

1 International Criminal Court
2 Trial Chamber I - Courtroom 3
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 Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Status Conference
9 Tuesday, 26 April 2016
10 (The status conference starts in open session at 10.34 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: Well, good morning. After some time, here we
15 are again for this status conference on which the agenda has been provided a few
16 days ago. And I think I go immediately to the agenda items in the order they're
17 listed in the email you all received.
18 Most of the items have been submitted by or requested by the Office of the Prosecutor,
19 so I give the floor to the Office of the Prosecutor first and we go I think item by item,
20 leaving then the other parties to take the floor if they have to add something, and I
21 think the Chamber will take notice on everything and then decide in due course if
22 need be. I just want to remind all the parties to speak slow, myself first, and
23 obviously the pause between, but in this case it's not so needed because there is no
24 question and answer, but still to speak slowly. If this is agreeable, I would give the
25 floor to the Office of the Prosecutor.

1 MR MACDONALD: Thank you, your Honour. Good morning, Mr President, your
2 Honours. Just before handing the floor to -- on the first agenda item to my colleague
3 Mrs Chubin and the second item will be addressed by Ms Henderson, I just want to
4 introduce two new members. Our new intern Mr Lucio Garcia -- no. Mr Garcia is
5 joining the case and also our new intern, Mrs Mayans. Thank you.

6 MS CHUBIN: Good morning, Mr President, your Honours. I will address the three
7 points within topic one addressing point 1(b) last.

8 We added this topic to today's agenda for two reasons. First and foremost because
9 we have concerns about the quality of the edited transcripts, point 1(a) of the agenda;
10 and second, to present certain proposals with respect to the correction process, point
11 1(c) of the agenda; and last, we'd like to briefly address you on the issue of transcript
12 references made by the parties, point 1(b) of the agenda.

13 In order to address some of these issues, we held a very constructive meeting with the
14 Registry, CMS specifically, in the hope of being able to present you with concrete
15 proposals today. Now, if I could backtrack, what led to our awareness of this
16 problem is having gone through the correction exercise for the transcript of the first
17 four witnesses that we heard, the correction exercise of the edited transcripts.

18 Now, as a result of this exercise, we proposed a number of corrections to the edited
19 transcripts of the first four witnesses, and we noted that these corrections fall in four
20 main categories.

21 The first and most important of these categories is where an entire sentence or
22 sometimes a cluster of sentences is missing from either the French or the English
23 version of the edited transcript. In our experience so far, this was mostly -- the
24 sentences were mostly missing from the English transcript, but not exclusively so.

25 Now, this type of error is of great concern to us because it tells us two things. One,

1 the fact that your Honours aren't getting the full interpretation of what's being said in
2 court; and second, because the record is and remains incomplete.

3 Now I'll give you an example referring back to the first witness of this case, P-547, and
4 I'm referring to T-18 and the public redacted versions.

5 Now, in the French version at page 48, line 5, we have, and I quote in French:

6 (Interpretation) "And just to one side there were gendarmes who were behind with
7 guns and on the other side there were CRS. So I'm not in a position to tell you
8 whether I was in the middle of the crowd, before it or behind it." End of quote.

9 Now, the English version, and this is page 43, line 17, and I quote, "Nearby there were
10 gendarmes, behind bags of sand, and carrying weapons. I cannot tell you whether I
11 was in the middle of the crowd, in front, or at the back."

12 Now, the French sentence or portion of sentence, (Interpretation) "And on the other
13 side there were CRS" --

14 THE INTERPRETER: Overlapping speakers.

15 MS CHUBIN: -- is missing from the English version. This is just one example, but
16 we found a number of these missing sentences when going through the correction
17 exercise for the first four witnesses. And these missing sentences materially impact
18 the evidence.

19 Now that's the first category of errors that we've noted.

20 There's a second type of error and that's where the French and English versions
21 contain substantive difference in meaning, an interpretation difference.

22 The third category is where an ERN has been mentioned in court and it appears
23 correctly in one language and has the incorrect ERN reference in the other language.

24 And finally the fourth type of error we've noticed are variations in spelling of proper
25 nouns or places.

1 Now, after our meeting with the Registry we have a greater understanding of what is
2 leading to some of these errors and what we - and by "we" I mean the various
3 speakers in this courtroom - can do to assist the court reporters and the interpreters,
4 and they're rules we've all heard before, but to continue to slow down, to observe the
5 5-second rule between speakers, and to at all cost avoid overlapping microphones.

6 Now, of course, we can and will endeavour to do so. And the Prosecution can also
7 try to provide the court interpreters and transcribers with spelling lists prior to the
8 testimony of each witness or alternatively to spell words as they come out in the
9 course of the testimony of a witness.

10 Now, we'd also like to make a proposal, a suggestion to CMS, a suggestion that we
11 believe could help the quality of the transcripts, and that's in the exercise of going
12 from the realtime transcripts, so the transcripts that we're getting here in court and
13 editing them into what becomes the edited transcripts, we suggest that at this stage
14 CMS engage in a coordination exercise which would entail comparing the English
15 version and the French version and correcting, going back to the floor tape if
16 necessary and correcting any obvious discrepancy in spelling, but also of missing
17 sentences where it's been noted that some words or sentences are missing. This
18 would substantially reduce our correction requests and the need for CTs or corrected
19 transcripts.

20 Now, we suggested this to CMS at our meeting, and they said they would assess the
21 feasibility of this proposal.

22 Now, related to this point, we found out after we sent our first transcript correction
23 request that the Registry policy requires us to provide the realtime timestamp for each
24 correction reference. Now we've tried to do this to the extent possible for the first
25 four witnesses, but we realise we simply don't have the resources to continue to

1 provide that additional timestamp, because what this requires is for us not to
2 compare just two versions of the transcript, not just the edited English version and the
3 edited French version, but also the two realtime versions. So we'd have to
4 cross-check four versions of the transcript for every correction proposal that we send
5 in and we simply don't have the resources. We mentioned this at our meeting as
6 well.

7 And if we don't have the resources, I imagine our colleagues across the bar don't have
8 the resources either.

9 Now, CMS suggested that they would look into a technical solution to this problem
10 and whether they can include -- electronically automatically include the timestamp
11 within the edited version of the transcript, which would solve this problem and avoid
12 this extra step.

13 PRESIDING JUDGE TARFUSSER: Now, may I ask just if all these problems, I mean,
14 these discrepancies you're talking about and the mistakes in the transcript and the
15 missing or misspelled names, if this has also been discussed with the other teams,
16 with the parties and the LRV and the Defence?

17 MS CHUBIN: Your Honours, we have not discussed it directly with the other
18 parties or participant. It's our understanding that CMS had at some stage a similar
19 meeting with the Defence on some of these issues. Whether it was limited to
20 courtroom speech and interpretation or also went into the details of the transcript, I'm
21 not sure. But in the conduct directives at paragraph 66 and the Registry policy on
22 correction requests it is -- the requirement is for each party to send their correction
23 requests directly to the CMS correction request and so we have not had inter partes
24 discussions on that point.

25 PRESIDING JUDGE TARFUSSER: No, but I think as it is, it seems to be a bigger

1 problem, it's not just a correction here and there, but a bigger problem, maybe it
2 would be also good to find a global solution which is not just Prosecutor and CMS,
3 but it is a more global solution.

4 MS CHUBIN: We agree, your Honours, and that's one of the reasons we're raising it
5 here today and wanted to bring it to everyone's attention at the earliest possible stage,
6 because we've realised it goes beyond just the one or two sort of line edits.

7 PRESIDING JUDGE TARFUSSER: Okay. Please go ahead.

8 MS CHUBIN: The last point I want to briefly address you on is the one listed at
9 point 1(b) or how parties refer to the transcripts. Now, we've noted that both in
10 court hearings and in written filings it's sometimes difficult for us to know which
11 transcripts exactly our learned friends are referring to.

12 PRESIDING JUDGE TARFUSSER: And vice versa probably.

13 MS CHUBIN: And probably vice versa. If we may, we'd like to make a suggestion
14 that where the edited transcripts are available, that the parties and participant refer to
15 the edited transcript and whether it's the English or French version, including the
16 page and line numbers; and where only the realtime is available to do the same. So
17 for each transcript, ET or RT, the transcript number, the page and the line, and I think
18 that would solve a lot of confusion and help us save some court time avoiding
19 objections and questions in responding to that.

20 PRESIDING JUDGE TARFUSSER: And I would add also that it would be good if
21 the pages would be the same in the English and the French transcript, if there would
22 be sort of nearly overlapping on the English and the French version, if this would be
23 possible; otherwise it becomes very difficult in any case to look at this. But I don't
24 know if at all this is possible.

25 MS CHUBIN: Mr President, from our understanding, that's not possible because of

1 the difference in wordiness in one language to the other, but I'll let our colleagues at
2 CMS address that in more detail. Those are our submissions on topic 1.

3 PRESIDING JUDGE TARFUSSER: Okay. Thank you.

4 Legal Representatives of Victims.

5 MR CARNERO-ROJO: Thank you, your Honour. We have not hold consultations
6 with CMS on this topic, but we agree entirely with the Prosecution because we have
7 really faced difficulties while reading the transcripts. And when it comes to the
8 issue of referring to them, I think that it would be good if we would agree, all of us,
9 on easy ways to refer clearly to the transcripts. Thank you.

10 PRESIDING JUDGE TARFUSSER: Thank you very much.

11 The Defence of Mr Gbagbo.

12 MR ALTIT: (Interpretation) I thank you, Mr President. Now, Mr President, your
13 Honours. With regard to the transcript and translation of discussions during the
14 hearings, the Defence for Mr Laurent Gbagbo would like to thank the translators, the
15 interpreters and the court reporters of the CMS or the Registry, without which the
16 hearings or trial would not be able to proceed under decent conditions.
17 We believe that it is essential that a permanent and constructive dialogue be
18 maintained between the parties and the interpretation teams be maintained in order
19 to iron out any problems in the interpretation and the transcripts. However, we
20 have discovered that a meeting did occur yesterday that we were not convened to. It
21 would have been a lot more productive had all the parties been able to sit around the
22 same table, discuss and possibly find solutions together.

23 And I would request that, you know, this does concern us all. We all are up against
24 the same issues, and I would like for things to be done together because it would be
25 time -- it would also gain time.

1 Now, let us come back to the mistakes. The mistakes are real, and the important
2 question is to try to avoid these mistakes upstream. Now, there is a first point,
3 notably that the definitive or final transcripts are only disclosed for the French version
4 weeks after the trial, the hearing. And this is not the case for the English transcripts,
5 which means that there is a lack of equality in this regard.

6 Now, we could try possibly to harmonise things. It is important for us, and for us,
7 that is the parties, for us to be able to have access to these transcripts as fast as
8 possible in order for us to be able to verify what the witness said and prepare our
9 examination and cross-examination.

10 So if you like, the speed at which these transcripts are made available is essential for
11 us.

12 With regard to the issues of transcripts and interpretation, the Defence would like to
13 underscore the fact that to the extent that most of the witnesses will be testifying in
14 French whilst the Chamber is Anglophone, and the Chamber therefore will practically
15 exclusively be consulting or -- consulting the transcripts, it is crucial for the Judges
16 and the parties to have a faithful transcript and a faithful interpretation to the greatest
17 extent possible.

18 It is also crucial for the proper nouns, for the place names, for the dates to be correctly
19 transcribed in both languages.

20 Now, since the beginning of the hearings, since the beginning of the trial, in fact, the
21 Defence has sent correction requests that are very different based on transcripts of the
22 first three witnesses. One correction of transcripts 1, 3, 5, 8, 10, 11, 12 and 15 of
23 February 2016.

24 Now, the Defence to date has only been notified of the corrected transcript of
25 12 February 2016 and not the other transcripts.

1 The requests for corrections that we have made bear on the -- have a bearing on the
2 transcripts in the French version. The errors of interpretation in both the French and
3 the English versions and also transcript errors in the English version.

4 When we sent our requests for correction, we did not materially have the time to
5 make a note of all the mistakes. It was impossible for us. And it's very difficult for
6 us and I believe also for the OTP, even if they have greater means than we do, it is an
7 extremely complex exercise. However, we were able to note very notable mistakes
8 with regard to proper names and also gaps in the transcripts of witness testimony
9 both in French and English, which means that there are entire passages that have not
10 been transcribed from the French into the English.

11 So I'm going to give you a few brief examples in order for things to be clear so that we
12 know what we're talking about.

13 So for example, in the English transcript of 1 February 2016, the village of Diahouin is
14 spelt Dia Wang, a bit like a Chinese village.

15 In the English transcript of the 1 February 2016, the name Wattao is translated as
16 Ouattara, which in itself is not wrong, but that's entirely another issue.

17 In the French transcript of 5 February 2016, the date of 23 March is translated in
18 French with 21 March.

19 In the English transcript of 11 February 2016, "à l'écart du groupe" in French is
20 translated or interpreted in English by "away from the men group."

21 I will give you an example of error of transcriptions in the realtime transcripts. In
22 the transcript dated 10 March 2016, Michel Gueu, which is a name of an individual, is
23 transcribed as les jeunes Gueu in French, les jeunes Gueu.

24 And this very same mistake is to be found in the edited version of the English
25 transcript. However, in the English edited version of the transcript it is a little -- it is

1 a different mistake because they maintain the jeunes Gueu -- so in English they talk
2 about who came with jeunes, whereas the word Gueu has been done away with.
3 Now, I shall give you an example of a gap in realtime transcripts. This is to be found
4 in the French transcript of 9 March 2016. And I will give you for the record,
5 ICC-02/11-01/15-T-FRA. In this transcript, part of the testimony of P-625 has not
6 been transcribed. And the interesting thing to note here is that this part was
7 transcribed in the English version. Of course, this is problematic to us because we
8 are interested in the French version. So the gap or the missing passage is the passage
9 at 10.04.40. And there are a number of excerpts or passages in fact.
10 Now, the problem is really real. On our side we are entirely aware of the difficulty
11 of the task for the transcribers and the interpreters, and we would like to thank them
12 again. We need certainly to find a solution by adapting the manner in which the
13 parties formulate things and also maybe a slower matter of expressing ourselves and
14 spelling out the names, et cetera.
15 All of this can help. It would seem to me that were we to maintain a permanent
16 form of communication with the services of court reporting and interpretation would
17 mean that we could communicate and say that there is a problem rather than coming
18 before the Chamber. I think we would be in a position to do this.
19 And also with regard to the interpretation, I think that this was raised earlier on, and
20 of course, if we are in agreement with this, we could request that the interpretation
21 services harmonise the English and French versions, because on occasion, on occasion
22 the French interpreter says things correctly and the English interpreter does not, and
23 sometimes the opposite is the case. So maybe we could find some way of
24 harmonising matters, and this would be of assistance.
25 Now, this is the problem at hand, and we are available to all and sundry to discuss

1 matters as long as of course as things don't take too much time, because we have a lot
2 of work. That's what we wanted to say. We are available for everybody. We
3 want to help. We want to take part in approving things generally. But we are up
4 against the difficulty of the task. Also we're aware of it.

5 Now, with regard to the two points and practical propositions, Madam Naouri will be
6 taking the floor with your leave.

7 MS NAOURI: (Interpretation) Mr President, your Honour, briefly on point (b),
8 regarding how the parties should refer to the transcripts, I think we are on the same
9 wavelength as the Prosecution. We believe that it is simply necessary to send the
10 number of the transcript, the two last figures also that will make it possible to identify
11 the day, the language, the page and the line, and we have to specify whether it is
12 realtime or final edited versions of the transcripts. That is what we have to say about
13 point (b).

14 Regarding point (c), it is true that including timestamps in the requests for transcript
15 corrections is not provided for in the decision on the conduct of the hearings.

16 However, CMS expressly requested the Defence teams by email to provide
17 timestamps when they submit transcript correction requests. Such a practice
18 requires time.

19 The Defence is not opposed to that insofar as they -- it makes it possible to have
20 greater clarification in the corrections so that there should be no discrepancies. But
21 this exercise is very cumbersome and we do not have resources. So we are trying
22 not to have to go through three or four versions of the transcripts.

23 The proposal made by the party -- by the Prosecutor to the CMS, that is to provide
24 timestamps for the edited versions, I think that is the best solution for us. That will
25 make it possible to save time while ensuring accuracy.

1 And if that can be done, it will be greatly profitable for all the parties, and that will
2 reduce the margin of error as far as possible. Thank you, your Honours.

3 PRESIDING JUDGE TARFUSSER: Defence for Mr Blé Goudé.

4 MR ZOKOU: (Interpretation) Thank you, Mr President. Before we give our point
5 of view, I would like to apologise once again on behalf of Maître Knoops who sent
6 you a message and the Prosecutor for not being able to be present here today.
7 I would like to also introduce Marion Carrin and Lauriane Vandeler, my colleagues.
8 Regarding the points raised, the Defence of Mr Blé Goudé do not have any additional
9 observations, that is given the remarks that have already been made by the Gbagbo
10 Defence. Thank you.

11 PRESIDING JUDGE TARFUSSER: Thank you very much.

12 Yes, the Registry.

13 MS DAHURON-JACOBY: (Interpretation) Mr President, your Honours,
14 representing the Registry today: There is Alexandra Tomic, who is responsible for
15 LSS; Ms Wang; and myself, Ms Dahuron, head of CMS.

16 In order to reassure the Defence, the meeting of yesterday held only with the
17 representatives of the OTP -- it was at my request. And our concern was to better
18 understand the grievances of the OTP in relation to the item on the agenda of today.

19 In fact, in the past we had two meetings with Mr Gbagbo's Defence team on the same
20 issues. We would like to thank all the parties for their good will in trying to
21 cooperate and to find a solution to get there with all the stakeholders.

22 Regarding the President's suggestions to align the French and English transcripts, this
23 is an issue that is regularly raised. We try everything possible to reduce the gaps
24 between the French and English versions, but the French language being what it is, it
25 has 30 per cent more words than the English language, so we really cannot align the

1 two versions.

2 Now, in the edited versions we use page numbers and lines. Now, we have also
3 proposed the inclusion of timestamps in the edited versions. This is something that
4 has been raised frequently, and we have raised the issue with the manufacturers of
5 the computer systems producing the transcription equipment.

6 We are also exploring another possibility, which is that the ICT service should try to
7 include timestamps in the edited versions of the transcripts, that is regularly
8 introduce timestamps manually in the edited versions. We are going to study that
9 possibility and come back to the Chamber because we are fully aware of the burden
10 of work that this represents for the parties and the reporters and the interpreters if
11 they have to actually locate the passages, the relevant passages in order to correct
12 them.

13 Regarding the delays, the issue of delays raised by the Defence, we have in fact many
14 or long delays. We are very short staffed because the teams are not yet complete.
15 And in March we had simultaneous hearings. We are trying to clear the backlog.
16 And when we resume, by the time we resume on 9 May we would try to have all the
17 transcripts provided in good time.

18 Now, that is what I had to say. I would like to give the floor now to Ms Alex Tomic,
19 who will give you greater details.

20 MS TOMIC: Mr President, your Honours. Thank you so much for raising all the
21 points in the agenda because it is very important for us to clarify that we are aware of
22 the errors. And we are fully aware of the need to having not just accurate but also
23 complete official record.

24 All of the corrections will be done. One reason why we are also delayed is because
25 that the teams working -- teams of interpreters working in this trial are also having to

1 insert the corrections and listen again to the recordings.

2 Of course, the best way to speed up any trial and to have a more efficient way of

3 working would be to avoid or at least mitigate, minimise the need for the corrections.

4 We have looked into the reasons behind the errors; the reason, the reasons are all to

5 do with the delivery of the speakers. Well, all to do, maybe 90 per cent.

6 Errors happen, of course, and that's why we have to have a process of correcting the

7 transcript. But just like court reporters, can only record what they hear, the same

8 goes for interpreters. They can only interpret what they hear.

9 The speed is not necessarily always the worst thing in a delivery, but overlapping

10 speakers is making it absolutely impossible to catch, and even sometimes correct.

11 There will be occasions where one microphone will take over the other and then you

12 will have lost it. And it's very difficult to go behind what was said, which is why the

13 most efficient way would be to just remember that this is a multilingual courtroom.

14 It's not a normal courtroom, or it is normal for international courts and tribunals.

15 Sometimes we have more than just two languages, sometimes we have three

16 languages. If we have another language, this adds complexity and there is always a

17 time lag of about two to three seconds, which is why we are requesting the

18 five-second pause at the end of every speaker's intervention.

19 We have some minor technical difficulties that I should mention that are to do with

20 the volume and the reach of the microphones. If the speaker turns, which is

21 obviously not the case of your Honours, but mostly of the parties and participants,

22 the microphone will not catch what was said. We are looking into whether we could

23 provide or whether we can see that they be provided microphones that are portable

24 and they can be attached.

25 There is also a difficulty with the volume that I just mentioned in -- on different

1 channels. The difference between systems, between the previous system that we had
2 and the new system, is that the volume is not equalised as it used to be. So this is
3 another adjustment that needs to be made. This is not to say that we are minimising
4 our responsibility. On the contrary, we are absolutely dedicated to providing the
5 most accurate interpretation, but it can only be done in -- I'm not, I'm not seeking for
6 ideal circumstances, but better circumstances because otherwise we will have to keep
7 correcting and there will be more and more of a backlog. Thank you, your Honour.

8 PRESIDING JUDGE TARFUSSER: Thank you very much.

9 I think this first point is discussed enough now, was it? Did you want to say
10 something? Yes, please, Mr Altit.

11 MR ALTIT: (Interpretation) Thank you, Mr President. Very, very briefly.

12 Regarding solutions, it is a bit easy to attribute or to apportion blame despite attempts
13 to mitigate that. We attribute -- we try to attribute that to the speakers. All those
14 who are speaking here have experience in international jurisdictions. And in fact,
15 the examples were in French also, the errors that I mentioned. This happens. And
16 that is why we have recommended communication. And this has not happened.
17 The errors that I mentioned are not related to overlapping. That is clear. So we
18 need to find solutions.

19 One of the possible solutions is that the interpretation services should assign the same
20 interpreters to this trial so that they should know, not be any errors when we are
21 dealing with proper names, place names, people's names and so on. That is a
22 possible solution. But we would hope to reflect together.

23 You are saying speak slowly and don't overlap. There are issues that are not related
24 to overlapping, so we really need solutions.

25 PRESIDING JUDGE TARFUSSER: Well, I think we have debated enough this

1 problem. I think we are all -- we all agree that there are mistakes. There are
2 problems. We think that -- we have to rely, all of us, on accurate -- on accurate and
3 reliable transcripts at the end of the day, so I think if there is good will, and there
4 should be good will, I invite really very much the parties and participants with the
5 Registry to liaise altogether and to try to find concrete solutions, because it's more a
6 technical problem, and then we will do from our side what is necessary in the
7 courtroom to help the -- to help to find, to start with the finding of the solution here in
8 the courtroom by speaking slower and without overlapping.

9 So I really would invite the parties and participants to liaise with the Registry just to
10 focus really on this problem.

11 So I would now go to item number 2, which is the issue of the transcription and
12 translation of videos submitted as evidence requested by the Defence of
13 Mr Blé Goudé.

14 You have the floor.

15 MR ZOKOU: (Interpretation) Thank you, your Honour. Ms Marion Carrin, who
16 is the legal assistant in my team will take the floor on this.

17 MS CARRIN: (Interpretation) Thank you, Mr President. We wanted to include in
18 the agenda the issue of transcription and translation of a video submitted as evidence.
19 On 8 April 2016, we sent an application for clarification to the Chamber regarding an
20 order that you issued during a hearing. In fact, we are really not sure of what your
21 decision meant. It is the hearing of 16 March 2016. And I will give the references in
22 French and English so as to comply, T-31-FRA RT 16-03-2016, page 77, lines 20 to 28.
23 English version the same, T-31-CONF-ENG ET 16-03-2016 1-86 SZ T, page 65, line 24
24 to page 66, line 5.

25 Regarding the English translations of videos that we submit, given that the

1 translations are not there, you said, and I quote, I think you have to also provide

2 English transcriptions of the most relevant excerpts or materials.

3 On 8 April 2016, we asked four clarification questions, and we wanted to know

4 whether the obligation to provide a transcription of video materials submitted by us

5 is applicable only to the relevant excerpts or for the entire video. And this also

6 applies to the necessity to provide a translation. Does it concern the entire transcript

7 or only the relevant excerpts?

8 Given this issue of the transcription and translation of videos, we already have

9 observations. The first observation comes under Article 50 of the Rome Statute,

10 which states that English and French are the official languages of the Court, but also

11 the only two working languages.

12 In the decision on the conduct of the trial, ICC-02/11-01/15-205, in paragraph 48, it is

13 provided that if a party wishes to tender evidence, material evidence, if that excerpt is

14 not on eCourt, the party has to provide copies to the parties and participants

15 indicating which excerpts will be used with all the corresponding translations. In

16 the original version of the decision on the conduct of hearings it is mentioned as any

17 corresponding translations.

18 To begin with, the decision on the conduct of proceedings does not provide for an

19 obligation to actually furnish a transcription, and it seems to us that there is also no

20 obligation to provide a translation into English. So what we felt is that the

21 corresponding translation provided for in paragraph 48 concerns only visual

22 materials in languages other than the working languages, the two working languages

23 of the Court.

24 So any audiovisual material presented in one of the two working languages of the

25 Court should not require translation.

1 Regarding the provision of transcriptions of videos, it seems to us that that is a
2 separate issue because there is the issue of translation as mentioned in paragraph 48,
3 not transcription.

4 And so our question is whether we should consider that the oral decision that you
5 handed down on 16 March is an amendment of the decision on the conduct of
6 proceedings? And if that is the case, we would like to draw your attention to the
7 consequences of that order which raises concerns for the Defence.

8 To begin with, the first concern is that in paragraph 44 on the decision on the conduct
9 of proceedings, the Defence is granted leave specifically -- I'm sorry, it is the
10 non-calling party which is specifically authorised to provide to the other parties and
11 to the Chamber 24 hours before questioning the witness the supporting materials
12 based on which they will put their questions.

13 That is a time frame that is sufficiently broad, that is 24 hours before the questioning
14 of the witness, that is to disclose and register the supporting materials. This is a time
15 frame that we feel is consistent with the position of the non-calling party because in
16 order to determine its line of questioning they have to know the questions put to the
17 witness by the calling party and, where applicable, the Legal Representatives of
18 Victims. And we have to take into consideration the immediate consequences.

19 Under those circumstances within a period of 24 hours, it is not materially possible
20 for us to provide the transcription of a video as supporting -- as supporting materials.
21 If there is a transcript, it will necessarily be provided later. So we -- it is difficult to
22 provide transcriptions within 24 hours, but it can happen that we have such
23 documents only at the last minute.

24 Now, the second issue in this case is that there are many video materials. A short
25 while ago on 21 April 2015, we counted the number of video materials disclosed by

1 the OTP, and that was 911 at that time. And this figure has increased. We received
2 a proposal from the OTP relating to the admission of several video excerpts from the
3 RTI covering several months of television news, daily television news twice a day.
4 It seems to us that for the evidence in this case, most of that evidence will be based on
5 video excerpts because it is easier today to capture and broadcast video footage.
6 And on the side of the Defence, we feel that we will also have a lot of video footage
7 given 1,000 hours of video disclosed by the OTP. Today we do not know what we
8 will have to use, but I think the number will also be very high.
9 This leads me to the third concern, which is at the heart of our observations.
10 Currently we do not have the human and material resources to face up to the
11 production of transcriptions. We applied to the Registry for additional resources,
12 making it possible for us to recruit a new legal assistant with a sufficient level, but
13 that application was rejected. Ever since early 2016, our needs have not changed.
14 We have been able to face up to the trial proceedings itself, but the transcriptions, the
15 necessity to provide transcriptions changes everything. That is why we are putting
16 ourselves in the hands of the Chamber to find a solution to this shortage of material
17 and human resources.
18 There was a proposal made and I will -- on 16 March a proposal was made, 16
19 March 2016, and I quote:
20 "When we have a transcription, you have to submit to the Chamber the transcription
21 of that excerpt. And the Registry services of the Court could provide translations."
22 That would be insufficient for us because we will still have the problem of the
23 transcription itself. But that is another issue. Can the professional language
24 services of the Court provide assistance to us?
25 So it seems to us that if you combine that possibility with the provision of additional

1 resources to us for a specific purpose, we will be able to go along with towards
2 solving most of these problems. Thank you.

3 PRESIDING JUDGE TARFUSSER: The Defence of Mr Gbagbo. Just to tell you that
4 the Chamber is working all these issues and questions which have been posed to the
5 Chamber, clarifications and all these things. We're working on these things, so it's
6 not that we are -- it's new to us, all these requests for clarifications. So we can make
7 it short.

8 MR ALTIT: (Interpretation) Madam Naouri will be addressing the Court very
9 briefly, Mr President.

10 MS NAOURI: (Interpretation) I thank you, Mr President. Yes, very briefly.

11 Firstly, with regard to the question of translation, the Prosecution did express
12 themselves very clearly on 16 March 2016. It is not up to the parties to translate.

13 When we transcribe a video, we transcribe it. And with regard to the translation, we
14 are not official translators. And for example, the Laurent Gbagbo team is
15 francophone, and there is nobody who has a translation qualification to translate a
16 video into English. So the question is sorted at that level. So for us there is no
17 problem of translation.

18 Now, with regard to the transcription. The Defence for Mr Laurent Gbagbo has tried
19 since the outset of the trial to provide the Chamber with the transcript of the videos in
20 a timely manner possible for the examination and cross-examination of the witness to
21 make sure that such a transcript is available as soon as the video is broadcast during
22 the hearing. It is not an obligation, but we are attempting to be as precise as possible,
23 and we are trying to assist the Chamber by furnishing the transcripts of the relevant
24 and important passages.

25 Now, these excerpts are provided to the translation services whenever possible.

1 When the translator has this transcription, it is easier for them -- or the interpreter has
2 this transcript, it is easier for them to interpret it during the hearings. So that's what
3 we're doing, we're doing all that's possible, and that is the situation to date.

4 So we believe that the translation is up to the teams of translators or interpreters and
5 not up to the Defence. Thank you.

6 PRESIDING JUDGE TARFUSSER: Legal representatives.

7 MR CARNERO-ROJO: Thank you, your Honours. I would have three brief
8 remarks on this issue. The first one is that we don't read the Chamber's order of
9 16 March 2016 in the way the Defence has just done because if we pay attention to the
10 edited version or the English transcript, your Honour said that the translation should
11 be provided if possible.

12 Be that as it may, because as your Honour has just said the Chamber may revisit this
13 issue and issue clarifications, and we think that the measures requested by the parties
14 and participants to provide transcriptions and translations of the evidence we submit
15 may be consistent with the efforts of the Chamber to enhance the efficiency and
16 expeditiousness of the trial.

17 And as a result we think that the original language of the material at hand should
18 determine whether the material must be accompanied by a transcript and a
19 translation. So I would agree with the Defence that if the audiovisual material is
20 already in English and French, there is no obligation on the parties and participants to
21 submit a transcript and a translation.

22 The Language Services Section can provide the translation if that is necessary.

23 By contrast, if the audiovisual material is not in one of those languages, is not in
24 English or in French, we think that the parties and participants should provide a full
25 transcript of that material in the original language together with a translation of the

1 full transcript into English or French.

2 Taking into account that both accused are more proficient in English than in

3 French -- sorry, the opposite, more proficient in French than in English, I think that

4 the potential translation provided of these transcripts should be in French.

5 This approach that we would suggest, we think that is consistent with the practice

6 followed by the participants when deciding whether to submit material which is not

7 in English or French.

8 I cannot guess how the Defence or the Prosecution -- how the Defence or the

9 Prosecution go about it, but when we decide whether we are going to submit material

10 into evidence that is not in English or French, first of all, we need to get a full

11 transcript of that material into the original language and then a translation into

12 English or French and, therefore, we can submit that into evidence. And I think that

13 this approach is also consistent with the manner in which the Chamber has already

14 decided that the evidence is submitted into the record.

15 Your Honours found in decision 467, you clarified actually because you had already

16 issued oral decisions repeatedly on this matter, that once an item is submitted by a

17 party, that item is considered as deemed for the Chamber in its entirety, irrespective

18 of the fact that only limited portions of the item might have been used or referred to

19 in the courtroom.

20 So in short, your Honours, we think that if the material, audio-video material is not in

21 English or French, a full transcript of that material needs to be provided and

22 accompanied by a translation into French. Thank you very much.

23 PRESIDING JUDGE TARFUSSER: Thank you.

24 Prosecutor, Office of the Prosecutor.

25 MS HENDERSON: Thank you, Mr President, your Honours. From the

1 Prosecution's perspective, the vast majority of the audiovisual evidence that we
2 would present in this trial is in French as an original language, and the vast majority
3 of that, if not all of it, has transcripts that we have resourced internally and that we
4 are able to put before the Chamber when we call that evidence.

5 Now, your Honours, here I emphasise that I'm talking about evidence that the
6 Prosecution will present. So I'm not talking about where you have a 60 minute video
7 from a media broadcast and we are only presenting 5 minutes. It would not be a
8 60 minute transcript. It would be a 5 minute transcript of the relevant portion of that
9 video that we are presenting.

10 Your Honours, in our meeting yesterday with Court Management Services and the
11 Language Services Section, we canvassed some possibilities to ensure a proper
12 coherence in language, so transcript and also translation for the Chamber's benefit
13 that does not impact on the parties' resources or impacts as minimally as possible.

14 And there are two solutions that I would like to canvass with your Honours.

15 The first one, which in our submission would be a faster-moving solution, is that the
16 interpreters would do what is called sight translations while a video is playing. So
17 this means that the interpreters would have the French or the French transcript
18 provided by the OTP, and they are interpreting that into English as the video plays.

19 Now, we just need to clarify that apparently this process takes longer than
20 interpreting from normal courtroom speech, and so it would not be synchronised.

21 There would be a slight delay following the end of the video.

22 The other option, your Honours, is to play a video without any corresponding
23 interpretation as it is played, but at the end of the video for the calling party to read
24 the transcript onto the record and while this is read the interpreters as per normal
25 processes would be interpreting into the other language. So that would take longer,

1 but it might be better adapted to shorter clips.

2 In any sense, your Honours, those are two solutions which may assist for coherence in
3 the presentation of the videos without having an onerous impact on resources of the
4 parties.

5 Those are the Prosecution's submissions.

6 PRESIDING JUDGE TARFUSSER: Thank you very much.

7 Registry.

8 MR MACDONALD: (Microphone not activated)

9 MS DAHURON-JACOBY: (Interpretation) In regard to this issue, without going
10 into the contents of the decision of the Chamber specifically, if a video is in French, for
11 it to be able to be interpreted during the hearing while it is being played during the
12 hearing, in principle if the interpreters do have the means of preparing well ahead of
13 time and that they have received disclosure of the specific excerpts that will be played,
14 they will be in a position to do so in principle.

15 So a transcript of these excerpts in French is desirable, but the translation of this into
16 English is up to the Registry because it has been provided in one of the working
17 languages.

18 We strongly suggest that it be provided, the excerpt be provided in French so that we
19 can provide -- can be provided a sight translation, because often during the videos the
20 speed of the people speaking is quite rapid. So with a sight translation we would be
21 able to, with a slight lag in the interpretation into English, so we would have to be
22 mindful of this before speaking or taking the microphone again at the end of the
23 excerpt, that we wait for the end of the interpretation into English.

24 It is a habit to start talking in order to make the most of the interpretation into English
25 of the video excerpt. I hope I have been clear in the matter. Thank you.

1 PRESIDING JUDGE TARFUSSER: Yes, thank you very much.

2 I think there is a need to be consistent to take one of the proposed solutions and then
3 continue, otherwise we are getting confused. So I think this should be also part of
4 the discussions between the Registry and the parties I think what the best solution is,
5 but I think we should have one solution and not more solutions.

6 I continue on the agenda and come to agenda item 3 proposed by the Prosecutor on
7 agreed facts. Please, Mr Prosecutor.

8 MR MACDONALD: Thank you, your Honours. I'll be addressing the last points
9 on the agenda. I don't know if you want the Prosecution to discuss this point right
10 now, because I feel that it is kind of subsumed with concrete examples now in order
11 to enhance the efficiency and expeditiousness of the trial, the point added by the
12 Chamber, which I will be addressing differently or incorporating this.

13 PRESIDING JUDGE TARFUSSER: May I just propose that you address 3, 4, 5
14 because they're very, very similar. I mean, it's all point 3, 4, and 5 quite go hand in
15 hand somehow please and obviously have to do also with the item added by the
16 Chamber where we invite the parties also to submit concrete proposals, because
17 obviously the Chamber is working also in light of paragraph 17 of the conduct of the
18 proceedings and based on the experience of these first two months to try to find
19 solutions to expedite proceedings. Therefore, we are requesting also the parties to
20 submit their proposals in order to try to work out which is the best solution for the
21 way, the long way we have ahead. Thank you very much.

22 Please go ahead, Mr Prosecutor.

23 MR MACDONALD: Thank you, your Honour. I will address then 3, 4, and 5
24 together because, indeed, there are examples of how to expedite the trial, but on
25 point 3 what is also necessary is cooperation from the parties. Prosecution has the

1 onus to prove its case beyond a reasonable doubt. Let's be clear about that. But
2 what is the Defence really contesting in this case? And that also I think involves the
3 intervention of the Chamber.

4 My point being is that we have submitted a number of agreed facts in the past and
5 we've copied the Chamber on the agreements reached between the parties. There is
6 a number, a large number of additional agreed facts which at this stage have not been
7 accepted.

8 Earlier last week we provided, and I understand that the Blé Goudé Defence team
9 alluded to that, we have disclosed what is in our possession, all the RTI news
10 bulletins. There is a few missing because the RTI was not broadcasting on certain
11 dates. Some have been disclosed as Rule 77 or potentially exonerating, but the vast
12 majority have been disclosed as incriminating.

13 So we've said for all the news bulletins that are on our list of evidence, do you agree
14 as to their authenticity and their admissibility into evidence?

15 Now, the content will be discussed in the final briefs and all of that, but it would also
16 help to then create excerpts. The body of those news bulletins, which is central to
17 the post-election violence, the messages that we're relying on would be before the
18 Chamber. And you can then, how should I put it, listen to those broadcasts on your
19 own, at your own pace during this trial. That's also another issue.

20 But I understand it touches upon the response that we provided to the Gbagbo
21 Defence filing on again what is submitted, what is admitted, and this eternal debate
22 that we seem to have.

23 But we're pushing. I mean, one way of really fast-tracking things are with
24 unavoidably the cooperation of the Defence ongoing on what is contested.

25 Judicial notice. Again, I mean sometimes -- a while back when we were thinking of

1 agreed facts, one idea was to, well, let's submit our PTB to the Defence and can you
2 just highlight what you don't -- what you admit, what you recognize as not being
3 challenged?

4 Historical facts is something you had alluded to during the testimony of 625. And
5 we saw that, I was standing up and admitting or proposing admission on the spot.
6 But I think we should, we should be able to do that before going to court, right now
7 as we speak, because at one point there is some -- I understand there is some
8 agreements already that are before the Chamber in relations to those, the easy ones.
9 Mr Gbagbo was elected in October 2000. That's easy. But there are other agreed
10 facts or historical facts I think that the parties, meaning the Defence, can tell us:
11 Okay, no need to discuss these. And we can be suggestive about it with witnesses,
12 because they're uncontested facts of an historical nature.

13 The fifth point, a map book. We have been having these back and forths about map
14 books, and I will step away from the microphone just a second. I provided copies,
15 and I invite maybe the court usher to -- I have four copies again, three for the
16 Chamber, one for the legal -- sorry, the legal officers, yes. And I've given a copy.
17 Now, maps. Okay, we're willing, we're providing. What have we received in
18 return as a proposal? We're saying we don't accept, but where are the Defence's
19 maps? Where are their concrete proposals? And we'll put them in the binders.
20 These are maps.

21 Now, I'm making a last attempt right here, because I think maps of the country, maps
22 of the city are basic documents that lead to judicial notice. And I understand, your
23 Honours, that there is a paragraph 61 of the current directives where it allows you
24 that freedom.

25 So I really encourage my colleagues to please add the maps that you want to be

1 added and we'll submit a joint document to the Chamber, because if not, we will ask
2 that document, so for the Chamber to take judicial notice of it orally, not in writing,
3 orally on 9 May because maps are maps. We need to move forward.

4 So those are the comments, your Honours, I wanted to make because then I have
5 additional ones on the last -- sorry, the point that you've added, although I can
6 address it immediately if you prefer. All right.

7 PRESIDING JUDGE TARFUSSER: Please go ahead so we might continue, we might
8 finish earlier.

9 MR MACDONALD: Now, you've seen that we filed a first request pursuant to Rule
10 68(2)(b) introduction of the full statement of a witness, and (3), partial witness comes
11 and testifies for, depending, as short possible, but, you know, sometimes when we
12 say 30 minutes, it could be 45 minutes.

13 Now, this is the first such request. I'm not giving details, we're in public session.

14 Others will come. But of course, we have to wait for a decision to see how the
15 Chamber will appreciate this, but as mentioned in that submission, we intend to make
16 such request for blocks of crime base witnesses.

17 But then again, we believe that some of these testimonies could be admitted. There
18 is a Witness 579, the second witness to be heard starting 9 May. We're in public
19 session, but he's here for one single reason, identification of a victim.

20 Is this really being challenged independently of the Defence that we're presenting, the
21 identity of a witness and the circumstances of the death? No matter who is
22 responsible for the killing, what we're discussing here is the result, but we have to
23 bring a witness. That slows down the proceedings. We could be saving a day,
24 because unavoidably and expenses to the Court, which then can be used in turn to
25 provide additional resources.

1 Chain of custody. There are videos, but there's a number of material documents that
2 we've seized. Now, we didn't invent those documents, but can we just introduce
3 them? They're in evidence, they're submitted. And then the Chamber, of course at
4 the end the parties still remain, and can discuss their probative value or their weight.
5 But then we don't need to call a number of witnesses to discuss the chain of custody
6 of these things.

7 You'll see with the next witness that is to start testifying on 9 May if we can,
8 depending on the relay of the testimony, we intend to use a 360 presentation. But
9 right now in the first 20 witnesses we have two witnesses dedicated to one, stitch
10 images together in order to do a 360 presentation, the other took the pictures that
11 were used by the technical person from the office to make the 360. Sorry, so this is
12 where the microphone comes in handy. Unfortunately it was not available.

13 So my point is we'll have in the 19th and 20th position right now two witnesses
14 dedicated to the use of 360 presentations, 360 degrees.

15 So the Prosecution with the next witness will try to use such one of these 360
16 presentation relevant to his testimony, but once it's used, then it becomes submitted
17 and then we don't need to call Prosecution staff members that their whole sole
18 purpose was to take pictures and stitch them together to have these 360.

19 The Prosecution has not used so far and we will use from now on paragraph 35 of the
20 directives. And I will read in English: "In particular, the Chamber directs the
21 parties to engage an inter partes consultation and to the extent possible agree on the
22 non-contentious areas of questioning by the calling party for which the testimony
23 may be expedited by use of leading questions. Should the parties reach an
24 agreement, this can be indicated to the Chamber in advance by way of an email."

25 Now, leading question aside, the value of this is to engage in discussions with the

1 Defence whereby look at the statement, highlight what is admitted, highlight what is
2 not contested, and then we will concentrate with the witness on the issues that are the
3 real issues in this case. I think that's one way of doing it.

4 There are small steps, your Honour, that you've noted and I'm not making a formal
5 request in that sense, but I think, you know, one examiner per witness by the
6 non-calling party should be the rule. We've noticed that there is one to two and
7 sometimes even three different people asking questions to a Prosecution witness,
8 which is certainly unorthodox I believe.

9 Another small step, oral motions, responses. You could in these discussions when
10 we have them and a witness is in court have strict time to discuss with the Chamber
11 these legal points, 10 minutes each. Supreme courts of different countries, that's
12 what they do, you have a green light, red light and then the microphone goes off even
13 if you are in the middle of an argument. That's the way it is. It forces the party to
14 go to the point. I'm the first guilty party of that, your Honour.

15 Those were the small points that we wanted to address under this topic, your Honour.

16 Thank you.

17 PRESIDING JUDGE TARFUSSER: Thank you very much. I must say they were
18 quite helpful and hopefully they are.

19 And I give the floor -- no, first to the Legal Representative, sorry, first to the Legal
20 Representative of Victims.

21 MR CARNERO-ROJO: Thank you very much, your Honour. Very quickly, on
22 agreed facts --

23 PRESIDING JUDGE TARFUSSER: Excuse me, I was just asked to speak a little bit
24 slower.

25 MR CARNERO-ROJO: Yes, yes. I will do my best, your Honour.

1 PRESIDING JUDGE TARFUSSER: Okay. Thank you.

2 MR CARNERO-ROJO: When it comes to agreed facts, although we do not
3 participate in the discussions that the Defence and the Prosecution have, we reiterate
4 our request to be informed of the result of their discussions to verify whether they
5 have an impact on the interests of the victims.

6 When it comes to the point on judicial notice of facts of common knowledge, we have
7 read paragraph 61 of the directions that you issued, and looking at how the things are
8 going, I think that it would be wise not to require the parties and participants to stand
9 up and say what they think about a proposal to agree on something or not, but, rather,
10 to simply tell if anybody would like to make an objection to the Chamber for that fact
11 not to be considered as being taken judicial notice of. I think it would be much
12 faster.

13 On the map, on the point of the book of maps provided by the Prosecution, we
14 entirely agree with the Prosecution. We think that it will enhance the
15 expeditiousness of the proceedings if all the maps were just in one book, to which we
16 and the parties could refer to.

17 And finally, when it comes to the Rule 68 request made by the Prosecution, I will
18 provide a response as soon as possible. Thank you very much.

19 PRESIDING JUDGE TARFUSSER: Okay. Now please the Defence of
20 Mr Blé Goudé -- of Mr Gbagbo I think first.

21 MR ALTIT: (Interpretation) Thank you, your Honour. The Prosecution has
22 raised certain points not included in the agenda today. We will still make an effort
23 to do everything possible to prepare a certain number of things.

24 I note that the OTP is trying to escape from its burden of proving the evidence.

25 Now, let us take two examples. Regarding Witness P-579 that the Prosecutor has

1 mentioned, they are telling us today that the only reason they are calling this witness
2 is that they need that person to identify a victim, but that is not what is included in
3 the attestation of the witness.

4 Since the attestation is more complete, it is up to the Defence to question the victim,
5 otherwise it would seem as if the Defence is not defending itself.

6 In fact, it is up to the Prosecutor to prove the facts. It is simple to prove that a person
7 was killed. They have to prove that it was indeed this particular person. That is,
8 even if we have the greatest will in the world, we cannot take the place of the
9 Prosecutor because it is the onus of the OTP to provide the evidence.

10 Second example, the videos. Whatever happens, it is up to the Prosecutor to
11 demonstrate the authenticity of the videos used, especially if they're taken by people
12 belonging to the OTP. That is quite logical.

13 The Prosecutor is asking us to believe that the evidence is true based on their word.

14 They're asking us to believe the word of the witness, to believe their account based on
15 their words, that is that we should not do our work and expect them to prove the
16 evidence.

17 Now, the problem is simple from our point of view; the Prosecutor has to provide
18 evidence and we have to discuss and assess that evidence.

19 Now regarding agreed facts, the Prosecutor has talked of inter partes discussions.

20 Yes, of course, we have to do that, to try to make progress, and that is why we have
21 done everything possible.

22 The Defence has continued to have constructive discussions with the OTP ever since

23 14 January 2016. And we have accepted everything that we could accept in order to
24 make progress. And today the Prosecutor is telling us that you have to accept all the
25 points, everything that we have proposed as potential agreed facts. Which are those

1 points? It is their own account that they have cited. It is their account. And this
2 raises a problem. They cut their own narratives and then they come and say we
3 have to agree on those facts, whereas the OTP does not agree the proposals made by
4 the Defence. And that is correct.

5 Based on the proposals that they give us, we make more neutral and less biased
6 proposals, but the Prosecution refuses. And, in fact, we can make progress, but
7 everybody has to make an effort. We cannot advance by simply accepting that one
8 part, one party is right and the other party is not. It is always the same problem,
9 always the same problem.

10 Now, specifically on the agreed facts, the first testimonies heard by your Chamber
11 proved, if it was necessary, that all it needs is a nuance in the method of presenting a
12 fact in order to change its meaning dramatically.

13 We have to accept what is acceptable. We cannot accept something that may in the
14 future actually be incorrect or untrue, which may be a false narrative or account given
15 to your Chamber.

16 The Defence recalls its previous position here that the broad range of modes of
17 alternative liability alleged by the Prosecutor makes it more difficult for the Defence
18 to express agreement on a large number of facts because a fact may have a peripheral
19 impact, an insignificant impact within the context of a specific mode of liability, but
20 have crucial importance within the context of another mode of liability. And this is a
21 difficulty that increases as a result of the existence of Regulation 55 and the risk of its
22 use during the late stage of deliberations as according to the settled law. In fact,
23 non-contentious facts within the context of a trial could be recharacterised at the
24 detriment of the accused.

25 Regarding videos, that is videos of television news of the RTI, the Prosecutor

1 mentioned that it was important to reach agreement on the change of custody, to
2 agree that these excerpts are correct. And this relates to 1 November 2010 to
3 3 April 2011.

4 Now, we are surprised why is the Prosecutor raising this issue during hearings,
5 whereas inter partes consultations began barely a few days ago? We would like to
6 carry out true discussions, or are we just playing to the gallery?

7 It is a systematic practice of the OTP to send items for agreement shortly before a
8 status conference in order to claim before your Chamber that they have taken action
9 in order to put the Defence on the defensive. And it seems to us that the Prosecutor
10 is confusing several issues.

11 We are not dealing with agreements on the facts here, but agreements on the chain of
12 custodies. So we have to determine whether these news excerpts are really from the
13 RTI and that they were broadcast on the dates indicated. The issue here is the same,
14 the burden of proof lies with the Prosecutor.

15 So briefly, your Honours, we are in favour of inter partes discussions, but we should
16 not be pushed up against a wall before -- and put before a fait accompli.

17 Now, regarding the second point, which relates to judicial notice, regarding judicial
18 notice of the facts of common knowledge, during the discussions of 4 September 2015,
19 the Chamber specified that such notice cannot be taken without having received the
20 submissions of the parties and participants. That is clear.

21 Once again, the important point here is to understand what this deals with. It is a
22 narrative supported by the Prosecutor and there is a different narrative. And this
23 was shown during the opening statements. And these are different from what the
24 Defence teams think, specifically the Defence of Gbagbo.

25 As far as we are concerned, no concrete element on which the Prosecution relied to

1 present its narrative was agreed upon, none. So the issue here is what I said before,
2 in order to accept facts in general, they should be presented in the most neutral and
3 acceptable manner. When they are slightly biased it means that they are consistent
4 with a certain narrative. We cannot accept that. So why would we not propose our
5 own narrative. It would be the same thing.

6 We have done everything possible. Maybe we can reach agreement on other points,
7 but we cannot use the notion of judicial notice to try to skirt the fact that we have
8 gone as far as possible given that the burden of proof is on the Prosecution, which
9 judicial notice we have not agreed on the narratives. It has to be discussed at the
10 deepest level. The only useful notion here is agreement of facts in which I can agree
11 with the Prosecutor.

12 So in order to -- going around that to accept a specific narrative using judicial notice is
13 not acceptable to us.

14 Generally speaking, this is a very important point, we would like to point out that
15 such a practice of judicial notice is particularly dangerous because it discharges the
16 Prosecutor of its obligation to prove their allegations. So it is necessary to limit that
17 practice and to accept judicial notice only if it relates to a specific point that cannot be
18 disputed by any of the parties.

19 More specifically, regarding the facts of common knowledge, neither the Statute nor
20 the Rules describes this term. And the jurisdiction of the ICTY states that judicial
21 notice of facts of common knowledge in application of Article 14(1) of the Rules can
22 be addressed after two conditions, that is the facts contained in the documents
23 presented by the applying party must be recognized as facts common knowledge.
24 And furthermore, it should be determined that "These facts of common knowledge
25 cannot reasonably be disputed." End of quote.

1 And it is a reference, decision relating to the Prosecution application for the purpose
2 of taking judicial notice of facts of common knowledge and the admission of
3 documentary evidence of 3 February 2006.

4 In that same case the Chamber pointed out, and I quote, that "Considering the first
5 condition mentioned above, that the information contained in the documents cannot
6 be considered as generally known or of being facts of common knowledge simply or
7 merely because they have been provided by an organ of the United Nations.

8 Mindful that it is incumbent on the Prosecution to prove that the facts cannot
9 reasonably be disputed and -- it is not up to the accused to prove that the facts are
10 doubtful. Mindful that it is not enough for a fact to be mentioned in a document
11 produced by another organ, a non-legal organ of the UNO for it to become reasonably
12 indisputable."

13 One thing is clear, if the Chamber has to consider taking judicial knowledge of facts
14 which according to it are of common knowledge, it would be necessary for it to
15 specify, one, that this practice should be exceptional so as not to waive the
16 Prosecutor's obligation to prove the evidence.

17 Secondly, only the facts that are reasonably not contested by the parties can be the
18 subject of a judicial notice; and

19 Thirdly, that it is the party requesting the judicial notice of a fact that has to
20 demonstrate that that fact is indisputable; and

21 Four, such a judicial notice cannot be taken without a debate, a contradictory or
22 adversarial debate.

23 Lastly, this might be a way for the Prosecutor to skirt the procedure to be followed,
24 and so the Chamber should not take judicial notice of facts on which none of the
25 agreements have been -- the agreement, there is no agreement between the parties.

1 The last point on the maps, and I was just checking that this is actually going to be my
2 last point, a map is a map. It is not just a map, it is what we have on that map. So if
3 I have something white on a map, it will be something white. If I have something
4 black, it will be something black.

5 So the Prosecutor is proposing maps to us that meet a specific purpose, a map
6 prepared by the UN and which serves a specific purpose, but which is not useful
7 when we are talking about what was actually in the field at the time of the events. In
8 other words, a map may appear to be neutral but is actually falsely neutral because
9 what it shows is consistent with what the person presented it -- presenting it wants us
10 to see, and that is what happens with the maps presented by the Prosecutor.

11 So the understanding of the maps may change if a carte shows only a certain
12 neighbourhood of Abidjan and not the entire city. We can discuss maps with the
13 Prosecution with the Defence teams in order to include everything we feel is useful
14 instead of trying to impose something that is pointless.

15 This is the fourth time that we are given the same map book. That is not the way to
16 make progress. We have to sit together and try to see how we can take a blank map
17 and put something there. Maybe there is a map of the fighting, a map of the various
18 military positions, a map of the various neighbourhoods. But a map should not be
19 imposed using the pretext that it is a neutral map because it was drawn previously by
20 an organisation. But we need to have neutral maps here.

21 To complete or to conclude, we are open, but not to the detriment of the rights of the
22 Defence of Laurent Gbagbo. We have a task, we have a mission, to defend the rights
23 of Mr Laurent Gbagbo. So we cannot accept just anything. But on the other
24 thing -- on the other hand, since we wish to make progress to understand what
25 happened in order for justice to be done, we are open to all proposals so long as they

1 are part of a legitimate will to discuss and find problems.

2 Now, just one word on the number of cross interrogators, the number of cross
3 examiners, and I'll give the floor to Ms Naouri.

4 MS NAOURI: (Interpretation) Now, we are talking of expediting the proceedings.

5 So it is important to understand that it is, in order to save time, that sometimes certain
6 witnesses that have hundreds of pages, the Defence organises itself to have two
7 cross-examiners, so it is for reasons of flexibility. We are very short staffed. We
8 don't have enough resources. So it is important for us to organise ourselves the way
9 we want respecting professional standards.

10 Now, regarding the fact that it may be an unorthodox practice, that is not correct.

11 First example, in the main Bemba case in the hearing of 3 December 2010, and I'm
12 quoting transcript ICC-01/05-01/02-T-43-Red2-ENG, page 3, lines 6 to 12, during an
13 examination, I will not quote the names of the counsel, but there are a change -- there
14 are two counsel carrying out a cross-examination of the same person.

15 Now, the second case is Bemba II, hearing of 7 October 2015, transcript

16 ICC-01/05-01/13-T-15-Red2-ENG, page 54, lines 12 to 14.

17 These are two examples. We could have found others. This is not an unorthodox
18 practice. It is a practice that makes it possible for the Court to save time. Thank
19 you.

20 PRESIDING JUDGE TARFUSSER: And if I may anticipate, I don't find it very
21 unorthodox.

22 I would now stop because we are close to the two hours time and give you the floor at
23 2 o'clock when we resume in order to respond to or to get into these items. And I
24 would also ask you both to take if you think the floor for this, the invitation of the
25 Chamber if you see proposals, if you have proposals to submit to the Chamber for

1 measures which might be implemented in order to enhance the proceedings, also
2 according to paragraph 17 of the conduct of the proceedings. I think we should be
3 also in this sense proactive, what the Prosecutor already did.

4 So just to conclude, we resume at 2 and we have one and a half hours. I hope we
5 don't need all those one and a half hours, but if need be, we will. So see you at
6 2 o'clock. Thank you.

7 THE COURT USHER: All rise.

8 (Recess taken at 12.26 p.m.)

9 (Upon resuming in open session at 2.02 p.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 PRESIDING JUDGE TARFUSSER: Good afternoon.

13 The floor I think is to the Defence of Mr Blé Goudé.

14 MR ZOKOU: (Interpretation) Thank you, Mr President. I just wanted to bring a
15 number of clarifications briefly to what the Prosecution said. It goes without saying
16 that the position developed by the Gbagbo team is entirely in keeping with ours, and
17 we also share their surprise as to the underhand manner in which the items were
18 introduced into the calendar, the items that were not included.

19 We just wanted to draw the Chamber's attention to the question of the 300 elements
20 that he would like to have us examine and to which he would like a response. And
21 we would say that of course we are not able to separate the substance from the form
22 as he would have us do, because we believe indeed that no exhibit or none of the
23 arguments from the Prosecution can be stated to be neutral, and we cannot rely upon
24 that automatically.

25 Of course, we do not doubt the trust that we can have, but of course we must be

1 vigilant with regard to the rights of our clients. So it is not possible in the current
2 state of affairs to accept or to admit the entirety of these exhibits.

3 The Prosecutor also made mention of Regulation 68, which also causes us
4 considerable surprise because he knows all too well that we are preparing a response
5 in this regard, and whilst preparing this response, we cannot provide an oral response
6 here in the courtroom.

7 As for the other points raised, notably the issue of the witnesses, our position is the
8 same. But I would merely state that we do have witnesses, the insider witnesses
9 notably who not only for some of them are present with regard to a number of
10 incidents, not only the insider witnesses, but other witnesses whose testimony covers
11 hundreds of pages; and if we had to preserve the situation of the witnesses, it would
12 be necessary also for the Defence because we're talking here about a Defence team,
13 which means that there are a number of different levels of competence, there are
14 different angles from which things are approached and the subject matters covered by
15 the witnesses are different. So we are of the opinion that we should not really have,
16 we should not really have a discussion as to the necessity for the Defence teams to
17 organise themselves so that some of them or a number of them should be allowed to
18 cross-examine.

19 These are the clarifications that the team for Mr Blé Goudé wanted to bring to your
20 Chamber so that you understand, so that the Chamber is aware of all of this.

21 PRESIDING JUDGE TARFUSSER: Thank you. Thank you very much.

22 I think we are quite through the agenda, but still I would like to hear from the
23 Defence, because the Prosecutor has already said something about it, this invitation
24 by the Chamber to, where it says, "In addition, the Chamber invites the parties to
25 submit concrete proposals for measures which might be implemented with a view to

1 enhancing the efficiency and the expeditiousness of the trial." This also in light of
2 the experience we had in the last two months, and obviously be mindful of all the
3 requests for clarification made, but if there is something more also in light of what is
4 said in paragraph 17 of the directives on the conduct of the proceedings, so if there is
5 something you would like to add in this perspective, the Chamber is very keen to
6 hear if there is something which really can be proposed to the Chamber to enhance
7 this, the proceedings.

8 Mr Altit.

9 MR ALTIT: (Interpretation) Thank you, Mr President. Mr Dov Jacobs will be
10 addressing the Court in this regard.

11 PRESIDING JUDGE TARFUSSER: Mr Jacobs, please.

12 MR JACOBS: (Interpretation) Thank you, Mr President. With regard to the
13 propositions from the Defence in order to accelerate proceedings, the Defence has
14 already answered some of the points raised by the Prosecution, notably, with the facts
15 of common knowledge or the agreement on facts.

16 It will, the Defence will in a timely manner answer the request from the OTP to admit
17 previous testimony of the witnesses. But if the Defence of course has the common
18 ambition of the parties and participants and Chamber to make sure that the
19 proceedings are conducted in the most efficient of manners, the main issue here at
20 hand we should recall is that it should be the fairness of the trial and the rights of the
21 Defence that prevail.

22 The trial is based on the -- around the rights of the individual which -- and the respect
23 of these guarantees, the legitimacy of the proceedings.

24 In this regard, the speed of the trial should be in connection with the rights of the
25 Defence and should not be an option used in order to fly in the face of such of these

1 rights.

2 On the contrary, it is in line with the respectful logic of respecting the rights of the
3 Defence. In such conditions all proposals, and as we underscored in responding to
4 some of the Prosecution's requests, all requests and all suggestions should be
5 understood and the cardinal rule here is to ensure that whatever the measure
6 implemented with regard to the witnesses or the admission of evidence, this should
7 preserve the rights of the accused to defend him or herself in the best possible
8 circumstances or situation.

9 PRESIDING JUDGE TARFUSSER: Thank you very much.

10 The Defence of Mr Blé Goudé.

11 MR ZOKOU: (Interpretation) We do not, we do not have anything to add to this
12 intervention, but we will be preparing a number of elements that we will be
13 submitting to the extent that we do share this wish to cooperate entirely. Thank you.

14 PRESIDING JUDGE TARFUSSER: Thank you very much.

15 I think we are through, except for one, if I'm not mistaken, for one point, which was
16 added by the Prosecutor by email, 321.

17 Yes, please, Mr Prosecutor.

18 MR MACDONALD: Just before going there, would it be possible to address the
19 additional point that we ask that be put on the agenda, the schedule of the trial after
20 the summer recess. It's not a very long topic, five minutes.

21 PRESIDING JUDGE TARFUSSER: No, yes, of course. I forgot this. So please, just
22 go ahead.

23 MR MACDONALD: I understand that some people say that this is the biggest case.
24 I look at it in terms of number of witnesses, your Honour. In terms of complexity, I
25 don't think this case is necessarily more complex than any other, but our point is is

1 that we've been sharing the courtroom, three trials, two courtrooms. Now the CAR
2 Article 70 case is now over in terms of evidence presentation, that is. Nevertheless,
3 let's be honest, a break of five to six weeks is quite long, and obviously you lose a
4 certain momentum.

5 What we would propose is I understand for the autumn, the fall schedule, there is
6 only two trials, ours and the Ntaganda, and only maybe next year and beginning of
7 2017 will we be having access to three courtrooms in full, I heard, potentially. The
8 Prosecution has a suggestion to make. While it would be good to have a break once
9 in a while obviously to regroup and for the Chamber to issue decisions and so on, the
10 system of sitting six weeks and a week off or let's say five weeks, a week off is a
11 system that I think would favour us also proceeding in a more expeditious way.
12 As you know, scheduling witnesses and their order and so on, you always lose time if
13 you have too many breaks. So that's why we raised this issue. And even in 2017, if
14 ever we had to share a courtroom, I don't think this case should be sharing a
15 courtroom with any other case because Mr Gbagbo has been in detention since the
16 end of 2011 and in light of the number of witnesses that we have. And I understand
17 other cases may be more advanced than ours at this stage.

18 So it's food for thought more than anything else, but something to keep in mind, your
19 Honours, in terms of the scheduling. Thank you.

20 PRESIDING JUDGE TARFUSSER: Thank you very much.

21 Legal Representatives of Victims.

22 MR CARNERO-ROJO: We have no observations to make, your Honour. Thank
23 you.

24 PRESIDING JUDGE TARFUSSER: Thank you.

25 Maître Altit?

1 MR ALTIT: (Interpretation) Yes, thank you, Mr President. Things are simple,
2 your Chamber has obtained a number of elements from experts - I won't come back to
3 this here because we are in open session - that all said as follows, that hearings in
4 maximum blocks of four to five weeks, and I think that that was -- it was in that
5 context that your Chamber accepted to hold the trial. So four to five weeks, we are
6 following what the experts said.

7 And then how much time would be between these blocks of four to five weeks?
8 Sufficient time for the accused to recover, notably, and also and especially sufficient
9 time for the Defence to do other things, such as conduct investigations, because today
10 after five years of investigations by the OTP, because those investigations took a great
11 deal of time, and now we have to conduct our investigations, whereas we have
12 started it, but of course, they evolve as the document, the DTC changes and evolves as
13 the exhibits presented by the Defence, things evolve. Of course, we have to react to
14 all of this. And six weeks for us is not possible because it is really against the very
15 specific specifications required by the experts, and we are not very numerous, we
16 have to do everything so we have to be present, and a one-week break would not be
17 enough.

18 So you know we have to conduct our investigations. You know this as well as I do.
19 So it's not realistic. Blocks of four to five weeks as was planned for and in order to
20 preserve the health of the accused and between those blocks enough time for us to be
21 able to prepare the examination or cross-examinations to come and conduct
22 investigations, et cetera, et cetera. The Defence has to be able to react. And once
23 again, if we are here after five years, well, we are doing with what we have, we are
24 making do with what we have. Those investigations took a great deal of time, but
25 we need now to move on to the next stage of events.

1 So that is our position. I think it's crystal clear. But we will be able to discuss it
2 further or provide further clarification with approximate dates if you like, but I think
3 it's clear and I would say that up to now everything has been going swimmingly.
4 I'm not going to go into any detail here because we are in open session, but we think
5 to our mind anyway everything has been going well and we will be able to work and
6 things are going well.

7 We would like to be able to continue at this rhythm, which is not perfect, but which I
8 believe enables us to take all the interests of all the parties into account.

9 MR ZOKOU: (Interpretation) Mr President, Mademoiselle Carrin will be
10 responding on this item.

11 MS CARRIN: (Interpretation) Thank you, Mr President. Just very briefly, I just
12 wanted to underscore the idea notably the judicial idea of the time of the trial, which
13 is not quite the same for the OTP as it is for the Defence. The OTP chooses the order
14 of appearance of the witnesses and presents this order of appearance of witnesses to
15 the Chamber. We then discover it when it is presented to you and we have to
16 organise ourselves according to this calendar.

17 If we take as an illustration what happened in the month of February and in the
18 month of March, when there was a considerable overhaul of the calendar, we were
19 very happy to be able to have a recess of more than one week in duration to enable us
20 to prepare for this upheaval.

21 So once again, we would like to underscore the fact that because of the investigations
22 that need to be conducted, because of a calendar that we do not -- we are not in
23 control of, and because of the upheaval of this calendar, we need our time, this
24 schedule, we need our time, we need time to prepare.

25 And when the Prosecution says that there are too many breaks, we don't really

1 understand what that means. Where are -- where is the limit here? It would seem
2 to us that what has been done to date, notably with working times, which enables for
3 us, us to work on upcoming witnesses, is satisfying, and we would like to continue in
4 this vain to have our time during the time of the trial. Thank you.

5 PRESIDING JUDGE TARFUSSER: Thank you very much.

6 I mean, the Chamber is very much mindful about everything you said. It is for the
7 Chamber to strike the balance between all these necessities and the rights you all have.
8 It's not an easy endeavour. We will try to do our best. But for me personally, it was
9 always my -- the personal freedom of a person is always the most -- the right which I
10 think has the most right to be defended or to have -- to be in mind of everyone, of
11 every Judge, of every Prosecutor, of every Defence lawyer. So I think we have to just
12 to strike this balance.

13 We will come up with a calendar at the beginning of May when we restart the trial.
14 We will come up with a calendar at least which goes to the end of this year and
15 hopefully it will satisfy all these sometimes conflicting, conflicting interests and
16 rights.

17 This was I think the last point, but not the complete last, because the last point we
18 have to do in private session. I ask the court officer to call the private session.

19 (Private session at 2.22 p.m.)

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- 23 (The status conference ends in private session at 2.37 p.m.)