

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Miatta Maria Samba, Judge María del Socorro Flores Liera and Judge
6 Sergio Gerardo Ugalde Godínez
7 Status Conference - Courtroom 3
8 Friday, 28 January 2022
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:06] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SAMBA: [9:32:15] Good morning, everyone.
14 Could the court officer please call out the case.
15 THE COURT OFFICER: [9:32:22] Good morning, Madam President, your Honours.
16 Situation in the Central African Republic II, in the case of The Prosecutor versus
17 Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SAMBA: [9:32:37] Thank you.
20 Could I now request the parties and participants to introduce themselves.
21 We'll start with the Prosecution, please.
22 MR MACDONALD: [9:32:57] Good morning, your Honours. Madam President,
23 your Honours, I am here today representing the Prosecution team with
24 Mrs Colleen Gilg, Mrs von Braun and Ms Le Bailly, for the Office of the Prosecutor.
25 Thank you. My name is, sorry, Eric MacDonald. I forgot to identify myself.

1 Sorry.

2 PRESIDING JUDGE SAMBA: [9:33:27] Thank you very much, Mr MacDonald.

3 And Legal Representatives for the victims.

4 MS PELLET: [9:33:32](Interpretation) Thank you, your Honours. The Office of

5 Public Counsel for Victims is represented by myself Sarah Pellet and by

6 Caroline Walter, who is a legal officer. Thank you.

7 PRESIDING JUDGE SAMBA: [9:33:52] Thank you very much.

8 And for the Defence, please.

9 MS NAOURI: [9:33:58](Interpretation) Thank you, your Honour. Your Honours,

10 beside me today Mr Jacobs, associate counsel. Behind me are two case managers,

11 Manon Lanselle, Léa Allix. And as for myself, I am Jennifer Naouri, lead counsel.

12 Thank you.

13 PRESIDING JUDGE SAMBA: [9:34:21] Thank you very much, Ms Naouri.

14 I see for the record that Mr Said Kani is also present in court.

15 Good morning Mr Said Kani.

16 And lastly, the Registry, could you kindly introduce yourself.

17 MS DAHURON-JACOBY: [9:34:41] Your Honours, the Registry is represented today

18 by Asmaa Yacoubi, acting chief of Language Support Section; Josiane Do Rego, the

19 head of the interpretation unit of the Language Support Section; Philipp Ambach, the

20 chief of the Victims Participation and Reparations Section.

21 Attending remotely via video link, and you can see him on the screen, is Mike Cole,

22 the head of the country office in the Central African Republic.

23 And on behalf of the Director of the DJS, I am Charlotte Dahuron-Jacoby, chief of

24 the Court Management Section.

25 PRESIDING JUDGE SAMBA: [9:35:18] Thank you very much.

1 Now, as we are meeting for the first time, I would also like to introduce the Chamber.
2 On my immediate right is Judge Socorro Flores, and to my immediate left is
3 Judge Ugalde, Sergio Ugalde. I am Miatta Maria Samba and I'll be presiding.
4 So the purpose of this status conference is to discuss the preparation of trial so that we
5 have all the necessary information to help us determine the start date of trial.
6 The Chamber will render a written decision on this matter in due course.
7 So in this regard I note the submissions of the parties, all parties, from 21 January, for
8 which we are grateful as a Chamber. We have considered these submissions
9 carefully, so I ask the parties and participants not to repeat them in court today and
10 only provide information which has not been conveyed or covered in the written
11 filings.
12 Some of the information contained in the submissions of 21 January is confidential
13 and even confidential *ex parte*. The parties and the Registry have therefore filed
14 redacted and public redacted versions of their relevant submissions. Consequently,
15 the Chamber urges the parties and participants to remain mindful of what is said in
16 open session. If there is need for us to go into private session, please make
17 the request and also -- and this also applies to today's hearings.
18 Finally, a very important logistical point I must mention before we start hearing
19 submissions. I kindly remind everyone to respect the five-second rule and to speak
20 slowly so as to assist the interpreters.
21 So with these preliminary remarks, we can now turn to the agenda for this status
22 conference.
23 First we will discuss item C on the order scheduling this conference: The agreed
24 facts, Rule 69 of the Rules.
25 And although there were no agreed facts between the parties at the pretrial stage,

1 the Prosecution sent a list of 33 facts to the Defence on 19 January 2022. We
2 encourage these *inter partes* discussions between the parties and will decide on
3 a deadline for the submission of agreed facts in due course.
4 The Chamber also notes the comments made by the Defence in paragraph 47 of its
5 submissions, where it states that they have to first test the evidence underlying
6 the facts and undertake investigations before making a decision whether to agree to
7 any facts. If the Defence already knows that it will not contest a given fact, there is
8 nothing to prevent it from taking -- from making this known independently of
9 the Prosecution's evidence.

10 Further, the Chamber stresses that while such agreements are possible throughout
11 the trial, they are most useful if they are reached before the start of the proceedings,
12 since it will impact the questioning of witnesses.

13 So, would anyone like to make any additional comments on agreed facts?

14 Starting with the Prosecution, Mr MacDonald.

15 MR MACDONALD: [9:40:02] Thank you, your Honours. Yes, we've taken note.
16 We'll make all the best efforts. We've started the process, although we had already
17 discussions back in August or September of last year, but unfortunately due to
18 the preparation and - how should I put this, put it - how the parties were pressed by
19 time to be ready for confirmation, we could not finalise such agreements. So
20 the process has started. We've met last week, we discussed it. And we'll do our
21 best. Thank you.

22 PRESIDING JUDGE SAMBA: [9:40:49] Thank you very much, Mr MacDonald.

23 Ms Naouri, do you have any submissions or additional comments to make in respect
24 of agreed facts?

25 MS NAOURI: [9:41:06](Interpretation) Thank you, your Honour.

1 A few very simple remarks. As Mr MacDonald just said, we did begin *inter partes*
2 discussions and we have agreed on three -- no, rather, six, six facts, simple facts,
3 acronyms and historical points. So the process is underway. The most important
4 thing for us, and we have discussed this with the Prosecution, is to obtain a French
5 version of the proposals from the OTP. * This will allow us to discuss them, together
6 with Mr Said, and to work, as part of our investigations into these proposed facts, and,
7 if necessary, possibly make changes to the wording of these proposals.
8 Finally, as we pointed out in our filings, once we have received the trial brief, it will
9 be more easy for us to come to an agreement with the Prosecution on a number of
10 facts, or not.

11 Thank you, your Honour.

12 PRESIDING JUDGE SAMBA: [9:42:10] Yes, Mr MacDonald.

13 MR MACDONALD: [9:42:12] Yes. Indeed French is not an issue on this team,
14 your Honour, so we will -- there -- actually, a draft translation is ready already for
15 the ones that we had sent previously but were taken by this hearing.

16 And again, we'll do the best efforts. I'm sure simple facts are not an issue. From
17 experience, I know that when it comes to more focused and specific ones, then it
18 becomes problematic and I'm sure you're aware, your Honour, yourselves of these
19 difficulties. But we'll try to do our best to accommodate the Chamber as best we can.

20 Thanks.

21 PRESIDING JUDGE SAMBA: [9:42:58] Thank you very much, Mr MacDonald.

22 Thank you very much, Ms Naouri.

23 MS PELLET: [9:43:02](Interpretation) Your Honour, if I could.

24 PRESIDING JUDGE SAMBA: [9:43:05] Yes, please.

25 MS PELLET: [9:43:08](Interpretation) I beg your pardon.

1 * Just regarding this issue of agreed facts, I would remind the Chamber of our
2 submissions of 21 January last. I would remind you that we asked for the Legal
3 Representatives of Victims to be notified of the version accepted by the OTP and the
4 Defence so that we can in turn make any necessary comments. I refer particularly to
5 paragraphs 29 to 31 of our filing.

6 Thank you, your Honour.

7 PRESIDING JUDGE SAMBA: [9:43:55] Thank you very much, Ms Pellet.

8 Mr MacDonald, do you have any comments to make in respect of her submission or
9 comments?

10 MR MACDONALD: [9:44:07] I don't. I'm sure the Defence will though. But we
11 have no objections, your Honours, to -- once the agreements have been agreed
12 between the parties, to forward them to the Legal Representatives.

13 PRESIDING JUDGE SAMBA: [9:44:23] Ms Naouri, do you have the same position?

14 MS NAOURI: [9:44:28](Interpretation) Your Honour, we have no objection to
15 disclosing our agreement on the facts. * As for arguments or comments that may be
16 made by the LRVs, once there are LRVs and participating victims, we think that this is
17 an issue that will have to be dealt with at the appropriate time.

18 PRESIDING JUDGE SAMBA: [9:44:59] Thank you very much.

19 So the next item we would like to discuss is the issue of translation at trial, as in item
20 D of our order scheduling this conference.

21 We understood from the Defence's submissions that the language the accused
22 understands perfectly is French. It is also the language in which he communicates
23 with his counsel.

24 Ms Naouri, can you confirm that Sango interpretation will not be required for your
25 client during the trial, please?

1 MS NAOURI: [9:45:50](Interpretation) To answer your question, your Honour, we
2 would like to hark back to the issue of Sango interpretation at the hearings. * In actual
3 fact, if we have understood the Registry's submissions of 21 January 2022, filing 229,
4 one of the possible options is that there may not be Sango interpretation at some time,
5 at some points in the trial.

6 For the Defence, this is not possible, for two reasons.

7 First of all, it clearly emerged from the assessment done by the Registry last spring,

8 and I refer you to filing 69, annex II -- correction: Filing 78, annex II, that

9 the language in which my client speaks and understands perfectly is Sango. He has

10 a superior level.

11 * The assessment concluded that the oral proficiency in Sango was superior to the

12 comparable level in French.

13 And the Defence reminded the Registry of this on 18 January 2022 in a number of

14 exchanges regarding language,

15 as part of the organization of this hearing.

16 So it is absolutely necessary to respect Mr Said's right to follow the proceedings in

17 a language that he understands perfectly, for all hearings to have a Sango

18 interpretation so that he can perfectly follow the exchanges.

19 Secondly, Sango interpretation is crucial to ensure that the proceedings can be

20 followed by the community most directly affected by the proceedings under way at

21 the court.

22 Furthermore, we wish to point out that if Sango interpretation is not provided during

23 Mr Said's trial, the communities will have uneven access to the proceedings, uneven,

24 unequal access to the proceedings.

25 They will be able to listen to Yekatom and Mr Ngaïssona's proceedings in Sango, but

1 not the proceedings against Mr Said.

2 The Defence is convinced that if the commencement date takes * into account

3 the various tasks to be accomplished by the parties, this will provide sufficient time to

4 the Registry to hire and train the proper staff to ensure Sango interpretation during all

5 the hearings of the trial.

6 Thank you very much, your Honour.

7 PRESIDING JUDGE SAMBA: [9:49:20] Thank you very much, Ms Naouri.

8 According to the Registry, the Language Services Section will first have to find, then

9 recruit and train candidates, after which these new Sango interpreters will be

10 operational only after six months of training.

11 The Chamber is mindful of the fact that this year's court calendar is very busy

12 considering the number of ongoing trials. We are also mindful of the fact that

13 holding two cases in the same situation, the CARII, poses logistical challenges for

14 the Registry.

15 So with this in mind, can the Registry give the Chamber a rough time estimate of

16 when sufficient Sango, Arabic, French and English interpreters will be available for

17 the commencement of the present case? And do we understand it correctly that once

18 this hiring and training is finished, Sango interpretation could be facilitated in two

19 proceedings at the same time?

20 The Registry, please.

21 MS DO REGO: [9:50:49](Interpretation) Good morning, your Honours. I am

22 Josiane Do Rego, representing the Language Service.

23 To answer your question, we are very much dependent on the funding that we

24 receive. So once that is done, we will be in a position to hire, recruit and train

25 interpreters and provide interpretation in both cases with the staff that we shall

1 recruit. It all will depend on commencement date of the trial.

2 Thank you.

3 PRESIDING JUDGE SAMBA: [9:51:30] Why thank you.

4 In its submissions at paragraphs 52 to 55, the Prosecution also talks about the issue of
5 corrections of transcripts and submits that a first verification of the correctness of
6 the transcript should be done by the Registry. Only then should it be sent to
7 the parties for a final quality check.

8 Could the Registry kindly make submissions on this matter? Thank you.

9 MS DAHURON-JACOBY: [9:52:09] Yes, your Honour.

10 So addressing the submissions of the Prosecutor, the Registry first would like to

11 confirm that the court reporting teams systematically review the audio-visual
12 recordings of the hearings when they finalise the edited version of the transcript.

13 We also welcome the Prosecution's offer to provide a glossary, as well as assist on an
14 ad hoc basis, as this will undoubtedly assist in producing accurate transcripts.

15 Without going into details at this juncture, we deem important to stress that for
16 a transcript to be accurate, it requires not only qualified court reporters and
17 interpreters, but also, and not least, some level of discipline from the hearing
18 speakers.

19 With regards to the wider verification process whereby the Chamber, as well as
20 parties and participants, may submit requests for verification after receiving

21 the edited transcript, this is described in detail in a standard operating procedure.

22 With a view to continuous improvement, this SOP is currently being updated. It
23 also includes a section on guidelines and best practices on working with simultaneous
24 interpretation and real-time court reporting recommendations to be adopted. This
25 document has been transmitted to Chambers for a review, and it is planned to

1 circulate the finalised version to parties and participants in the near future.

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

3 PRESIDING JUDGE SAMBA: [9:54:15] Thank you very much.

4 Does the Prosecution have any comments to make?

5 MR MACDONALD: [9:54:30] Sorry, I'm struggling with my headphones and mask.

6 It's a coordination issue, it seems.

7 It's a very contentious issue, your Honours, not just with this case, in the coming case,
8 but of all the cases that are currently pending before the ICC.

9 So before the Chamber, if you are indeed looking at some sort of an SOP, I think it
10 would be important for the parties to be involved in that, and the participants. Any
11 solutions in this matter is not just for this case, it has to be holistic for the institution
12 itself.

13 The current way of functioning creates huge strain on trial teams of the parties and
14 participants. I understand we're all stretched in terms of resources, including
15 Registry, including interpretation, including translation, including transcriptions.

16 We understand that. But there has to be a reasonable, practical solution for everyone
17 involved. And this has been dating back a long time, a very long time.

18 So I understand the comments of Madam Dahuron, and I understand the comments
19 at the back also from our language unit of the -- of the Registry on the hiring of Sango
20 interpreters and so on, but I think the keyword here are resources. It's budget. It's
21 money.

22 So therefore, yes, quality starts with, of course, the speakers. However, the practice
23 has been, and this is the way it's been done during -- you present your witnesses.

24 You can try to interrupt - sorry - the proceedings when something flagrant is
25 mentioned. You can provide the best glossaries of last names, full names, locations

1 and so on. You can review again, listening to its issue, the ET version, meaning
2 the edited transcript. You have first the live feed that we are seeing now. Then in
3 24, 48 hours, we'll get the ET version, it's called. And ultimately what we want for
4 a judgment is the CT version, the corrected version. And who does the correction?
5 The parties. I can send you examples. Pages of corrections.
6 So I don't want to dramatise, but I think it's important that the Chamber has a clear
7 picture. Because it's not only that the English needs to be right, the French needs to
8 be right, they need to correlate. And we don't have the Sango. That's on an audio.
9 So it all starts with the Sango interpretation. It has to be perfect. Because,
10 ultimately, the parties, when it comes to the final brief for the Chamber to issue its
11 judgment in three years' time, you will be basing yourselves on those CT versions of
12 the transcripts. And this is where we're now back to a dossier system. Witnesses
13 are long gone and forgotten. So the transcript becomes the essential tool for you, for
14 the parties, for the legal representatives to be able to present the best arguments.
15 Accuracy is essential. We have many challenges, the Prosecution does, to prove its
16 case beyond a reasonable doubt. We cannot be bogged down with transcripts.
17 Thank you, your Honour.

18 PRESIDING JUDGE SAMBA: [9:59:06] Thank you very much, Mr MacDonald.
19 Does the Defence have any comments to make, please?

20 MS NAOURI: [9:59:14](Interpretation) Very quickly, your Honour.

21 In light of the remarks just made by the Prosecution, we have had the same
22 experience over a number of years we have practised before this Court.
23 The real-time transcripts and then we have the ET transcripts. This takes up
24 the most amount of time for the parties.

25 The Prosecution mentioned resources, and I'm not going to get into a discussion

1 about the Defence's resources, which are less than the resources of the OTP and
2 the Registry, but the transcript review, the initial transcript review represents a huge
3 burden for the Defence, particularly going from the real-time to the edited version.
4 We really want to focus on the final corrections, the corrected versions of
5 the transcripts. And for that, it is true that the edited transcript has to be better done,
6 better reviewed. That isn't currently the case.

7 We're very happy to hear that new guidelines -- I don't want to twist the Registry's
8 words, but we are happy that new guidelines will be shared with the Chamber. We
9 would like to make comments on them as well, share our experiences so that we can
10 have better edited transcripts, and then move quickly to the correction of
11 the transcripts so the Chamber can do its work working on the -- on -- working with
12 quality transcripts and in the best possible timelines.

13 Thank you.

14 PRESIDING JUDGE SAMBA: [10:01:02] Thank you very much, Ms Naouri.

15 I'm sure this will be resolved on a Chamber-wide basis. But having heard the parties,
16 the Defence and the Prosecution, does the Registry have anything further to say in
17 respect of this matter?

18 MS DAHURON-JACOBY: [10:01:21] Thank you, your Honour.

19 Yes, I think it's important to exchange prior to the start of the trial, to have further
20 discussions on this point.

21 Maybe for the Chamber's clarification, the review that is done systematically for
22 the edited transcript is within one language. So this means the English transcript is
23 revised with the English audio-visual recording, and this is the first revision.

24 There is not systematically at this stage a French/English revision. We do not have
25 the means as it stands.

1 So I just wanted to clarify this for now. I think there will be a lot more to discuss, but
2 maybe not now. Thank you, your Honour.

3 PRESIDING JUDGE SAMBA: [10:02:13] Thank you very much. But since we are still
4 talking to the Registry, we have a question on a related topic. And for this, let us go
5 shortly into private session.

6 Court officer, can we go into private session, please.

7 (Private session at 10.02 a.m.)

8 THE COURT OFFICER: [10:02:40] We are in private session, Madam President.

9 (Redacted)

10 (Redacted)

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8 (Open session at 10.07 a.m.)

9 THE COURT OFFICER: [10:07:04] We are back in open session, Madam President.

10 PRESIDING JUDGE SAMBA: [10:07:08] Thank you very much.

11 So now we are moving on to the issue of disclosure, items E and F on our order

12 scheduling this conference.

13 Before we get into specifics, I would like to make a few general comments regarding

14 disclosure.

15 First, we wish to emphasise that we expect the Prosecution to complete its disclosure

16 in a timely manner. Similarly, the Chamber expects that any request for disclosure

17 should be discussed between the parties before rulings are sought from the Chamber.

18 In this regard, it is incumbent on the Prosecution to give proper reasons if they are

19 going to object to a request for disclosure. The Chamber also notes the comments

20 made by the Defence at paragraph 54 of its submission that disclosure should be done

21 on a rolling basis. We agree with this. Any deadline given by the Chamber with

22 regards to disclosure will be a final deadline until when disclosure has to be effected.

23 However, we are confident that the Prosecution discharges its disclosure obligations

24 diligently and on a continuous basis in line with Article 67(2), which states that

25 disclosure should be effected "as soon as practicable".

1 Finally, the Chamber also wishes to remind the Prosecution that it has an ongoing
2 obligation to disclose exculpatory evidence to the Defence and this should be done in
3 a timely manner.

4 So we have some questions for the Prosecution in respect of its ongoing investigations.

5 In paragraph 26 of your submission you describe the focus of your current
6 investigations.

7 Do we take it, Mr MacDonald, that you are only completing outstanding
8 investigatory steps, but not opening new activities such as, for instance, interviewing
9 new witnesses? And in the following paragraph 27 you indicated that these
10 investigative steps, and I quote, "could take a number of months considering
11 the ongoing COVID-19 pandemic."

12 Can the Prosecution provide the Chamber with a more specific estimate than
13 "a number of months"? When does the Prosecution envisage that it will be done
14 with its investigations?

15 Mr MacDonald, please.

16 MR MACDONALD: [10:10:39] Yes, your Honour.

17 We are finalising, completing essential steps related to the charged incident as
18 confirmed. There are two components, major components, obviously, to these,
19 the *chapeau* elements and the core crime. In some instances, we are meeting
20 witnesses that either we had started the interview and could not finalise it - and I'll
21 come back to that for the reasons why that could not be done - witnesses that had
22 been identified had been -- we've been in touch with but we haven't been able to
23 organise concretely and sit down with the witnesses. Other situations where we
24 intend to go and clarify certain additional things from witnesses that have already
25 been interviewed. Why? Because as the proceedings and the investigation

1 progresses, we need to clarify certain things with our witnesses because they'll be
2 cross-examined, obviously, by the Defence and their evidence will be challenged.

3 And our onus is great, beyond reasonable doubt. Those are the steps.

4 There are also outstanding RFAs that we've been pursuing with the government in
5 relation to obtaining documents that we've been pursuing. So those are in general
6 form what.

7 New witnesses in the sense that, "Oh, why don't we start today and see if we can find
8 a witness about this topic." No. We're not doing that because we are aware that,
9 you know, time is running out. So of course we've identified witnesses that we need
10 to go and interview for that very purpose so they're -- they're identified, the topic is
11 identified and we need to go and do that. So, in that sense, they haven't provided
12 a statement before, but it's not a whole new line of enquiry unrelated to the case.

13 Just a -- just a second.

14 Sorry, yes, I'm going to come to that point. I thought it was more on the witnesses
15 being questioned at the moment, interviewed.

16 Let me explain to the Chamber the challenges and why we say that hopefully by April,
17 end of April, beginning of May we're done. Why is that? The reality is,
18 your Honours, that investigators are based in The Hague, obviously, but they need to
19 travel there. So that is -- currently, the whole travel restrictions are changing
20 constantly. Recently I was in the field for the first time actually since joining this
21 case. Why? Before that I couldn't go. So I went -- or, because of obligations here
22 or because of the complications of travelling to the field where you have -- when we
23 send investigators, they need to stay there for weeks until -- and Mr Cole can send us
24 a revised approach.

25 Last week when we filed, investigators had to wait seven days. So you land, you go

1 to the location where you're staying and you stay there in the room or the whatever
2 place for a week. On the seventh day you go to the *Institut Pasteur* or the UN, if you
3 happen to have a possibility to go to the UN, and you get tested. And 20 -- and then
4 the next day, if you're negative, you can work. We've had investigators get COVID
5 in the field in Bangui back in 2021.

6 It's -- so now this rule has changed to 48 hours, so we're happy with that. You land,
7 you stay put for 48 hours. On the 48th hour there you get tested, or the next day,
8 and then negative test the next day you can travel. So it reduce -- you can start
9 doing your work in the field.

10 Witnesses that we interview systematically now need to be negative. So they go to
11 *l'Institut Pasteur*. There's only one place where civilian authorities -- or civilians,
12 sorry, and including local authorities to get tested, and that's at *l'Institut Pasteur*.

13 They're very efficient, but it takes 24 hours then to, you know, the witness goes in
14 the morning, afternoon you get the results, or the evening, and then the next day you
15 can plan. If the witness is negative, then he understands that he needs to quarantine.
16 During interviews, witnesses have become COVID, because we may do rapid test or
17 whatever, they don't feel well. They have regular jobs. We need to meet them in
18 the evenings. Local professionals are very difficult to meet because of their
19 obligations. So those are challenges.

20 What I'm trying to get at is, when we say that by the end of March, April or beginning
21 of May, we're doing our best to do it as quickly but we're -- the COVID situation has
22 extended our missions and has reduced our efficiency.

23 I'll give you statistics because we've checked that. The missions conducted in 2020
24 and in 2021 during the COVID period have been -- if in 2019, 2018, using those
25 numbers we compared, how many missions were we able to conduct? Only a third.

1 A third in 2020, a third in 2021.
2 So take, let's say, a hundred days. Well, theoretically, of efficiency, it's only a third of
3 that that we were being efficient in the field. If we've interviewed 50 witnesses, only
4 a third now in 2020 could be interviewed or only a third in 2021. That's the reality,
5 currently. So again, it's not because we're trying to obtain more time. No. It's
6 because we want to be -- we have an obligation, we have an onus. These cases are
7 very challenging, but that's the reality in which we're currently living.
8 That's also taking into account currently here in the office having team members
9 contract COVID. It's been spreading recently like wildfire. So these people have
10 families, need to quarantine with their children in a home, they cannot work. So that
11 is also the reality that we're facing.
12 I'll leave it at that, your Honours. I don't know if there are more specific questions,
13 but I want to reassure the Chamber on this: It's not new lines of enquiries. It's
14 really wrapping up the essential things. And there are witnesses that we cannot
15 meet, that don't want to meet us, that we've been trying to meet for years. We'll
16 write investigator reports, we'll disclose that to the Defence, stating "we tried, could
17 not" so that the Chamber will also appreciate and wonder: Well, how come this
18 witness was -- or was not interviewed? It's not that we didn't want to, it's just that
19 we -- they didn't want to, they didn't want to cooperate.
20 Thank you, your Honour.

21 PRESIDING JUDGE SAMBA: [10:19:29] Thank you very much, Mr MacDonald.

22 Ms Naouri, please.

23 MS NAOURI: [10:19:39](Interpretation) Thank you, your Honour.

24 We've noted your instructions to the Prosecution with regards to disclosure on
25 a *rolling basis and this instruction is crucial for us because we would also like to

1 remind everyone that during the confirmation *of charges phase there *were late
2 disclosures, Rule 77 items and exculpatory evidence. *More specifically, and
3 the deadline for the Prosecution was 30 August 2021, whereas the Prosecutor
4 disclosed between 20 August and 30 August 2021, *in the 10 days before the deadline,
5 3,578 items of Rule 77 evidence, a total of more than 19,000 pages in the last 10 days
6 before the deadline. And *on the last day, 30 August 2021, *the Prosecution
7 disclosed 2,494 items of evidence, that's 20 per cent of the *total evidentiary items
8 disclosed to the Defence. *So the Prosecution waited to the last moment, despite the
9 requests from the Defence, to disclose Rule 77 materials.

10 But the Prosecution *went further. Because even after 30 August, the Prosecution
11 continued to disclose evidence to the Defence. On 13 September the Prosecutor
12 disclosed *an INCRIM package with 40 items of evidence and *278 pages, and another
13 package containing 56 items and 759 pages. * And on 21 September, less than one
14 month before the confirmation of charges hearing, the Prosecutor disclosed to the
15 Defence a *Rule 77 package containing five items totalling 66 pages, and a package
16 described as 'Other' containing 88 items totalling 432 pages. * At the trial stage, such a
17 modus operandi is just not possible, for it causes considerable delays in the
18 preparatory work of the Defence.

19 * Furthermore, when it comes to the submissions of the Prosecution, we note that it
20 has already been indicated that the Prosecution intends to disclose 8,300 pages of
21 evidence under Rule 77.

22 They have to be disclosed under the best time frame and obviously this is the same
23 for *evidence identified among the 40,000 evidentiary items in the database CARII,
24 *composed of 136 items the analysis of which the Prosecutor is indicating to us is
25 under way.

1 * Today, the Prosecution says that they are still meeting witnesses, that there are still
2 requests for cooperation under way. The Defence will need to obtain all these items,
3 whether it is under Rule 77 or as exculpatory evidence. And if the Prosecution
4 finishes new investigations, new interviews with witnesses towards the month of
5 May, it has to analyse this evidence and disclose it to the Defence so that we can
6 analyse it, check its credibility, its authenticity and *cross-check them together with
7 other evidence in the dossier, and we also have to investigate this evidence as well.
8 And if the Defence is going to be submerged at the last minute by evidence which is,
9 by definition, relevant for the Defence because *it is useful for the preparation of
10 the defence, then the Defence will have to ask for additional time.

11 * At the trial stage of proceedings, it is crucial to set a realistic deadline for the
12 Prosecution to disclose both incriminating and exculpatory evidence as well as Rule
13 77 evidence. And we think it's also useful to give the Prosecution the necessary time
14 to finish its work such that the Defence can *streamline and optimise its preparatory
15 work for the trial, which will make it possible to go quicker into trial. That will
16 make it possible to go quicker during the trial itself.

17 * Due to the *large volume, very *large volume of evidence in this case, the Defence
18 considers that the *deadline by which disclosure, or on which the Prosecutor has to
19 have finished its *disclosures be set at at least six months before the start of the trial to
20 make it possible for the Defence to have the necessary time and facilities to carry out a
21 holistic analysis of the evidence and carry out effective investigations.

22 Thank you, your Honour.

23 PRESIDING JUDGE SAMBA: [10:26:01] Thank you, Ms Naouri. It's our
24 understanding that the Prosecution will not be, you know, starting new investigations,
25 as it were.

1 But, Mr MacDonald, do you have an estimate, an estimate as to a number of how
2 many witnesses you are talking about? You spoke about witnesses that you are
3 dealing with before Ms Naouri made her comments. Do you have an estimated
4 number of how many witnesses you are talking about?

5 MR MACDONALD: [10:26:39] In our investigations currently?

6 PRESIDING JUDGE SAMBA: [10:26:43] (Microphone not activated) Yes, please.

7 MR MACDONALD: [10:26:46] All right.

8 There are two things --

9 PRESIDING JUDGE SAMBA: [10:26:52] I am talking about witnesses whom you are
10 still or you will be interviewing.

11 MR MACDONALD: [10:26:56] Yes, yes, okay. We're talking about missions on
12 the -- in the field. We're not talking about trial witnesses yet.

13 PRESIDING JUDGE SAMBA: [10:27:04] We understand that, yes.

14 MR MACDONALD: [10:27:10] So the Chamber -- the question is how many
15 additional -- I -- I -- let's -- let's view it the way -- how many incriminating witnesses
16 are likely to come out of this process and the volume of information that would be
17 disclosed pursuant to our disclosure -- our Statute obligations, Rule 77 and
18 Article 67(2).

19 I can't give you an exact number, but we're not talking about, you know, 50 witnesses
20 or even 25 witnesses. Currently there are witnesses that will be disclosed pursuant
21 to Rule 77 or Article 67(2), obviously, if that was the case. We don't intend to add
22 many incriminating witnesses. Currently I know of one, for sure, if we're able to
23 complete the interview process. And there could be additional ones also, but
24 I cannot give you an exact number saying will it be five, will it be 10. But, we're, you
25 know, looking into that area. Because, again, there are -- people that live in the north,

1 for instance, of the country are very hard to reach. It's difficult for them to come
2 down to the locations of interview. It's -- it's -- so that's -- that's why, yes, maybe
3 a witness that we've been trying to confirm and reengage with for the last year may
4 pop up, so, okay, it's an additional one. So we're -- we're -- and I'll -- I'll switch to
5 French because I think it's -- be it my first language.

6 (Interpretation) So we are very dependent on the events in the field,
7 the developments in the situation in the field, including security developments, which
8 we haven't gone into yet.

9 I'm going to go back into English now.

10 (Speaks English) So this, this -- this is so -- but we're definitely looking at a low
11 number of additional incriminating witnesses and a low number of additional Rule 77
12 witnesses. We're not going to dump information on the Defence on any of
13 the fronts.

14 Would the Chamber appreciate clarifications, if necessary, as to the pre-confirmation
15 disclosure process? Because the characterisation, we don't necessarily agree with
16 the way my colleague presented the way the disclosure took place. So if
17 you are -- because obviously this will inform potentially your decision and calendar
18 that I'm sure you'll be adopting. But we have disclosed on a rolling basis. So if
19 you're willing to accept arguments on this, my colleague Ms von Braun would be
20 very happy to clarify the record on that front. But I leave it to you, your Honours, to
21 decide.

22 PRESIDING JUDGE SAMBA: [10:31:03] Ms von Braun, do you have -- do you want
23 to address us on that, please.

24 MS VON BRAUN: [10:31:12] Thank you, your Honour. If you allow me just two
25 minutes. Taking into account what the Defence has just said respective to our

1 disclosure policy, I would indeed like to make a few submissions.

2 Contrary to how Ms Naouri characterised our approach, the Prosecution has

3 disclosed on a rolling basis, we have made that our policy from the outset since

4 Mr Said's arrest. We have adhered to all deadlines the Pre-Trial Chamber had set for

5 us. And we went beyond, in the sense that we disclosed on a weekly basis all types

6 of classifications. We submitted schedules ahead of time highlighting to the Defence

7 and the Pre-Trial Chamber the types of materials that they could expect to receive in

8 a given time period, keeping everybody informed of, for example, the types of

9 witness materials, digital evidence, document collections and how they would relate

10 to aspects of the case.

11 In our disclosure reporting to the Pre-Trial Chamber, we then always provided

12 annexes where we gave further overview in a thematic way to highlight how certain

13 items relate to our case. This process is something that, yes, it took us a bit more

14 work and more time, but it helped guide through this whole proceedings. And I

15 would like to correct the record on one point particularly. The Prosecution, in a very

16 short time frame, as ordered by the Pre-Trial Chamber, disclosed the vast majority of

17 the incriminating evidence, as well as the aligned Rule 77 and PEXO materials in this

18 case. The Defence has been in possession of this since August.

19 Now, we've disclosed on a rolling basis, weekly basis, 12 -- over 12,000 items. In

20 the end of that time frame, there was a larger bulk because of the very tight deadline

21 set by the Pre-Trial Chamber. But, your Honours, the Prosecution never approached

22 the Pre-Trial Chamber for a postponement of those deadlines, for a -- for giving more

23 lenience. We met those deadlines.

24 Final point I would like to say is, yes, we disclosed after those deadlines, but we made

25 clear in our disclosure notifications if we disclose incriminating evidence now, we are

1 not relying on that at the confirmation of charges hearing. But since it came into our
2 possession after the deadline, we disclose on a rolling basis and as timely as possible,
3 but making clear if we disclose something now, after the confirmation of hearing
4 deadline passed, we're not relying on it. Same goes for Rule 77 obligations and other
5 categories.

6 So we would like to proceed in that manner, and I would like to assure you that we
7 will, on a weekly basis, disclose. We have already internally set those dates, how
8 that would work, with our colleagues who process disclosure, and we will also
9 indicate thematically types of disclosures that we will do.

10 Thank you on that point.

11 PRESIDING JUDGE SAMBA: [10:35:05] Thank you very much.

12 The Prosecution has submitted that the Defence is already in possession of the core
13 evidence in this case and of most of the essential material necessary for their
14 preparation. The Prosecution states at paragraph 28 of its submission that 136,845
15 items in its possession relating to the CARII situation are in the evidence Ringtail
16 database and that all material directly relevant to this case have been reviewed.

17 You also state that 12,382 items have been disclosed. Can you state how many of
18 the 136,845 items that are relevant to this case and how much more items you need to
19 disclose? How much more items do you need to disclose?

20 MR MACDONALD: [10:36:25] Thank you, your Honour.

21 So let me -- let me come back on this and provide additional details since our filing of
22 last Friday.

23 We evaluate that in the next six months -- and I'll come back to that. The six months
24 include disclosure review of everything outstanding, of lifting of redactions, of
25 preparing the disclosures, or lifting or putting redactions, answering filings,

1 coordinating the investigations in the field, attending hearings that the Court may
2 schedule, work on bar table motions, work on Rule 68 motions, in essence, meeting
3 a deadline that would be, if the Chamber -- and without presuming an 8 July last
4 disclosure of everything, including, which I haven't mentioned, a trial brief, a list of
5 evidence, a shrink list of witnesses from the 102 witnesses that we've indicated.
6 During that six-month period from today, or if it's seven, what do we -- what is it that
7 is related to disclosure? And I'm answering now the question specifically.
8 Let's start with witness evidence. Beyond the new witnesses that may come in that
9 will be very low, in the 136,000, and beyond the bulk of the evidence that has been
10 disclosed specifically related to this case, we have identified 172 persons that we've
11 interviewed or met. In the form of a screening for 142 of them, and the remainder of
12 the 172 statements in the form of written or transcripts, for a total of 8,300 pages.
13 Now, again, we expect -- and what does the review entail? A screening is between
14 three and five pages, your Honours. So 142 of these persons that we've met, we have
15 screened. But there are related materials to witnesses, be it that they give a screening
16 or a statement. And what is that? Not only is it the annexes and documents they
17 may provide when we meet them, but it's everything surrounding that.
18 It's the security assessment that is done. It's the protection measures that may have
19 been in place. It's reviewing all the contacts we had to meet the witnesses and
20 schedule the interview to see if there is anything that is material to the preparation of
21 the Defence.

22 PRESIDING JUDGE SAMBA: [10:40:13] Okay, Mr MacDonald, do we already have
23 that in your submission, maybe? If you look at (Overlapping speakers)

24 MR MACDONALD: [10:40:18](Overlapping speakers) Yes, you do. But I want to
25 clarify. the 2,000 page, it's -- it's going to be 2,000 page that we are likely to disclose.

1 PRESIDING JUDGE SAMBA: [10:40:26] Yes. Well, if you can answer the question
2 without repeating what you have already said in your submission, that would be
3 appreciated. Thank you.

4 MR MACDONALD: [10:40:36] You're asking how many witnesses?

5 PRESIDING JUDGE SAMBA: [10:40:39](Microphone not activated) I'm asking how
6 many more items you need to disclose.

7 MR MACDONALD: [10:40:46] That I cannot say specifically because of
8 the documents, and I'll get to the documents. Because we can provide estimates.
9 So what I can say is, for the witnesses, the new information that is not in our filing is
10 2,000 pages will be disclosed.

11 PRESIDING JUDGE SAMBA: [10:41:09] Thank you very much.

12 MR MACDONALD: [10:41:10] Now, there's 25,000 documents. We've indicated
13 40,000 documents in our submissions, the non-witness related material.

14 The 40,000 pages is now -- we've been able, upon further character -- word search and
15 looking at it, to bring it down to 25,000 documents that need to be reviewed until
16 the last disclosure deadline.

17 PRESIDING JUDGE SAMBA: [10:41:42] Okay.

18 MR MACDONALD: [10:41:43] And I cannot tell you how many we will disclosing
19 from them.

20 However, I want to reassure the Chamber. As an example, we're coming across
21 incidents that are in our database that relate to 2018. So even though we have a time
22 frame search and everything, when we're starting to look at those documents, they're
23 outright irrelevant to this case.

24 But out of an abundance of caution, in line with our due diligence obligations, the
25 Prosecution has to review those documents because they are in our possession in this

1 situation. And we need to get through the materials as quickly as we can - we
2 understand that - to be expeditious.

3 So I cannot give you the number of -- of the documents that will come out of that.

4 PRESIDING JUDGE SAMBA: [10:42:37] But can you give an approximate number,
5 at least? Are you in a position to do that? And if not, you can say so also.

6 MR MACDONALD: [10:42:46] What I can say is that we will not be -- we do not
7 expect to be dumping, again, thousands and thousands of documents on the Defence.
8 We're not going to do that.

9 Is it going to be 500 documents? Is it going to be a thousand? I do not know
10 the exact number at this stage.

11 PRESIDING JUDGE SAMBA: [10:43:10] Thank you very much, Mr MacDonald.

12 Excuse me.

13 So it seems that the most important evidence is already in the possession of
14 the Defence. In light of this --

15 Ms Pellet, do you have anything to say?

16 MS PELLET: [10:43:33](Interpretation) Yes. I beg your pardon, your Honour.

17 Now, given the picture that has been painted by the OTP and the Defence, and so as
18 not to drown the victims in an impossible volume of documentation, to use

19 Ms Naouri's expression, for a number of reasons that I will hark back to when you
20 allow me to speak to point J on the agenda and explanations regarding the absence of
21 participation requests from victims, I think that the information that you've just been
22 given about the volume of the evidence in this case are such that the Chamber should
23 appoint a legal representative to represent the interests of victims at this crucial phase
24 of preparations for the trial. And this person would be notified of the public and
25 confidential documents so as to prepare for the trial on behalf of the victims to come.

1 And I will explain why I think that there will be victims who will wish to participate
2 in the trial.

3 This approach was taken by the Pre-Trial Chamber in the earlier stages of this case
4 before confirmation of charges. And without that decision, it would have been
5 impossible to represent the interests of victims.

6 I was appointed on 6 October for confirmation of charges that were held on
7 12 October. And I would appeal to the Chamber to take the necessary measures so
8 that the person representing the interests of the victims may be able to represent them
9 properly and not in a merely symbolic fashion.

10 Thank you, your Honour.

11 PRESIDING JUDGE SAMBA: [10:45:49] Well, all that will be dealt with later. For
12 now, we are discussing disclosure.

13 As I said, it seems that the most important evidence is already in the possession of
14 the Defence. In light of this, could the Defence please elaborate on why it would
15 need at least six months before the date of full disclosure and the start of the trial and
16 how you came to that calculation.

17 Ms Naouri.

18 MS NAOURI: [10:46:48](Interpretation) Thank you, your Honour.

19 To answer your question, the time we need and how we carried out our calculations.
20 First of all, the time that we shall require, we have talked quite a bit about the volume
21 of evidence, which is quite extensive, the items already disclosed and also the items
22 that will be disclosed on the basis of what the OTP has told us, even though there's no
23 clear figure and it is all a bit hazy as to the exact amount.

24 We do realise that, in addition to the 12,000 items that have already been disclosed,
25 additional items stemming from investigations under way, including information

1 from former witnesses who are being re-investigated -- re-interviewed, rather, or
2 RFAs, all of this shall lead to items obtained by the Defence because of the links
3 between Mr Said's case and the case of Mr Yekatom and Mr Ngaïssona. All
4 the items that may come from the analysis of the database, the CARII database,
5 136,000 items, 40,000 of which have already been -- that apparently already need to be
6 analysed before disclosure.

7 * Then we have the information from expert reports, and the 8,300 pages that will be
8 disclosed to us.

9 As we have indicated in our filings, we have to look at what we have already received
10 and what is to come. Disclosures received and disclosures coming up. And we
11 would remind the Chamber that during the confirmation of charges hearings we had
12 to focus on items that the Prosecution had selected for the hearing, because
13 the pretrial judges, given the limited scope of the confirmation of charges hearings,
14 were of the view that it was not necessary for the Defence to go into the details and to
15 analyse items of evidence that had not been chosen.

16 * And similarly I refer you to filing 196. In that same filing, the pretrial judges
17 were of the view that it was not necessary for the Defence to carry out exhaustive
18 investigations because the Defence would have sufficient time to do so during the
19 trial. * So during the confirmation of charges phase the Defence did not have the time
20 to analyse the 192 elements in detail, just the elements that were used for the
21 confirmation of charges hearings. So the Defence was not in a position to carry out
22 exhaustive investigations.

23 And then we also carried out some calculations on the basis of investigations that we
24 have to carry out. At this particular juncture, the situation, the CARII situation has
25 been investigated for eight years now and, as part of Mr Said's case, the Prosecution

1 has been investigating for a number of years. So equality of arms would not be
2 present if the Defence is not in a position to carry out effective investigations and this
3 has not been the case during the confirmation of charges stage of the proceedings.

4 * Thus, the estimates that we provided in our filings are conservative estimates. If we
5 take into account the fact that new items will be disclosed to the Defence, this means
6 that the number of checks to be done, the number of investigations, the number of
7 analyses, the number of items to be authenticated, and so on and so forth, all these
8 numbers will increase exponentially. Therefore, on the basis of the information that
9 we currently have, the Defence calculated as follows, and this is assuming that we
10 obtain additional resources. * I'm making that point because in our filings we have
11 already pointed out that we are a very basic team within the legal aid system, with
12 only four positions. Now that we have some numbers for upcoming disclosures, we
13 can ask for additional resources. So our calculations were based on a team of five
14 people working full-time on the Prosecution's evidence. So, our calculations, I am
15 referring to paragraph 31 of our filing. We began -- well, we said five people
16 full-time. And once we analyse an item of evidence it has to be read and it has to be
17 checked. It has to be corroborated with other items. It has to be investigated.
18 And, quite frankly, we have a very well performing team and we came to
19 the conclusion that we could do six pages per day, including all the various steps.
20 Under those conditions, on the basis of what has already been disclosed, this would
21 allow us to come to the figure of 14 months.

22 * If we add the 8,300 items that the OTP says it will be disclosing to us under Rule 77,
23 that means two additional months of work. So that takes us to 14 plus two, grand
24 total of 16 months. * Knowing that a person who analyses evidence full-time cannot
25 work on other matters. The Prosecution has said that there will be bar table motions,

1 there will be applications to provide witness statements under Rule 68; we will have
2 to investigate. There will -- witness protective measures to discuss, the lifting of
3 redactions to be discussed so that we can do our work and carry out our
4 investigations.

5 So to conclude, provided the time and facilities necessary to the Defence to prepare
6 for the trial is essential, and this is the time. Under the current circumstances, there
7 will be no second chance. * There was no opportunity during confirmation of
8 charges -- * well, the confirmation of charges process was done very quickly and
9 efficiently --- and for that matter, the Prosecution reminded us of that today --- but
10 there won't be a second chance for the Defence to carry out these investigations and to
11 analyse all the evidence, to analyse the 192 documents, the 8,300 pages that will be
12 coming our way, as the OTP has announced today. The 40,000 documents that will be
13 analysed by the OTP, and then some of which will be disclosed to us.

14 The 40,000 documents that will be analysed by the OTP and will then be disclosed to
15 us. The new items from the new investigations under way. Because the truth is the
16 Prosecution is investigating still. They are meeting with witnesses, questioning them,
17 taking statements from them, preparing screening notes to assess their relevance.

18 * All of this will have to be disclosed to the Defence. We will then be free to ask, by
19 way of the protocols, to meet with these witnesses. All that is a part of our work and
20 that will impact our work.

21 There is a period of time that cannot be compressed during which we will have to
22 carry out our various tasks and this period of time has been estimated in a very
23 conservative fashion. We have not considered the exponential increase in work as
24 we receive disclosures from the Prosecution, and we are very much caught up in
25 the -- well, the imprecision of the volume of disclosure. * In that case, if today the

1 Defence were to be deprived of the opportunity to analyse the evidence in a holistic
2 manner, before the beginning of the trial, all the evidence, since the evidence forms a
3 whole... A witness who tells us about an incident, even if this witness is not retained
4 by the Prosecution, he will be of interest to us, the Defence. Perhaps he will discuss
5 the credibility of another witness. Perhaps he will have a different account of a
6 topographical explication, for example. And it is the work of us, the Defence, to
7 cross-check these items, to investigate, to test credibility. Under those circumstances,
8 that is how we will carry out our work and cross-examine witnesses and work
9 effectively.

10 Similarly, if the Defence cannot investigate in depth, how can we have items of
11 evidence to present witnesses with during cross-examination? How can we
12 challenge the credibility of witnesses? How can we challenge the authenticity of
13 items that are put on the case file through witnesses? This is our responsibility as
14 Defence counsel, to analyse the evidence in a holistic manner. 92,000 items, and
15 more to come, at least 10 -- 10,000 pages and more is coming our way. So at least
16 10,000 pages awaiting us. Months of additional worth.

17 So the estimates that we have prepared are conservative ones. We have assumed
18 a small team working full-time, five people working full-time on evidence and they
19 will not be working on investigations or on legal matters. And we haven't even
20 received additional resources. I hope that this will be done very soon.

21 So there you have it, your Honour. I hope that I have shed light on our estimates
22 and on our calculations.

23 PRESIDING JUDGE SAMBA: [10:59:01] Thank you very much, Ms Naouri.

24 It's close to 11 o'clock now. So I think it's the right time for us to take a break for
25 30 minutes.

1 THE COURT USHER: [10:59:14] All rise.

2 (Recess taken at 10.59 a.m.)

3 (Upon resuming in open session at 11.31 a.m.)

4 THE COURT USHER: [11:31:33] All rise.

5 Please be seated.

6 PRESIDING JUDGE SAMBA: [11:32:08] Welcome again to this next session.

7 Continuing, the Chamber notes that the Defence states at paragraphs 60 to 70 of its
8 submissions that it is currently not in a position to give any estimate relating to its
9 disclosure of evidence. In its submission the Defence highlights the difficulties it is
10 facing in investigating in the CAR.

11 Two preliminary remarks. The Chamber notes that in paragraph 29, the Defence
12 submits that it will request additional resources once it has sufficient information on
13 the disclosure by the Prosecution. It is incumbent upon the Defence to make such
14 requests in a timely and diligent manner. Should the Defence have not requested
15 additional information it considers necessary, it should do so as soon as possible.

16 Now I'm looking at paragraphs 17 to 25 of the Defence's submissions where it states
17 that it can only really plan its missions once the decision on the confirmation of
18 the charges is final and after receiving the Prosecution's trial brief. These certainly
19 cannot be conditions for starting investigation into the defence of your client.

20 The Chamber would like to know, has the Defence conducted any mission in
21 the Central African Republic? And have you started planning investigations in
22 the field? Has the Defence submitted any mission requests? Have you considered
23 recruiting a local staff member in order to curtail some of the difficulties discussed in
24 your submissions, such as quarantining?

25 You may request to go into private session, if necessary.

1 Yes, Ms Naouri.

2 MS NAOURI: [11:34:44](Interpretation) Thank you, your Honour. Indeed in order
3 to answer this question and to explain the situation of the Defence, not only would we
4 ask to go into private session, but *ex parte* as well, because the investigative activities
5 carried out in the field or not obviously come under the secret or confidentiality of
6 the work of the Defence and it has nothing to do with the Prosecution which,
7 furthermore, we're talking about investigations which were carried out, the staff,
8 the way in which we work, whether it is to protect members of the team. We have
9 no information about the Prosecution's * investigators of the field. We don't know
10 about their identities. We don't know about how the OTP organises itself. All of
11 that is between parties, it is confidential. And you speak about these different issues
12 and ask us to go -- we would ask to go into private session *ex parte* as well and not in
13 the presence of the Legal Representative of Victims either. Thank you.

14 PRESIDING JUDGE SAMBA: [11:35:51] Well, the Defence would have to file *ex parte*
15 submissions on these questions. Would you do that?

16 MS NAOURI: [11:36:02](Interpretation) Of course, your Honour, we can submit
17 written submissions in order to answer your question. That's no problem.

18 PRESIDING JUDGE SAMBA: [11:36:12] Thank you very much.

19 Would the Prosecution like to respond or say anything? Nothing, because of course
20 they've not said anything.

21 We will now discuss item H in our order setting out this status conference: Motions
22 requiring resolution prior to the commencement of trial.

23 The Prosecution suggests setting a deadline of 45 days prior to the commencement of
24 the trial for filing all motions requiring resolution prior to the commencement of trial.

25 The Defence is not yet in a position to indicate to the Chamber which motions should

1 be dealt with before the start of the trial. It states that it will file any motion it deems
2 useful to ensure Mr Said's right at trial. The Chamber notes that the Defence
3 nonetheless intends to file a request for a site visit before the commencement of trial,
4 but after notification of the Prosecution's trial brief and a review of witnesses'
5 statements or testimonies.

6 The Chamber also notes that the Prosecution and the Legal Representatives are in
7 favour of a site visit.

8 We would first like to hear from the Registry on the feasibility of a site visit and/or
9 the holding of hearings in situ, considering, of course, the security situation.

10 MR MACDONALD: [11:38:10] If you allow me just on this topic, and it's -- there
11 may be issues with this that you may want to address in private session. That's why
12 I'm just standing up. I think there's obviously the general concept of site visit, we
13 can discuss it publicly, that's not the issue, but if we start going down in the more
14 details, I would recommend private session.

15 PRESIDING JUDGE SAMBA: [11:38:33] Can you advise the Chamber when you
16 want to go into private session for any of these -- or any of the comments you want to
17 make. Thank you very much.

18 Yes, the Registry, please. And if you want to go into private session, please say so.

19 MS DAHURON-JACOBY: [11:38:50] Thank you, your Honour, but no, not at this
20 point. Thank you.

21 First of all, the Registry would like to inform the Chamber that either in situ hearings
22 or a judicial site visit requires extensive planning and coordination among
23 the Chamber, the parties and participants and the Registry.

24 So we are not in a position to provide, today, concrete recommendations on
25 the feasibility of either. We first need to conduct a comprehensive assessment and

1 analysis in various aspects. To name some: The applicable legal framework and
2 possible agreement and support from the host country; the security and political
3 situation in the country; logistical arrangements and availability of the required
4 technology; the impact on the safety and security of the witnesses and victims;
5 the impact on the Court's outreach activities; and the budgetary impact.

6 To conduct this comprehensive assessment, maybe more than one reconnaissance
7 mission will be necessary. Of course, the Registry stands ready to conduct such an
8 assessment, if ordered by the Chamber. However, we would like to submit that
9 there are parameters which may be considered before starting an assessment, and I
10 will give a couple of examples, to be brief.

11 So with regards, first, to the in situ hearings, the Registry would indicate as
12 parameters examples: The time and length of the proceeding you would like to
13 conduct in situ; the number of participants that would be in situ; the location;
14 the presence of the accused or not via video link or presence in situ; the languages to
15 be used in the proceedings; and whether there would be a requirement of real-time
16 transcripts while holding the in situ hearings, or not. These are just examples.

17 For the judicial site visit there are also some parameters to be considered beforehand.

18 One of them would be, for instance, the determination of the method of retaining
19 a record of the site visit. Would you require transcripts or filming, for instance?

20 The locations and the timing of the site visit is also very important as it will affect
21 the security arrangements. The permits, maybe, to access certain locations.

22 The logistical and technical support, taking into consideration weather conditions and
23 road conditions. And also with regards to the locations, for the Registry to really
24 select the method, what would also assist is guidance from the Chamber on the points
25 of interest of each location, as well as the evidence linked to the specific sites so that

1 the visits are organised in a way to best meet all the judicial interests.

2 So, as you are aware, your Honours, the political and security situation in the Central
3 African Republic is precarious. This might result in having the feasibility confirmed
4 very shortly before the actual date when either the hearing or the visit would be
5 scheduled. Also the COVID-19 pandemic and the travel restrictions related are to be
6 monitored.

7 So to sum, to sum up, the Registry will of course monitor the situation in the country
8 and perhaps the next step that we would suggest is to submit to the Chamber
9 the complete set of the parameters for the organisation of the in situ hearings and
10 the judicial site visit in writing for your consideration.

11 Once the parameters are determined, the Registry would need, at minimum, two
12 months to conduct its assessment and provide its recommendations.

13 Thank you, your Honours.

14 PRESIDING JUDGE SAMBA: [11:44:51] Thank you very much.

15 Does the Prosecution have anything to add or say in respect of the comments made?

16 MR MACDONALD: [11:45:01] Yes, of course.

17 First of all, we're not recommending in situ hearings, for the reason that, of the two
18 possibilities offered, meaning in situ visit to appreciate the locations of interest to this
19 trial vis-à-vis being a more permanent presence on location to either do opening
20 statements, hear witnesses, or whatnot, we understand that hearings would be much
21 more difficult, also just logistically a location of a courtroom to do that, even though
22 the CPC maybe could accommodate -- the special court, sorry, CPS.

23 So what the Prosecution - and I'll speak only for the Prosecution - what we would
24 recommend is an in situ visit, as we indicate, prior to the start of the presentation of
25 the evidence.

1 And let me clarify why. Because all the parties are on the same footing. It's before
2 the presentation of the Prosecution's case, it's before the presentation of the Defence's
3 case. The Prosecution has the onus of presenting its case. The Chamber obviously
4 is interested by the search for the truth. Having seen the locations, you're able to
5 knowingly ask questions based on your experience in the field, be it *de visu* seeing
6 locations of interest and appreciate the cultural aspects of this case that are also quite
7 important because of the economic situation in which the crimes in the country in
8 which they've been committed.

9 I'll leave it at that here because if we were to discuss further, I would have to go into
10 private session, I would recommend.

11 But the point is, of a site visit, is for the judges to appreciate firsthand the sites
12 referred to by the witnesses, what they look like. Of course, it's based on security
13 and COVID situation. It can be done later, but I think that it's always better to see
14 the sites beforehand, because now we know what we're talking about clearly because
15 we've seen it with our own eyes.

16 We can do 360, and we will have 360 presentations of certain locations. But having
17 done a site visit, there's nothing like seeing it firsthand.

18 Thank you.

19 PRESIDING JUDGE SAMBA: [11:48:21] Thank you, Mr MacDonald.

20 Ms Naouri.

21 MS NAOURI: [11:48:27](Interpretation) Thank you, your Honour. Just a few
22 remarks firstly on site visits.

23 So, as was said in our written submissions, we are in favour of this. And it's true
24 that the timing before the start of trial seems to be the best, but it's also possible to
25 envisage doing it between the case of the Prosecution and that of the Defence.

1 Now, it's also important for us that this site visit takes place once that we have
2 obtained the pretrial brief of the -- the trial brief of the Prosecutor. And why?
3 * Because this is the fundamental document which will make it possible for us and the
4 parties and the Chamber to see the Prosecution's vision of its case and how the
5 Prosecution will be using the testimony.
6 Indeed, the interest of the site visit is to visit the places that the witnesses speak about.
7 So we, the Defence, we have to have time to analyse this testimony, but we could
8 target the places that are really interesting from our point of view. As the Prosecution
9 would do, they will target the places which are of interest for its point of view. We
10 will go to places which are of interest to us.
11 And we will submit to the Chamber - and this is something we can discuss with
12 Registry - the feasibility of visiting certain, if not all, of these places. But what is
13 fundamental for us is that it takes place * at least some weeks after we have obtained
14 the trial brief such that we can firstly analyse the trial brief and thereafter indicate to
15 the Chamber and to the Registry the places which are fundamental for the Defence to
16 visit. So that concerns the question of site visits.
17 * Obviously, this is all the more important since the testimonial evidence is very
18 important in this case. So we have understood from the written submissions that
19 there will be very little documentary evidence presented in this case.
20 Now, with regards to the opening statements in situ, so unlike the Legal
21 Representative for Victims, we're not asking for there to be hearings in the Central
22 African Republic. For us, this really is about holding the opening trial, which is
23 short sessions, a few days by way of maximum, in the Central African Republic.
24 And why? Because this is a very important moment, the start of the trial. This is
25 something that we think should be close to the concerned communities.

1 During the opening speeches the parties and participants will present their vision of
2 the case and what they intend to demonstrate during the proceedings. It is therefore
3 crucial that such speeches are held before the Central Africans. * It is they who are
4 concerned by what will be said during the opening statements. And these speeches
5 are, first of all, addressed to them, before being addressed to the judges, such that
6 each party can display its vision of the history of the country. Each party can
7 summarise its point of view, something that will make it possible for the Central
8 Africans to understand the issues at stake in the case and the guidelines as well.

9 * And furthermore, we would remind everyone of Articles 33 and 62 of the Statute, as
10 well as Rule 100 of the RPE. And we think that it would be useful to note from the
11 very outset that Rule 100, which justifies the holding of hearings outside the seat of
12 the Court, refers to the interest of justice. And we think that the interest of justice
13 consists in making it possible for people who are concerned, and the local populations
14 who are concerned, to appropriate, to own the process itself such that all of
15 the citizens and the collectivity as such are able to participate as a whole.

16 And furthermore, to make it possible to be in agreement with the *raison d'être* of
17 the Court, we think that holding opening speeches in the field will make it possible to
18 contribute to the outreach work of the Court.* Now, with regards to the technical
19 aspects, this is something which we will certainly discuss again with the Registry.

20 However, what we want to do, we want to draw everybody's attention of
21 the participants, the fact that there is the special court in the Central African Republic.
22 So there is infrastructure that could be looked at in order to hold such opening
23 speeches in the CAR. And it's not a trial, hearing witnesses, et cetera, that will be
24 done in this way. It will be one, two, three short sessions which we would envisage.

25 Thank you very much, Madam President.

1 PRESIDING JUDGE SAMBA: [11:54:08] Thank you very much, Ms Naouri.

2 Ms Pellet.

3 MS PELLET: [11:54:16](Interpretation) Thank you, Madam President.

4 I don't have any more indications to give than I gave in my submissions of 21 January,

5 paragraph 46 to 48. Quite simply to say that I would like to raise an issue. And

6 here I join the Prosecution and the Defence on getting close to the affected

7 communities and victims who, in our discussions recently, they have been following

8 the missions of the confirmation hearing and they have all -- it has -- what has been

9 demonstrated is a lack of trust in the International Criminal Court. And that started

10 with the Bemba case and it continued with the confirmation decision, which isn't

11 definitive, but it's really important to make this gesture towards them and to put

12 the Court close to the victims and to the affected communities.

13 Thank you, your Honour.

14 PRESIDING JUDGE SAMBA: [11:55:22] Thank you very much. We take note of

15 your concerns. And we also take note of the Registry's observations in respect of

16 the precarious security situation and the COVID travel restrictions.

17 If we are to come to a decision to do a situ visit, as the parties have recommended, of

18 course we will inform the Registry and in a timely manner.

19 Meanwhile, we'll ask that the Registry monitors the situation and maybe give a report

20 in writing as to the parameters of -- which will be in the country of interest to us.

21 And as time goes on, if we are to decide that we want to go to the site and see

22 firsthand what really happened or where these places are that the parties are talking

23 about, we'll inform you.

24 Thank you very much.

25 I would now like to move on to the issue of victims' application for participation in

1 the trials. The Chamber notes that all 27 victims who were authorised to participate
2 in the pretrial proceedings are reported to have suffered harm as a result of crimes
3 committed at the CEDAD. The decision confirming the charges, however, only
4 confirmed the charges for the crimes connected to the OCRB. This means that
5 the applications of these 27 victims now fall outside of the scope of the case as
6 confirmed by the Pre-Trial Chamber.

7 The Chamber understands that the Registry will be carrying out outreach activities in
8 the next few weeks and months in the CAR. In annex II of its submissions,
9 the Registry estimates that a few hundred applicants could be considered as victims
10 having suffered personal harm as a result of the charges which were confirmed.

11 Can the Registry be more specific on the time frame of its activities? When does it
12 expect to be able to reach potential victims?

13 The Registry, please.

14 MR AMBACH: [11:58:08] Good afternoon, your Honour. Thank you for giving me
15 the floor.

16 Good afternoon, everybody.

17 As to your question for a more specific time frame, the outreach activities are bound
18 to commence. We expect that we will have some immediate feedback within
19 the next weeks.

20 We also expect that potential victims will be contacting the Registry, be that at
21 headquarters or in the field, pursuant to relevant activities on the side of colleagues of
22 the Office of the Prosecutor, as also outlined in our filing. Henceforth, we are
23 considering that we will be receiving contacts from victims within the next weeks,
24 which will then lead to further sessions that we hold with these victims in order to
25 properly appraise them of the exact ramifications of their potential participatory

1 rights before the ICC, which then may lead to a hands-on approach of filing
2 the relevant victim applications. So we're talking about a process that will be
3 commencing in the next weeks and yielding results on a rolling basis within, I would
4 say, a month or two.

5 Henceforth, I would expect that this is rather imminent. Yet, I have to also caution
6 that we are all hostage to the situation in the field, as already repeatedly referred to.
7 That means that obviously I speak under the condition of COVID and the general
8 situation in the field allowing for the relevant contacts to happen and relevant
9 information to be gathered by the Registry.

10 Thank you, your Honour.

11 PRESIDING JUDGE SAMBA: [12:00:19] Thank you very much.

12 At paragraph 15 of annex II also -- the Registry also estimates that, and I quote,
13 "a number of potential new applicants may realistically be reached during the first
14 semester of 2022 yielding a number of applications comparable to what was received
15 at the pretrial stage."

16 Is it correct to say that between 40 and 50 potential new applicants may realistically
17 be reached during the first semester of this year?

18 And when can -- just a moment. When can the Chamber expect to receive the first
19 applications from this group?

20 MR AMBACH: [12:01:13] Thank you, your Honour.

21 Yes, indeed, your assumption is correct. That is what we foresee at present. And I
22 would hope that we would be able to provide to the Chamber the first information of
23 that kind, say in two months' time from here.

24 Thank you, your Honour.

25 PRESIDING JUDGE SAMBA: [12:01:40] Thank you very much.

1 The Chamber notes that the Legal Representative for the Victims and the Registry
2 agree that the A-B-C Approach should continue to apply at the trial stage.

3 Would the Prosecution or Defence like to make a submission on this matter?

4 Prosecution? Defence?

5 He said no. So Defence.

6 MS NAOURI: [12:02:12](Interpretation) Thank you, your Honour.

7 * First of all, to answer your question about the system for assessing participation
8 applications, the Chamber -- rather, the Defence would like to remind the Chamber
9 that the Appeals Chamber did make a decision on this matter.

10 In * its decision of 14 September 2021, * the Appeals Chamber concluded that if
11 the A-B-C Approach adopted by the Pre-Trial Chamber could in principle be an
12 adequate method for assessing participation applications, it did specify that all
13 the same, and I quote, I'm quoting from decision 172, paragraph 5-- correction:
14 Decision 171, paragraph 5: "When it is anticipated the number of applications remains
15 low, the interest of the suspect or the accused person to receive copies of these
16 applications and to respond to them could be higher than the benefits resulting from
17 the implementation of the A-B-C system. In such a case, the security and well-being
18 of victims could be better preserved by applying the necessary redactions to
19 the participation applications from the victims before they are transmitted to
20 the parties." End of quote.

21 So indeed in this case it should be noted that the number of victims has always been
22 higher. You just mentioned --

23 THE INTERPRETER: [12:04:46] Correction, correction by counsel: That the number
24 of victims was not very high, *peut élever* in French.

25 MS NAOURI: [12:04:58](Interpretation) Forty or 50 applications. And, ultimately,

1 27 victims allowed to participate during confirmation of charges. And at this point
2 there are no further victims -- there are no victims, actually.

3 Consequently, it would be quite feasible that on a rolling basis in this case
4 the applications for participation could be disclosed to the participants, redacted if
5 necessary, without having any impact on the speed of the proceedings. Since
6 the representatives of the Registry, VPRS in particular, will have the time to process
7 the new applications on an ongoing basis and to redact them.

8 Furthermore, today the representative from the Registry has explained to us that
9 the applications will be checked on a rolling basis. Thus, this work on an ongoing
10 basis will allow us to have the -- for the applications to be given to the parties in
11 agreement with the decision from the Appeals Chamber.

12 So that is the point we wish to raise about participation of victims and the system to
13 be put in place.

14 Now, once again regarding participation of victims in response to the submissions
15 from the Legal Representative of Victims, both the written filings and oral pleadings,
16 we would like to make some remarks. There are no further victims -- no victims
17 anymore in these proceedings, so we really have to wonder about the framework of
18 participation and the involvement of the OPCV as Legal Representative of Victims
19 this being the case. * It is possible to consider the participation of the OPCV under
20 Regulation 81(4)(b) of the Regulations of the Court, or under 81(4)(c).

21 PRESIDING JUDGE SAMBA: [12:08:02] Ms Naouri, I think you are giving answers
22 to what was not my question. I wanted you to address us, actually, in respect of the
23 A-B-C Approach, which I think you have done. There will be an oral decision
24 coming up in respect of which procedure will follow. So maybe, you know, we can
25 cut it short at that point and address other issues. I've -- we've taken note of your

1 points is in respect of the A-B-C Approach.

2 MS NAOURI: [12:08:49](Interpretation) Thank you, your Honour. Duly noted

3 when it comes to the A-B-C Approach. So I understand that later on in this hearing

4 we will have an opportunity to respond to the written submissions from the LRV.

5 So we will respond later to new points that she fleshed out in her submissions today,

6 because when it comes to the victims we are talking a new point that was raised

7 because of this information that we have received from the LRV and from

8 the Registry report, the information that the LRV shared somewhat earlier this

9 morning with us.

10 PRESIDING JUDGE SAMBA: [12:09:30] Thank you very much, Ms Naouri.

11 The Chamber will rule on the approach to follow in due course, as I said.

12 Now I am going to give an oral ruling on legal representation for applicants.

13 The Chamber notes that on 9 July 2021, the Pre-Trial Chamber II appointed the OPCV

14 to represent the collective interest of applicant victims on a temporary and

15 provisional basis.

16 The Chamber understands that this mandate lapsed when the applications of

17 the victims represented by the OPCV no longer fell within the scope of the case after

18 the delivery of the decision confirming the charges.

19 However, in light of the developments mentioned above, the Chamber deems it

20 beneficial to ensure the continuity of the legal representation of prospective

21 applicants and hereby appoints the OPCV to represent the collective interests of

22 future applicants in these proceedings. This mandate will remain in place until one

23 or more common legal representatives is appointed for the trial proceedings.

24 This concludes the oral decision on the legal representation of applicants.

25 Now, the Registry also proposes a periodic review of the Legal Representation

1 Scheme. At paragraph 26 of annex II, the Registry proposes to assess on
2 a continuous basis whether any adjustments may be advisable for the present phase
3 of proceedings and report to the Chamber as appropriate.

4 Now, first, the Chamber would like to know how this would work in practice.

5 Would this be a review of the quality of legal work from the CLRV or a review of
6 the relationship between the counsel representing the victims and their clients?

7 The Registry, please. How often would the Registry provide such a review? What
8 would be the suggested consequence of a negative review by the Registry?

9 Can we hear submissions from the Registry, please.

10 MR AMBACH: [12:12:27] Thank you very much, your Honour.

11 I think first and foremost what needs to be underlined is the fact that there is
12 a client/counsel privilege between the legal representative and the victims allowed to
13 participate, pending the Chamber's ruling as to who that legal representative is and
14 the participatory status.

15 The review that the Registry has been putting forward is more one of an
16 administrative nature and more one that is guided to assist, in particular, that
17 relationship between the legal representative and clients in the field, in particular
18 where the Registry has recourse to a structure in the field. That would be
19 the country office in this case. We do have staff there that are, as per their general
20 mandate of interaction with victims, are in touch with the victim communities, as
21 such, and would therefore be also in a position to provide general assistance as to
22 the best functioning of the relationship should there be any issues occurring.

23 Obviously, this would also be an alleyway of any problems perceived by either
24 the legal representative or clients to be voiced to the Chamber through the neutral
25 Registry. As to the periodicity, I am in your hands. I would assume that a half

1 yearly report would serve the purpose.

2 In terms of suggestions what to -- what action to take in case any negative findings
3 were to be reported, I wouldn't want to hazard too far into this scenario because I
4 think the first thing that would have to happen is a more inclusive hearing of all
5 relevant parts involved and an assessment of the Chamber as to the appropriateness
6 of the scheme as it has been envisaged.

7 However, I wouldn't want to venture now too far into the details of this because it is
8 too far in the future. We are obviously happy to devise something and submit any
9 suggestion to the Chamber in writing, obviously in consultation with everybody
10 potentially involved. Thank you, your Honour.

11 PRESIDING JUDGE SAMBA: [12:15:19] Thank you very much for your answer.

12 We would now like to hear from Ms Pellet, the legal representative. Victims of ...

13 MS PELLET: [12:15:35](Interpretation) Thank you, your Honour.

14 I have made my comments and I have taken note of the oral decision from
15 the Chamber regarding the legal recognition of the applicants and I thank you.

16 I understand from the decision I will be in a position to represent the collective
17 interests of future victims who may want to take part in the proceedings. I

18 understand that this will have consequences on the notification of the necessary
19 documents for such representation. And I stress this point because the Registry,

20 the report regarding the direct interest of victims was only a public version, which
21 was redacted, and I believe things will be normalised and I am satisfied that I will be
22 in a position to carry out my mandate.

23 As for the comments that were just made by the Registry concerning the possibility of
24 monitoring the quality of the legal representation, they can -- I note that so far before
25 this Court only the Legal Representative of Victims belonging to the OPCV have been

1 assessed, including this particular case.

2 Without getting into the details, I do think that the Chamber should be
3 aware -- I don't know if the Chamber has been made aware of the confidential version
4 of the developments regarding legal representation that were under way during
5 the preliminary phase and could also have an impact on an evaluation of the current
6 legal representation. And I do thank you, your Honour.

7 PRESIDING JUDGE SAMBA: [12:17:46] Thank you very much, Ms Pellet.

8 Does the Prosecution have any comment to make in respect of this matter?

9 MR MACDONALD: [12:17:56] Just to say - sorry - that earlier I didn't mean to be
10 disrespectful when I stayed seated and nodded to say no. I have no comments,
11 your Honour.

12 PRESIDING JUDGE SAMBA: [12:18:09] Thank you very much, Mr MacDonald.
13 Ms Naouri, please.

14 MS NAOURI: [12:18:15](Interpretation) Thank you, your Honour.

15 This is an opportunity to reiterate the few remarks that I wanted to make. We quite
16 agree with the review suggested by the Registry on this matter because we think it is
17 crucial to -- to act very carefully when it comes to authorised interventions from
18 the OPCV and to ensure that these interventions do not infringe upon the leeway of
19 Legal Representatives who may be appointed in the future.

20 It is important for the staff from the OPCV do not impact the strategies of Legal
21 Representatives in the future who may be representing victims -- possible victims in
22 the future, the views and re-occupations based on discussions with their clients.

23 It is particularly important in the case at hand to be prudent, careful, because
24 the outcome of the consultations with -- between the Registry and potential victims
25 before the confirmation of charges, they were -- did not express any particular will to

1 be represented by the OPCV.

2 * On the contrary, according to the representatives of the Registry, the people
3 consulted expressed a preference for a local lawyer with knowledge of local culture
4 and the specific situation in the Central African Republic, one who speaks Sango. I
5 am referring to filing 80, annex II, paragraph 33 and 38, filing 80 (Overlapping speakers)

6 PRESIDING JUDGE SAMBA: [12:20:29] Sorry, Ms Naouri.

7 MR MACDONALD: [12:20:29] I just note the public nature of our debates at the
8 moment.

9 MS NAOURI: [12:20:35](Interpretation) It is public. This is a public filing. I made
10 sure of that point. It has been redacted. It's quite public and the paragraphs I'm
11 referring to are * paragraphs 33 and 38 of the redacted version of filing 80.

12 Under these conditions --

13 PRESIDING JUDGE SAMBA: [12:21:03] Mr MacDonald.

14 MS PELLET: [12:21:07](Interpretation) I beg your pardon, this --

15 PRESIDING JUDGE SAMBA: [12:21:15] Sorry, Ms Pellet, just a moment.

16 MS PELLET: [12:21:16](Interpretation) Mr MacDonald's remarks had to do with my
17 gestures, and I do apologise, but I think that such discussions, if we were going to go
18 into the heart of the matter -- I beg your pardon, I was saying that I apologise.

19 Mr MacDonald's intervention was in response to my gestures from my place here in
20 the courtroom. Now I do think if we were to go further with such discussions, we
21 should do that in private session so that everyone can express their views freely on
22 this important issue.

23 PRESIDING JUDGE SAMBA: [12:22:06] Ms Naouri, sorry.

24 But Ms Naouri just said that what she is now discussing has nothing to do with
25 something that we should go into private session -- session for, because it's all -- you

1 know, they are public documents. That's why I called on the -- that's why I called on
2 the Prosecutor, Mr MacDonald, to confirm that.

3 MR MACDONALD: [12:22:33] Yes. The topic is public and I understand
4 the references are, but I agree with my colleague that there are issues in relation to
5 that that should maybe better be discussed privately, in private session. That's all
6 I am saying. But, yes, the fact that initially maybe witnesses were being represented
7 by a local lawyer, yes, maybe that be public, I need to go back to *écriture* number 80,
8 but if it's their own writing, it's they choose to publicise it. But the point is, is that
9 the legal representation, the A list, B list, C list, who was representing who for
10 the CEDAD victims that are not OCRB victims, by the way, all of that was
11 confidential.

12 PRESIDING JUDGE SAMBA: [12:23:29] Well, we don't have to discuss the entire
13 subject any further, do we, Ms Naouri?

14 MS NAOURI: [12:23:37](Interpretation) Just to be entirely clear, we're not talking at
15 all about the issues just mentioned. We are talking about a public filing and I had
16 one sentence to conclude. We said and we drew the Chamber's attention to this
17 point and we are very happy with the work done by the Registry on this issue. And
18 I thank you, your Honour.

19 PRESIDING JUDGE SAMBA: [12:24:04] Thank you very much, Ms Naouri.

20 MS PELLET: [12:24:11](Interpretation) I beg your pardon. One point that was just
21 raised by the Defence to the effect that the OTP -- that the office should not infringe
22 upon the role of a possible legal representative who may be appointed to the future.
23 I would point out that when representing the collective interests of the victims, we
24 represent their interests and, normally speaking, it would be -- this would be
25 completely in accordance with what will be done by a legal representative in

1 the future and we have confined ourselves to the role that has been set. We are
2 merely representing the interests of the victims in the stage leading up, that is during
3 the preparations leading towards the actual trial.

4 PRESIDING JUDGE SAMBA: [12:25:15] Thank you very much, Ms Pellet. We need
5 to finish this.

6 Before we discuss the topics filed under "other items" of the agenda, we would love to
7 ask the parties and participants whether or not you want to make any additional
8 submissions on the subject of anticipated evidence. Anticipated evidence.

9 Mr MacDonald for the Prosecution.

10 MR MACDONALD: [12:25:49] If you allow me maybe one minute to confer with my
11 colleagues?

12 PRESIDING JUDGE SAMBA: [12:25:55] Go ahead, please.

13 (Counsel confer)

14 MR MACDONALD: [12:26:14] Thank you, your Honour. No, we don't have
15 anything further to add on this topic. We're always at -- remain available to answer
16 questions that the Chamber may have on the subject. But outright, beyond what was
17 already in the order, no.

18 PRESIDING JUDGE SAMBA: [12:26:30] Thank you very much, Mr MacDonald.
19 Ms Naouri.

20 MS NAOURI: [12:26:37](Interpretation) Thank you, your Honour.

21 Two issues that we'd like to touch upon quickly to respond to new information that
22 we learned in written submissions from the Prosecution.

23 The first point has to do with the use that the Prosecution plans to make of witness
24 statements under Rule 68 of the Rules of Procedure and Evidence.

25 So the Defence will respond on a case-by-case basis, of course, to all applications or

1 requests, rather, from the Prosecution. However, in light of the Prosecutions
2 submissions in which they state they wish to make ample use of Rule 68, it is crucial
3 for the Defence to address a number of points. * First of all, we would remind the
4 Court that article 69, paragraph 2, of the Rome Statute sets out that witnesses shall be
5 heard in person at a hearing, subject to the measures set forth in article 68. This article
6 is quite clear about the principle of the oral nature of the proceedings. This is
7 a guiding principle of the procedures -- proceedings before the ICC. In a decision
8 from 3 May 21 in the Bemba case, the Appeals Chamber specified, and I quote
9 paragraph 77 -- 76, rather, of filing 1386 in the Bemba case, paragraph 76, filing 1386:
10 The first sentence of this article means that witnesses must appear in person and give
11 testimony before the Trial Chamber. (Overlapping speakers)

12 PRESIDING JUDGE SAMBA: [12:28:52] Ms Naouri.

13 MS NAOURI: [12:28:56] (Overlapping speakers)

14 THE INTERPRETER: [12:28:56] Overlapping.

15 PRESIDING JUDGE SAMBA: [12:28:58] Sorry. The Rule 68 application is there for
16 a purpose. I'm sure if the Prosecution files for Rule 68 -- if they file a Rule 68
17 application, you will be in a position to respond. And what you now want to tell
18 the Chamber is basically whatever you would have to -- whatever would have to be
19 a response based on each application that the Prosecution would have to make. So
20 may I ask whether or not you have, you know, any other thing that you want to
21 discussion under anticipated evidence before we move on. Because really when
22 Rule 68 applications are made, if at all they are made, you will have a chance to
23 response -- to respond, sorry.

24 MS NAOURI: [12:29:38](Interpretation) Thank you, your Honour. I will respond to
25 the submission made by the Prosecutor, because of course there will be requests on a

1 case-by-case basis, but I'm talking about the possibility of the Chamber giving
2 instructions to the Prosecution without waiting for such requests.
3 I would like to draw the Chamber's attention to the fact that the Prosecution has
4 already said that only 30 of the 102 witnesses will be called to give testimony
5 viva voce, so 29 per cent of the witnesses will be viva voce witnesses. * And of the 72
6 remaining witnesses, 16 will have their prior statements admitted under 68(3). So
7 only 16 will be cross-examined by the Defence. Fifty-six other remaining witnesses
8 will have their statements admitted under 68(2)(b) or 68(2)(c), which means that these
9 witnesses will not be heard. They will not be called to give testimony and their
10 previous statements (Overlapping speakers)

11 PRESIDING JUDGE SAMBA: [12:30:59](Overlapping speakers) Ms Naouri, again I
12 will say that those would be -- I'll say that those would be applications made by
13 the Prosecution, if at all they do that. It does not mean that if they make that
14 application, it is incumbent on the Chamber to accept whatever application they
15 would make. We would have to look at what your reactions would be to those
16 applications for Rule 68 and come to a decision. And I'm sure that that you can
17 leave in the capable hands of the Chamber.

18 So let's move on, please. Thank you.

19 MS NAOURI: [12:31:36](Interpretation) Thank you, your Honour.

20 This concludes our remarks. We wanted to ask for a verification of 68 and see if we
21 can -- we can discuss it up stream before the Prosecution make any requests, and we
22 take note of the position of the Chamber. Thank you.

23 PRESIDING JUDGE SAMBA: [12:31:59] Thank you very much.

24 Any comment by Ms Pellet for the victims?

25 MS PELLET: [12:32:08](Interpretation) Thank you, your Honour. I have no further

1 comments for the moment.

2 PRESIDING JUDGE SAMBA: [12:32:13] Thank you very much. Now we are
3 moving on to the topic filed under "other items" of the agenda.

4 First, on the issue of protocols to be adopted at trial, the Chamber will issue a decision
5 on each protocol in due course. So the protocols that were in force at the pretrial
6 stage remain applicable until a new decision is taken by the Chamber.

7 Second, the Chamber has taken good note of the Prosecution's suggestion to appoint
8 an alternate judge.

9 *We have now gone through the items on the agenda that we wanted to discuss today.
10 Do the parties or participants wish to raise anything which has not been discussed in
11 this hearing and which, in their view, might influence the start date of trial?

12 I'll start -- I'll start with the Prosecution.

13 MR MACDONALD: [12:33:17] Thank you, your Honour.

14 It could have an impact on the start date, but it's -- it's an invitation that I want to put
15 on record.

16 Like you've mentioned, seeking agreements between the parties, having discussions
17 between the parties to try to enhance the expeditiousness of the proceedings, we
18 invite the Defence, if they so wish, but we understand they're not obliged to, in order
19 to help them, they can help us by providing search words for our database in order to
20 fast track our evidence review of the other material that we don't expect to be related
21 to this case or, if so, very much remotely.

22 So, therefore, we invite the Defence to provide us with search words, to send them to
23 us, and we will be happy to -- to search our database.

24 Thank you, your Honour.

25 We do not have any other matters at this stage. Thank you.

1 PRESIDING JUDGE SAMBA: [12:34:37] Thank you very much, Mr MacDonald.
2 Yes, Ms Naouri, do you have any submission to make or comments to make?
3 MS NAOURI: [12:34:47](Interpretation) Thank you very much, your Honour.
4 So we're not at all opposed to collaborating with the Prosecution on this subject.
5 Obviously, we have to see what type of keywords we are -- or search words we are
6 giving without revealing our strategy, and we will send the invitation made to the
7 Prosecutor also to share their search words or keywords. Identifying such words
8 that they are already using will make it possible to see what other keywords could be
9 added thereto. So with a view to collegiality, receiving search words or keywords
10 which they use would be very useful.
11 With regards to other items, nothing else to add.
12 PRESIDING JUDGE SAMBA: [12:35:37] Ms Pellet, for the victims, please. Thank
13 you.
14 MS PELLET: [12:35:41](Interpretation) I'm sorry. Thank you, your Honour.
15 No further commentary to make. Thank you.
16 PRESIDING JUDGE SAMBA: [12:35:46] Well, I thank you very much.
17 The Chamber will announce the starting date of trial in due course, as I said, and also
18 issue a decision on the conduct of proceedings. We will now adjourn the matter.
19 It's going to 1 o'clock now, and we should be going away for our lunch break at 1, but
20 we suggest that we take our lunch break now and come at 2 o'clock and hear
21 the submissions on detention review.
22 Thank you very much. We have now finished the status conference part for today.
23 So when we come back we shall hear the other part for which we are here.
24 But maybe before I go, I'd ask my colleagues, Judge Ugalde, if you have anything to
25 say?

1 Judge Socorro Flores?

2 Okay. So thank you very much. We'll resume hearings at 2 o'clock, please. Thank
3 you.

4 THE COURT USHER: [12:36:56] All rise.

5 (Recess taken at 12.36 p.m.)

6 (Upon resuming in open session at 2.01 p.m.)

7 THE COURT USHER: [14:01:00] All rise.

8 Please be seated.

9 PRESIDING JUDGE SAMBA: [14:01:32] Good afternoon and welcome again.

10 According to the record, Mr Said Abdel Kani has before now not exercised his right to
11 apply for interim release.

12 This means that no chamber has so far assessed whether the conditions set forth in
13 Article 55(1) of the Statute are still met.

14 And since the Defence has now formally asked for Mr Said Kani to be released
15 pending trial, the burden falls upon the Prosecution to show that the criteria of
16 Article 58(1) remain fulfilled.

17 And given that Pre-Trial Chamber II recently confirmed some charges against
18 Mr Said Kani, the Chamber considers that the requirement of Article 58(1)(a),
19 reasonable grounds to believe that Mr Said Abdel Kani has committed at least one
20 crime within the jurisdiction of the Court, is fulfilled. The Defence does not contest
21 that.

22 The focus of discussion today should thus be on the continued necessity to remand
23 Mr Said Abdel Kani in detention. This necessity can be shown on three alternative
24 grounds:

25 There is a risk that Mr Abdel Said Kani would not appear for his trial if released.

1 That is one.

2 Two, there is a risk that Mr Said Abdel Kani could obstruct or endanger
3 the investigation, or the current court proceedings. That is two.

4 Thirdly, there is a risk that Mr Said Abdel Kani could commit further crimes within
5 the jurisdiction of the Court.

6 If the Chamber is satisfied that one or more of these risks have been established, it
7 must then consider whether there are measures, short of physical detention, that
8 could sufficiently mitigate them. Rule 119(1) of the Rules provides a non-exhaustive
9 list of conditions the Chamber could impose.

10 However, the Court can only release someone with conditions if there is a State that is
11 willing to receive the person and to enforce the conditions imposed. Until such
12 a State can be found, the accused will remain in detention.

13 The Chamber is also aware that the Pre-Trial Chamber imposed certain restrictions on
14 Mr Said Abdel Kani in terms of his contact with the outside world.

15 If the Chamber were to decide to extend Mr Said Abdel Kani's detention pending trial,
16 it must review these restrictions.

17 The parties are therefore asked to address this matter in their submissions as well.

18 The Chamber understands that the Defence has expressed the wish for these
19 submissions to be made in private session. The Chamber approves of this request
20 and therefore instructs the parties to ask that we go into private session before
21 addressing the issue.

22 But before turning over the floor to the parties, the Chamber would first like to hear
23 from Mr Said Abdel Kani himself.

24 Good afternoon, Mr Said Abdel Kani. Can you hear me?

1 MR SAID: [14:06:11](Interpretation) Yes.

2 THE INTERPRETER: [14:06:21] Or, correction, the -- yes, I can hear you fine.

3 MR SAID: [14:06:26](Interpretation) Thank you, your Honour.

4 I am sincere in the undertaking that I took and my arrest and my transfer were not
5 subsequent to a search.

6 PRESIDING JUDGE SAMBA: [14:06:46](Overlapping speakers) Okay. Mr Kani,
7 can we -- can we take it one at a time, please.

8 MR SAID: [14:06:46](Interpretation) I was asked --

9 PRESIDING JUDGE SAMBA: [14:06:55] Okay. I just said good afternoon to you
10 and wanted to know whether or not you can hear me properly.

11 And my understanding is that you can hear me and you do understand what is going
12 on. Correct?

13 MR SAID: [14:07:14](Interpretation) Yes, I can hear you just fine, Madam President.
14 Thank you.

15 PRESIDING JUDGE SAMBA: [14:07:25] Thank you very much.

16 Could you please indicate how you would like to be addressed by the Chamber?

17 We know that your full names are Mahamat Said Abdel Kani. But how would you
18 like us to address or refer to you, sir?

19 MR SAID: [14:07:52](Interpretation) My name is Mahamat Said. I am known by
20 that name.

21 PRESIDING JUDGE SAMBA: [14:08:02] Mahamat Said.

22 So if you wish to address the Chamber on how you are faring in at the detention
23 centre, this would be your opportunity. Can you tell us?

24 MS NAOURI: [14:08:25](Interpretation) Your Honour.

25 MR SAID: [14:08:27](Overlapping speakers)

1 MS NAOURI: [14:08:30](Interpretation) These questions that have to do with his
2 detention should be in closed session. These are very confidential matters.

3 PRESIDING JUDGE SAMBA: [14:08:44] Thank you very much, Ms Naouri.
4 Could the court officer kindly get us into closed session.

5 (Private session at 2.09 p.m.)

6 THE COURT OFFICER: [14:09:07] We are in private session, Madam President.

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20 (Open session at 2.24 p.m.)

21 THE COURT OFFICER: [14:24:12] We are in open session, Madam President.

22 PRESIDING JUDGE SAMBA: Thank you very much.

23 Carry on, Madam Prosecutor.

24 MS VON BRAUN: [14:24:17] As these documentaries and also the cited report that I

25 just referred to demonstrate, Mr Said before his arrest was not only a member of this

1 very strong influential armed group, this group controls the diamond trade in that
2 area of CAR in and around Bria, the place where he originated from before his arrest.
3 This profession, this line of work gives him access to a network and funds to help him
4 abscond. Mr Said's network extends beyond the FPRC in CAR. It also includes
5 now the network and leadership of the CPC as these groups have joined forces. This
6 involves leaders that have ties to neighbouring countries, including to Europe,
7 namely France.

8 And these ties, your Honours, are not merely speculative. The CPC has publicly
9 criticised Mr Said's transfer to the Court. I refer you to CAR-OTP-2127-7746.

10 And this, your Honours, is not a *critique banale*, as alleged by the Defence in their
11 submissions. The Single Judge in the filing ICC-01/14-01/21-116-Conf paragraph 30,
12 and I will not cite it in full here, has acknowledged the connection between the CPC
13 and Mr Said and this support on the basis of this statement.

14 It is reasonable to assume that should Mr Said be released, the CPC will take
15 measures to prevent Mr Said from returning to The Hague. The Defence has not
16 proposed any viable assurances that Mr Said would be reachable to the Court once
17 released. There is no proposal, no plan.

18 It has to be assumed also from these submissions that Mr Said would return to
19 northern CAR, namely Bria, where the government lacks control, an area far away
20 from Bangui, difficult to reach, not only for the Court but also for the government of
21 CAR. He could be back in his former network and continue with the illicit
22 trafficking activities of the armed group that he was involved with.

23 Your Honours, the Prosecution submits that in addition to the prerequisites of a flight
24 risk, the prerequisites of the risk of obstructing the proceedings is also met in this case.
25 Mr Said has the ability to obstruct the proceedings should he be released. He knows

1 and understands now the scope of the Prosecution's case. The evidence has been
2 completely disclosed where it concerns the OCRB.

3 We have not withheld witness identities en masse in this case. The opposite is
4 the truth -- is true. Only a small minority of crucial witnesses have been withheld.
5 The vast majority is known to Mr Said.

6 Mr Said seems to request release to CAR, where these witnesses and their families
7 reside. His release would send a chilling effect, would scare Prosecution witnesses,
8 and risk to endanger their future cooperation in these proceedings.

9 Contrary to the Defence submissions, the Prosecution's risk analysis here is also not
10 merely speculative. Mr Said's network of armed groups extends beyond the CAR
11 and could be mobilised to help him interfere with the proceedings.

12 As set out before, he has been the member of armed groups right before and up until
13 his arrest.

14 The FPRC is led by Nouredine Adam and Abdoulaye Hissène. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted), the joinder of the FPRC to the CPC extends the support network, and it is
18 this armed group, the CPC, which is currently still active, and not only in the north
19 of CAR, but also engaged in persistent armed hostilities across the CAR.

20 And as I said before, the CPC and Mr Said's link is not merely speculative, because
21 this group came out in direct support of Mr Said, criticising his transfer.

22 The Prosecution has reported security incidents in the past. I will not detail these
23 here in open session, but we will make further submissions on these in the future, as
24 indicated. However, also the Pre-Trial Chamber had noted these with concern.

25 Mr Said has not detached himself from the FPRC or the CPC. There is no declaration

1 in this regard at all. It has to be assumed that he intends to return to his hometown
2 in Bria to his past position and network.

3 Mr Said has a track record of being part of armed groups for the past 12 years leading
4 up to his arrest. He joined a former faction of the Seleka that joined the Seleka later
5 in 2008. He had an active role in the Seleka forces during the time which he
6 allegedly committed the confirmed charges.

7 After the end of the Seleka regime, he became part of the *Front populaire* -- for
8 the FPRC. And it is also well documented in previous filings that the FPRC has been
9 in ongoing -- active in ongoing violent activities in the past. All the sources are
10 available in eCourt that the Prosecution has cited before and will be submitted to
11 your Honours in written form.

12 Let me briefly address the issue of length of detention. Mr Said has not been detained
13 for an unreasonable period of time. Nor has it been due to an inexcusable delay on
14 part of the Prosecution. In fact, the Prosecution has never requested a delay or
15 a postponement in any way in these proceedings so far. We have met every
16 deadline set by the Pre-Trial Chamber.

17 Mr Said has been in detention a little over a year for very serious crimes. But this
18 length of detention has not been unreasonable. In the case at hand, the confirmed
19 charges are still very severe. The security situation is an ongoing challenge, and we
20 are conducting these proceedings in an ongoing worldwide pandemic.

21 Now, I am aware that this is -- none of this is Mr Said's fault, but it has to be factored
22 in to the decision and the reality of the situation we are working in.

23 I would now turn to the issue of certain restrictions and would request to go into
24 private session again, your Honour.

25 PRESIDING JUDGE SAMBA: [14:33:36] Thank you.

1 Court officer, can we kindly go into private session.

2 (Private session at 2.33 p.m.)

3 THE COURT OFFICER: [14:33:51] We are in private session, Madam President.

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18 (Open session at 2.44 p.m.)
19 PRESIDING JUDGE SAMBA: [14:44:11] Yes, we are in open session now, I think.
20 THE COURT OFFICER: [14:44:17] We are in open session, Madam President.
21 PRESIDING JUDGE SAMBA: [14:44:19] Ms Pellet.
22 MS PELLET: [14:44:21](Interpretation) Thank you, your Honour.
23 I shan't go back to what I said prior to the hearing going into open session, but we
24 agree to the Prosecution submissions and submit that Mr Said's continued detention
25 under Article 60(2) of the Rome Statute is necessary as the conditions of Article 58(1)

1 continue to apply.

2 Furthermore, in the present case the changed circumstances provided for in
3 Article 60(3) of the Statute do not in any way justify Mr Said's release. Accordingly,
4 he must be maintained in detention and the application for interim release filed by
5 the Defence on Tuesday must be rejected.

6 But with a view to being as concise as possible, I shall limit myself to making
7 observations concerning directly the interests of victims. And in this part I will
8 make three observations. First of all, I would like to recall, as I did during
9 the confirmation hearing, that the victims -- and here I would quote what I said at the
10 confirmation hearing, which is still valid. And here I quote that: The victims are
11 terrorised. They live in constant fear of being stopped in the streets of Bangui or of
12 being recognised by their torturers, some of whom still belong to the internal security
13 forces or the Central African armed forces, while others occupy positions, high
14 positions within the Central African administration.

15 The security situation of the majority of the victims is precarious. Therefore,
16 a possible release of Mr Said would risk having a serious prejudicial impact on
17 the victims and contribute to discouraging them from participating in the proceedings
18 of this case. We have already made this point during the hearing this morning.

19 *A fortiori* a possible return of Mr Said to Bangui or to the Central African Republic
20 would negate any possibility for them to be able to come to your Chamber to
21 authorise them to participate in proceedings.

22 Madam President, I would like to make an additional observation in this regard,
23 contrary what seems to be apparent from the Defence submissions on the gravity test
24 in the context of an application for interim release, the fact that at this stage
25 where -- with regard to the decision of confirmation of charges, if it were to become

1 definitive, this does not mean that there are no victims of crimes alleged against
2 Mr Said. In this regard, I would once again refer to the Registry report of 21 January
3 and not only, as the Defence does, to paragraphs 5 and 6, but also to paragraphs 7 to
4 15. And to the provisions made by the Registry in this regard.

5 Finally, where it concerns the detention conditions of Mr Said, they respect
6 the highest standards in the matter. I shan't go into this question in open session,
7 but I would recall that the victims unfortunately cannot say as much. I would also
8 say that numerous families of these same victims have been deprived of their
9 members and they will never be able -- and here I -- to re-establish themselves
10 emotionally or psychologically.

11 By way of conclusion, your Honour, we therefore respectfully ask the Chamber to
12 reject the -- the request for interim release and to order his continued detention in
13 accordance with Article 60 and 58(1) of the Statute.

14 PRESIDING JUDGE SAMBA: [14:49:05] Thank you very much, Ms Pellet.

15 I now turn to the Defence.

16 MS NAOURI: [14:49:19](Interpretation) Thank you, your Honour.

17 PRESIDING JUDGE SAMBA: [14:49:23] Just a moment, Ms -- I'm sorry, Ms Naouri.
18 As I said, you will have an opportunity to address the Prosecution's argument in
19 detail in a written submission. However, if you already wish to formulate an initial
20 response, you are free to do so now. There's no need to start what you have already
21 mentioned -- to state what you have already mentioned in your written submissions
22 of 25 January. But if you want to address the Chamber in respect of anything
23 the Prosecution said or if you have any other submissions in relation to the detention
24 or in respect of what -- of anything that the legal representative for the victims said, I
25 now give you the floor.

1 MS NAOURI: [14:50:25](Interpretation) Thank you, your Honour.

2 We will answer in writing to the submissions, both of the Office of the Prosecutor and
3 of the victims' office as well.

4 We have a small question for the Prosecution, namely if the submissions presented
5 today on the restriction on communications of Mr Said, are those their submissions,
6 and at that time we will answer them today, or if they will have written submissions
7 to reply to? It was very clear to us that they will file written submissions in order to
8 make their applications concerning the interim release or the maintaining in detention,
9 their application that he kept in detention.

10 But now where it concerns the restrictive measures, is that their submissions today, or
11 is it part of their submissions or are they their final submissions, if I may put it that
12 way?

13 PRESIDING JUDGE SAMBA: [14:51:29] Could the Prosecution react, please.

14 MR MACDONALD: [14:51:33] Thank you, your Honour.

15 I just want to make sure I understand the offer that was made by the Chamber at the
16 outset. Because we were under the impression that our oral submissions today
17 would be the final ones, but I understand you're giving us the opportunity to file
18 submissions in writing and you put the emphasis on any evidence that we wanted to
19 rely on. So I'm seeking clarifications. What does the Chamber want? Because to
20 be quite honest I think our submissions are pretty much complete. There may be
21 a few things that we could add potentially, but there's not that much, to be frank.

22 PRESIDING JUDGE SAMBA: [14:52:30] So the Chamber's position is this. If
23 you are satisfied as a Prosecution that what you have said is substantial, that would
24 be fine. But we offer both parties to write written submissions and file them for us
25 for our decision. So that is the Chamber's position. So you can build up on what

1 you have already said if you want to, save if you want to say that what you have said
2 is enough. But if you want to build up on what you have said and put it in writing,
3 both parties, that should be fine.

4 MR MACDONALD: [14:53:16] Quite clear, your Honour. Thank you very much
5 for this.

6 Our submissions are complete, with the following exception, that we would propose
7 sending by email additional sources that we cut out because of this possibility. Or
8 we can do it in the form of a formal submission, filing with CMS number. As you
9 wish. But it would only to be giving ERN numbers and we would copy the normal
10 emails, if that is satisfactory. Either way, we're in your hands.

11 PRESIDING JUDGE SAMBA: [14:53:55] We will do formal submissions, please.

12 MR MACDONALD: [14:53:59] Noted. Thank you.

13 PRESIDING JUDGE SAMBA: [14:54:01] Thank you very much.

14 Ms Naouri, do you have anything to say?

15 MS NAOURI: [14:54:07](Interpretation) So it's very clear with regards to the official
16 submissions. That will make it possible to have access to the sources and we will
17 then reply in writing on interim release. That's clear.

18 However, my question is still pending regarding the subject of the restrictive
19 measures.

20 Now, is the Prosecution also going to file submissions formally? If that is the case
21 then we will stop there for today and we will answer these submissions for
22 maintenance in detention and also with regards to their relaxing of
23 the communications restrictions as well.

24 MR MACDONALD: [14:54:45] I don't understand why the Defence is separating
25 both topics, but yes, we are complete on both topics. These are our submissions for

1 today and they're final.

2 PRESIDING JUDGE SAMBA: [14:54:57] Which -- yes, but which you will put in
3 a -- which you will make -- do in a formal submission; is that our understanding?

4 MR MACDONALD: [14:55:07] No, the contact restrictions, the -- the detention ERN
5 numbers. Contact restrictions, well, we'll -- I think it's pretty obvious that we're
6 making a request for them to be continued based on the submissions that we did
7 today. There is no further submissions on the topic. Consider it as our request.

8 PRESIDING JUDGE SAMBA: [14:55:31] Thank you. Thank you very much.

9 Ms Naouri, so that's the position of the Prosecution in respect of restrictions, contact
10 restrictions.

11 MS NAOURI: [14:55:42](Interpretation) Very well, Madam President. So we're
12 going to make certain remarks with regards to the restrictions. Because we're going
13 to make written submissions as well. This is the opportunity to give written
14 submissions and now there's this issue that's separate.

15 Now, with regards to the Prosecution suggestion that we disclose evidence, of course
16 it's necessary that we have the sources, because currently we do not know at all what
17 factual elements the Prosecution is basing its case on. There's no disclosure, there's
18 no official notification of the items it is basing itself on. And by way of consequence,
19 we shall answer the submissions of the Prosecution once we have these items through
20 the official channels.

21 We will therefore ask that there be a filing with the ERNs as was proposed, and at
22 that time from the moment that we have the evidence, the factual evidence, we shall
23 file our submissions in accordance with 34(b) and in writing. That is our position.

24 PRESIDING JUDGE SAMBA: [14:56:50] Thank you very much.

25 So the Chamber has taken note of the parties' and participants' submissions and, as

1 already indicated, the parties and participants are invited to submit further written
2 submissions in which they can flesh out their specific evidentiary arguments.
3 The Prosecution has until Friday, 4 February, to file its submissions.
4 The Defence and the OPCV may respond by Friday, 11 February.
5 So unless you wish to raise any specific legal arguments, there is no need to restate
6 the law. Focus on your written submissions, please, on the facts and the evidence.
7 If there are no other points and the parties wish -- that the parties wish to raise, this
8 concludes the hearing on detention.
9 The Chamber will take the matter into consideration and issue a decision after it has
10 received your written submissions. Until then, Mr Said will remain in detention and
11 the contact restrictions remain in place.
12 Today's hearing is adjourned.
13 THE COURT USHER: [14:58:29] All rise.
14 (The hearing ends in open session at 2.58 p.m.)