuation of medication, are adequate to preserve his health.

23 Thank you.

24 PRESIDING JUDGE HENDERSON: Thank you, Ms Massidda.

25 Right. Mr Altit, the Chamber will now hear from you.

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1 MR ALTIT: (Interpretation) Thank you very much, your Honour. Your Honour, your
2 Honours, the question of the fitness is put today because the Prosecution has put it forward.
3 We therefore have to try to respond to it well. As far as we're concerned, we don't have all
4 the information in order to do so.
5 We nevertheless have sufficient information to know that what should not be done.
6 Otherwise, there is a risk to the person concerned and it could also ruin the judicial
7 process.
8 If we would like to take up the elementary -- the information that we have, the Defence,
9 because it has noted the exhaustion of Laurent Gbagbo in Côte d'Ivoire, because it has seen
10 the difficulties that he had after his transfer to Scheveningen, had a duty, namely, to explain to
11 the Chamber what his situation was and the duty to do everything such that he be treated
12 such that he can recover his faculties. That is the reason why -- that is the reason why we
13 have not ceased to act as our duty commands.
14 The Prosecution since the very start has denied the harm to the health of Mr Gbagbo, has
15 denied particular PTSD and the hospitalisation syndrome that they could be the result of
16 what happened in Côte d'Ivoire.
17 The Chamber has access to the submissions of the Prosecution in which the Prosecution puts
18 forward its position which is that Laurent Gbagbo is in perfect health. And I heard a
19 moment ago a nuance to that. The Prosecution isn't proposing certain amendments or
20 accommodations with regards to his health, but as far as the rest is concerned, it's the same.
21 Quite frankly, I do not understand the interest of denying the reality. The reality is
22 as follows: Laurent Gbagbo is sick. He is tired. He is fragile. We are not doctors.
23 I can't tell you how or how much or for how long, but what I can tell you is that he is
24 sick, he is tired, and he is fragile. I'm not the only person who wants to tell you this.
25 All the members of my team who see him at least once a week can confirm this to

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1 you.

2 PRESIDING JUDGE HENDERSON: Mr Altit, I don't want to disturb you, but it has
3 happened to all of us as lawyers when you have sometimes a difficult point that you have to
4 argue, and ultimately you have to persuade the three of us, the Bench, that your position is
5 correct. So while it might be, you know, interesting to hear what you may experience, what
6 the Chamber actually has are three contemporary reports from three acknowledged experts,
7 persons who have from the evidence, have a vast amount of experience in these matters,
8 which must surely have and carry considerably more weight than any one of us non-medical
9 persons here.

10 So what I want you to focus on is why should the Chamber reject the views of these experts,
11 which carry -- which arguably may be of some weight, and prefer a non-medical view?

12 MR ALTIT: (Interpretation) I'm coming to that, your Honour. I'm coming to that now.
13 But what I wanted to do was to tell you what you asked me a moment ago, what our position
14 was, and I wanted to give it to you completely. I wanted to tell you what we think, what we
15 think because we are having discussions here of an extremely important case, and this is the
16 health of a man and the future of the proceedings. So please allow me to tell you what I
17 think and what we think as a team.

18 But I, of course, will respond to your question, because what I think and what we
19 think is based upon everything that the experts say, everything that the experts say,
20 including the last report, which we think does present a certain degree of interest, and
21 if you would allow me, I will tell you why.

22 In this regard I have heard the three experts, we've heard them together and I am not
23 sure to have come to the same conclusions as the Prosecutor. They didn't say that he
24 was well. They didn't say -- well, everybody in their own words, everybody in
25 accordance to the examinations that they carried out has said that there was an

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1 improvement. Does that mean that he's well? For us, no. Does that mean that he
2 is fit? That is another question.
3 What I'm trying to make people understand here is his weakness. That is something.
4 The fitness is a consequence of the degree of weakness that one has. These are two
5 different things. I would nevertheless, because this is fundamental, and I think that
6 we will -- pardon me, I wanted to report this to you, because this is a question of
7 experience here. If you would allow me just a few seconds, not more?
8 When we, Maître Baroan and myself, when we, after months and months of efforts,
9 when we were able to have Laurent Gbagbo, he was detained in the north of Côte
10 d'Ivoire in unworthy conditions. He was held in the dark since -- for 8 months. We
11 were struck by his physical weakness. We understood that if he wasn't transferred
12 quickly to the International Criminal Court, he would die. That's what the experts
13 have recalled, appointed under the aegis of the Pre-Trial Chamber, that this transfer
14 saved his life.
15 Furthermore, we've done everything that we could so that he would be better,
16 because he should have become better, but he wasn't getting better for weeks. We've
17 seen. Unhappy, miserable, and we didn't know what it was. So at the end of the
18 day we sent a first expert, our expert, who asked the Chamber to appoint other
19 experts, and then there was a debate. All these experts, including the experts who
20 came afterwards (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted). We can't
2 do so as if he had had some kind of infection and then suddenly, okay, he's now
3 healed, let's forget about it. It is not that.
4 We're talking about the life of a man. He hasn't -- he nearly died, believe me.
5 Now, the Defence for four years now has done everything within its power to fulfil its
6 mission, everything, everything within its power in order to fulfil its duty and
7 presenting to the Judges the most precise and reliable table of the state of health of
8 Laurent Gbagbo, and every time it had to put itself against a denial of reality that was
9 being made.
10 Your Honour, your Honours, the responsibility is completely yours. The Defence
11 declines any responsibility with regard to the decisions that are taken, but we would
12 like to draw your attention to the fact that it's better to start and argue with such an
13 important case on the best possible basis rather than hurrying and ending up with a
14 catastrophe because it's been to the detriment of Laurent Gbagbo.
15 I won't go back to the reports of the experts, 2012 March, August 2012, (Redacted).
16 We have spoken sufficiently at length about that. But I would like to stress how the
17 expert reports have come from different areas who had different competencies.
18 They all went in the same direction and they were converging, all of them. (Redacted)
19 (Redacted)
20 And now if we go back to the most recent reports, the three last expert reports, first of
21 all, the experts didn't spend the necessary time in order to fulfil their mission properly.
22 If we look at the account, Dr Lamothe spends his first hour with Laurent Gbagbo in
23 trying to convince him that he wasn't hostile to him. The rest of the time in the
24 afternoon it would seem to have taken part in the examination of Dr Ludes. I'm just
25 making a few separate comments thereto. And he looks so little concerned that he

1 even doesn't remember if Dr Ludes was present all the time or not. And it's in the
2 French transcript pages 9 and 10, lines 27 to 7.
3 Now, Dr Ludes would have spent two hours with Laurent Gbagbo in total. And
4 that's in the French transcript, page 40, lines 17 to 19. And he was content with
5 making a superficial examination.
6 Then neither of the two doctors seemed to have been -- have read the most important
7 documents, and in particular the report of four specialists of 25 (Redacted), with
8 Dr Lamothe stating, "No, I haven't read this report." Now that's in the French
9 transcripts page 18, lines 16 and 17.
10 Where it concerns this report, a succinct and superficial analysis was carried out a
11 posteriori with Dr Lamothe at the hearing. This does not replace a substantive work
12 which should have been done in useful time.
13 And when they state that they read all the documents, the answers that they give to
14 the questions put by the Defence show that they only have a very superficial
15 knowledge thereof. For example, well, their expert reports, they're unanimous in
16 highlighting the physical dimension of the hospitalisation syndrome. Dr Ludes
17 seems to ignore such points and the developments that the experts put to them.
18 Above all, Dr Ludes seems not to have understood what his mission was. He seems
19 not to have understood that he had to carry out his mission in an independent way, in
20 a way as to give the Chamber and to the parties a report, and here I quote, "with
21 regards to the current state of health of Laurent Gbagbo, and in particular to
22 determine if he continues to suffer from post-traumatic stress and hospitalisation
23 syndrome." He didn't understand. He didn't understand that he should have been
24 interested in PTSD.
25 He says, and this is in the French transcript, page 53, lines 9 to 15, and here I, quote,

1 "Clearly I indicated at the end of my report that the psychiatric aspects, in particular
2 post-traumatic stress, do not come within my specialism and I cannot respond to
3 them."
4 He didn't understand either that he should have been interested in the hospitalisation
5 syndrome. Page 13 of his report, the questions concerning the existence -- the
6 questions concerning the existence of a hospitalisation syndrome are the competence
7 of the psychiatric expert. This lack of involvement had other consequences as well.
8 It prevented Dr Ludes from seizing what was his mission -- from understanding what
9 was his mission concerning hospitalisation syndrome. He had a definition which
10 made it possible to stick with Dr Lamothe. He seems to have understood his mission
11 as a compliment to Dr Lamothe's mission, being content with having an auxiliary role
12 where the task was just to practise a few superficial physical examinations, to carry
13 out a few superficial physical examinations -- French transcript, page 52, lines 10 to
14 16 -- and eventually to determine what he calls underlying pathologies. French
15 transcript page 54, lines 11 to 26.
16 He would seem even to not have understood that the Chamber asked him for his
17 opinion as an expert where it concerned the possibility for Laurent Gbagbo to
18 participate in the proceedings in the close future. And here I quote, "It is a matter in
19 your phraseology, therefore, of a projection in the future, a projection in which
20 the -- it is difficult for the -- a projection which it is difficult for the expert to make."
21 Well, that's extraordinary. Pages 64, lines 10 to 12.
22 In the same sense the expert recognizes not having thought for a single second that it
23 was a matter of determining whether the person concerned could participate in a trial
24 which would last for a certain amount of time. So the nature of the exercise itself
25 consisted for the expert in projecting oneself in the future.

1 The examination from that, there is total incomprehension as to the mission which
2 was entrusted to him, which if he had understood it he would have renounced it
3 because it appeared during the questioning, the questions were put to him, that he
4 did not consider himself qualified to respond to the Chamber's questions concerning
5 both PTSD and the hospitalisation syndrome which is at the heart of the matter.

6 It is necessary to look at the lack of involvement of experts here. Where it concerns
7 the lack of professionalism of Dr Ludes, it was such that he didn't even carry out the
8 examinations which he said were (Redacted)

9 (Redacted)

10 (Redacted)

11 Even if we take the most favourable scenario for him, according to which some of his
12 examinations, even if incomplete and insufficient, could have given observers certain
13 useful indications, it has to be noted that he didn't carry them out in a professional
14 way and, in particular, did not respect the protocol which he claimed to follow, not
15 having ensured a dialogue with the person concerned, a strictly confidential exchange
16 outside the presence of any third parties.

17 The lack of professionalism of Dr Lamothe is illustrated by the fact that he conducted
18 the examination in the afternoon during the medical examination carried out by
19 Dr Ludes, which he was de facto prevented from doing, contrary to what he would
20 claim, from holding dialogue with a person concerned and, therefore, doing it in
21 acceptable conditions, which would be a semi-directive interview.

22 We note that all the information which Mr Lamothe bases himself on come from the
23 afternoon examination and we've just seen this was carried out, if it was carried out,
24 in non-professional conditions. That's page 3, line 23 of Lamothe's report.

25 (Redacted)

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- 11 (Redacted)
- 12 PRESIDING JUDGE HENDERSON: Mr Altit, just assist us here. Does the issue of (Redacted)
- 13 (Redacted), does that go to his ability to
- 14 understand the charges, to follow the proceedings and to instruct his client, or does that go to
- 15 modalities of his attendance?
- 16 MR ALTIT: (Interpretation) With your leave, in a few moments I will tell the Chamber
- 17 what we believe should be done, what strategy must be adopted so that Mr Gbagbo can be
- 18 treated so that the risks can be minimized. (Redacted) has to
- 19 be considered, but more generally speaking, I will touch upon that matter a little bit later on
- 20 in my remarks, and we will tell you what our suggested approach is.
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 We are before a quandary, your Honours. This is difficult when we consider these
3 two physicians' respective reports. How can we really attach any importance to
4 these reports when they are entirely ignorant of proceedings before the ICC and how
5 they unfold. Neither physician seemed to really understand what a trial was all
6 about. None of them -- neither of them have the slightest idea how long a trial could
7 last. French transcript page 23, lines 19 to 21. Page 36, lines 10 to 25. Pages 63 and
8 64, lines 26 to 12.

9 Neither one has the slightest idea of how many witnesses will be called by the
10 Prosecution. French transcript pages 23 and 24, lines 23 to 14.

11 Neither one of them realizes just how long the witness statements really are. French
12 transcript page 77.

13 Neither one of them realizes how long examinations-in-chief will last. Once again I
14 refer you to the transcript.

15 Neither one really understands what examination-in-chief and cross-examination
16 really mean. Once again, I refer you to the transcripts.

17 Under these conditions, how can these physicians answer the questions put by the
18 Chamber? In actual fact, these experts based themselves on their knowledge of
19 French law, French proceedings. Fitness is really never dealt with in that system of
20 law -- well, or at least never in the same terms as the legal framework we have here at
21 the ICC. In France an accused person is deemed to be fit if he can ask his lawyer to
22 defend him with no more information than that and if he is able to sit in the witness
23 stand and -- correction -- sit in court to listen to the proceedings. That is what the
24 two experts thought proceedings were like here at the ICC.

25 Dr Lamothe seemed to think that Laurent Gbagbo didn't even have to listen to all the

1 testimony minute by minute because he was being represented by counsel. French
2 transcript page 24, lines 3 to 9.

3 The various remarks made by this physician show that he did not understand the role
4 that Laurent Gbagbo would have to play to prepare his defence. When the physician
5 was questioned by the Defence, he replied, and once again I quote, "I did not say that
6 he was able or that he had the will to write a historically -- book about the end of his
7 presidency, that he considered exhaustively witness statements or testimony of 600
8 pages." But this is unheard of, your Honour. This boggles the mind.

9 In response to the same question, Dr Ludes said, and I quote, French transcript pages
10 78 and 79, lines 25 to 6, "We are not dealing with a compulsion, so to speak, as you
11 described it in my way of seeing things." Simply put, he thought it would not be
12 necessary for Laurent Gbagbo to have the ability to take stock of the Prosecutor's
13 evidence.

14 But here we are talking about Mr Gbagbo's ability to use his rights, to exercise his rights.
15 Listening to the hearings, this is not some sort of frill, so to speak. This is something that has
16 to be ensured. This is a condition that must be met.

17 To understand the Prosecution's position, a few moments ago Prosecution seemed to be
18 saying, based on their interpretation of ICTY jurisprudence, they seemed to be denying
19 Mr Gbagbo the opportunity to truly exercise his rights. They believe that he merely needs to
20 have a superficial understanding of the proceedings and can rely on counsel for everything
21 else.

22 Above all, your Honours, do you truly wish to be -- to follow jurisprudence that says,
23 and I quote, "It would be quite untimely, unjustified and contrary to application of
24 international criminal law to require each one of these capacities to be present at the
25 highest theoretical level." I quote from the Strugar ruling, paragraph 37.

1 What did this ruling actually say? This ruling said that international criminal law would
2 apparently be incompatible with full exercise of rights by the accused.

3 Your Honours, on the basis of that case law, Goran Hadzic was deemed to be fit to stand trial
4 even though he was in his dying days. He was -- he had terminal cancer. He was having
5 cognitive difficulties, was unable to concentrate for more than a few moments, a few minutes
6 on any particular matter.

7 Your Honours, this jurisprudence does not apply in this case. It does not meet the
8 standard that would be desirable. And then what is more, it is not applicable in
9 practical terms. For example, in the case of Goran Hadzic the Chamber had to, in
10 fact, adjourn the trial. And I make reference to paragraph 69 of the ruling of 26
11 October 2015.

12 I do take note that the Prosecution seems to be following the model of an ICTY
13 prosecutor who absolutely wanted to continue the Hadzic trial despite the health of
14 the accused. And in his submissions, he said that only death could end the
15 proceedings. I quote from paragraph 19.

16 In any event, this is not the issue. It is not a matter of determining whether the
17 person is in fine form, as fit as a fiddle, so to speak. Rather, it's a matter of
18 determining whether the person can effectively and efficiently take part in the
19 proceedings and his own defence.

20 The international jurisprudence is quite clear on this point, your Honours, much more
21 specific, much less demanding than what the Prosecution says.

22 It was clearly stated that the person in question must, and I quote, understand the
23 evidence in detail. This is what we are dealing with here. Strugar ruling,
24 paragraph 36. Can the person understand the evidence, the charges? It's as simple
25 as that. But, of course, this -- the answer doesn't seem to be particularly simple.

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1 Similarly -- I am told that the interpreter did not point -- did not render one particular
2 point. I shall repeat myself.

3 I was saying that the jurisprudence from the Strugar case was clear, and it requires a
4 certain level of involvement on the part of the accused person since it was clearly
5 indicated that the person in question must, and I quote, "understand the evidence in
6 detail." Paragraph 36. In detail. I stress this point.

7 This is what we are dealing with here. Does he understand the detail?

8 Harking back to my earlier points: Similarly in the Kovacevic case the judges said
9 that the person had to instruct his counsel, particularly regarding the questioning of
10 witnesses, paragraph 18 of that ruling, which necessarily means that the person must
11 understand the details. The person must be able to analyze witness statements and
12 follow the examination during the actual hearings. It is all very -- it is quite simple.

13 Now, if one --

14 PRESIDING JUDGE HENDERSON: Mr Altit, as you are looking to make your next point, I
15 just want to remind you that you had asked -- I just wish to remind you that you had asked
16 for a certain amount of time, which, of course, the Chamber has given you, and that hour
17 comes to an end at 17 -- I beg your pardon, 18.33.

18 MR ALTIT: (Interpretation) That is quite clear, your Honour.

19 What must be done to respond to your earlier question? (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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12 (Redacted)
13 (Redacted)
14 (Redacted). And this is what I was trying to
15 bring out when I examined today's witness. Then we can look at the whole issue of
16 fitness in a rather calm manner.
17 If today you ask me what I think, given the various items of information that we have at our
18 disposal, I would say this, that to my mind Mr Gbagbo is not fit to stand trial. Why?
19 Because he simply cannot exercise his rights. And that is the issue at hand. He cannot
20 understand the details. Yes, he has a general understanding of the issues at stake. He is an
21 intelligent man, very intelligent, but is he tired and (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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5 And I am concluding, your Honour. Thus, we believe because -- because it is a matter of
6 wisdom -- your Honours, I beg your pardon, if you don't mind, I will repeat one particular
7 phrase.

8 I was saying this: If there is less risk, it is easier to deal with the issue of fitness. We need to
9 minimize the risks so that we can move towards a determination regarding fitness.

10 And I shall conclude, your Honour, by saying this: (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 The Prosecution's way of seeing things is wrong. They think it's all or nothing.

17 They think that Laurent Gbagbo is doing just fine, that this trial can begin tomorrow
18 and that basically there is no risk. Why do they take this position? Because the
19 only other option is for everything to come to a grinding halt. This all-or-nothing
20 approach is not productive.

21 Furthermore, in all the various cases mentioned by the Prosecution, mentioned earlier,
22 other options have always been looked at, always. For example,
23 temporary -- temporarily unfit with treatment provided. And they have always
24 looked at what treatments need to be established to avoid running risks.

25 If you were to find that Mr Gbagbo is fit to stand trial, and that would be quite extraordinary,

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1 then judging by what the experts have told us, it is absolutely necessary to organise the
2 hearings in a particular way; that is to say, only in the afternoons. This is the suggestion that
3 Mr Dumez seemed to particularly stress, and it does not seem to be negotiable.
4 These sessions should be divided into relatively short periods of time. That was his
5 suggestion as well. And I believe Mr -- or Dr Lamothe suggested much the same thing.
6 Mr Gbagbo should receive more social stimulation. Perhaps in the middle of the week he
7 could have one day when he could have visits from his family and friends. He should be
8 given regular opportunities to get some fresh air, and he should be allowed to rest. As the
9 Pre-Trial Chamber allowed for a hearing that lasted a number of days, there was another
10 room close by where Mr Gbagbo was able to take some refreshments, rest, reduce all the
11 negative impacts of the trial, given his current state of health.
12 I believe there is another interpretation problem. Let me look at it, your Honour.
13 Well, it's not that important. I said if exceptionally, if, despite everything that we
14 have said, you declared him fit, then we should look at the possible adjustments. It
15 was just said using a different type of expression.
16 PRESIDING JUDGE HENDERSON: Okay. Just one question I want to ask you, and I hope
17 you can give it to me in a short summary answer.
18 So as I said when we began, we have these three expert reports, which all point in one
19 direction. You are asking the three Judges to find that Mr Gbagbo is unfit. In a word, what
20 is the evidential basis that we should knock off, remove, disregard, the three experts in
21 preference for this finding that you're wishing us to make? Because the finding has to be
22 grounded in some evidential basis.
23 MR ALTIT: (Interpretation) Thank you, Mr President. I will try to answer this question.
24 We have spent a lot of time together. I don't want to inflict more on you.
25 PRESIDING JUDGE HENDERSON: Then please don't. Yes.

1 MR ALTIT: (Interpretation) To begin with, I will repeat. Our position is a position that
2 we have tried to present with a nuance. (Redacted)
3 (Redacted). Let us treat him as he has been treated (Redacted)
4 (Redacted) and if he improves, the attitude will follow, the positive
5 attitude will follow. And if that does not happen, it will not follow.
6 And I answered the question that you have asked me. You said what do you think today?
7 I don't think that question should have been asked, but since you have asked it, I have -- I will
8 tell you that in my opinion currently he is not fit.
9 And on what basis? Apart from my experience and the experience (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted), and I have tried to prove it, we cannot rely on
13 (Redacted)
14 (Redacted) of extraordinary lack of professionalism and one
15 of the other doctors also. So we cannot take the risk to rely on expert studies that have not
16 been done appropriately and may be biased.
17 In order to take such important decisions, we have sufficient information to say that if you
18 look at the expert reports as a whole, he is unfit. So let us try to improve things.
19 Mr Dumez talked about the fact that the PTSD is better. Why is it better? I can say it's
20 better, but is he -- I asked him, "Is he like he was before?" And he said, "No." (Redacted)
21 (Redacted)
22 So there were three experts and three different descriptions of hospitalisation syndrome. So
23 that is a problem. They are not talking about the same thing. Those of us who are not
24 physicians, can we take risks that are based on such assumptions? We are dealing here with
25 the interests of justice.

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1 And just one last word. What I said in my introduction is true. We cannot take a
2 (Redacted)
3 (Redacted). We can look at everything overall. If a human being is doing well, he is
4 doing well. And if the human being is not doing well, he is not doing well. We have to
5 treat the overall person and everything will go well.
6 It is our duty as professionals not to rely on experts who lack professionalism, whereas we
7 have all information from more serious experts, even though they don't give us everything.
8 That is why I am proposing that other assessments should be carried out.
9 PRESIDING JUDGE HENDERSON: Okay. I understand your point.
10 Now we're just going to close off. We have the Registry here, so just one moment.
11 We have seven more minutes.
12 (Trial Chamber confers)
13 PRESIDING JUDGE HENDERSON: All right. We have the Registry here. We have six
14 more minutes of tapes. Is there anything that you, by way of assistance, wish to have put
15 before the Court?
16 MR CRAIG: Thank you, your Honour. My name is Patrick Craig, chief custody officer, just
17 for the record.
18 I have listened to the debates this afternoon and I have read the various medical reports, so
19 just in terms of assisting your Honours as to whatever decision you make or whatever
20 modalities you look at, essentially I look at it from a risk management, proactive risk
21 management of risks going forward.
22 Within the ICC building itself, we do have a resident doctor and we do have a resident
23 medical unit. So in terms of any decision that could be arrived at in terms of ongoing
24 medical monitoring and reporting back to the Bench, that can be facilitated both from within
25 the detention centre by the treating medical officer as well as perhaps you may wish to

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1 consider that we also have those services here on any given day, should we want to take any
2 extra measures on any particular day.

3 In respect of just some of the things I've listened to here today, I mean, for me it's
4 about the identification of any risk that I'm charged with looking after the detainee,
5 the management of those risks from a prospective proactive nature and the mitigation
6 of any identified risks and then the response to any incident should it take place.

7 And my observations of this in terms of particularly the new building, you know, we
8 will have the medical unit there. The custody officers are medically trained. We
9 are 600 metres from Bronovo hospital should it be required. And we can report in
10 on whatever basis you require us to do so.

11 In terms of the new facilities, I have inspected the new cells. In terms of the ability
12 for people to take rest and should those breaks occur at whatever time, there is a large
13 bench there for lying down, mattresses can be made available for periods of rest,
14 whatever those periods are.

15 So, in essence, we can cope and assist with whatever modality you arrive at and whatever
16 your decisions are, and we're open to further dialogue in assisting you on anything that you
17 suggest any measures we take.

18 PRESIDING JUDGE HENDERSON: Thank you. Well, I think we are about to run out of
19 recording space. So I think this will bring to a conclusion the hearing.

20 I want to thank sincerely all of the attorneys for the tremendous assistance and work that you
21 put in in assisting the Chamber in this matter and we shall be deliberating on this and we
22 shall get back to you, the parties and participants, soon, very, very soon.

23 THE COURT USHER: All rise.

24 (The hearing ends in closed session at 6.41 p.m.)

25 REPORT

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- 1 Pursuant to Trial Chamber' I Order, ICC-02/11-01/15-464, dated 18 March 2016, the
- 2 public redacted version of this transcript is filed in the case.