

Ex Parte Status Conference
(Prosecution only)

(Closed Session)

ICC-02/04-01/05

ICC-02/04-01/15-T-5-ENG ET WT 28-01-2015 1/47 SZ PT

Pursuant to Pre-Trial Chamber II's Order ICC-02/04-01/15-238, dated 22-05-2015, this transcript is reclassified as Public.

- 1 International Criminal Court
- 2 Pre-Trial Chamber II - Pre-Trial Courtroom
- 3 Situation: Uganda
- 4 In the case of The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and
- 5 Dominic Ongwen - ICC-02/04-01/05
- 6 Single Judge Ekaterina Trendafilova
- 7 Ex Parte Status Conference (Prosecution only)
- 8 Wednesday, 28 January 2015
- 9 (The ex parte status conference starts in closed session at 2.04 p.m.)
- 10 SINGLE JUDGE TRENDAFILOVA: I greet the team of the Prosecutor, I greet the
- 11 interpreters, I thank you in advance for what you are going to do, and of course the
- 12 team of the Chamber.
- 13 I would like now to ask the court officer to please call the case.
- 14 THE COURT USHER: Thank you, your Honour. We are sitting in the situation in
- 15 Uganda, the case of The Prosecutor versus Joseph Kony, et al.
- 16 Thank you.
- 17 SINGLE JUDGE TRENDAFILOVA: Thank you very much, court officer.
- 18 For the record of course we have to identify the members of the Office of the
- 19 Prosecutor who are with us today and also the members of the team of the Chamber
- 20 that are working on this case.
- 21 MR GUMPERT: My name is Ben Gumpert and I'm the senior trial lawyer in the
- 22 Prosecution of Dominic Ongwen. With me today Mr Pubudu Sachithanadan, and
- 23 he's a trial lawyer; the international cooperation adviser, Mr Kamran Choudhry; and
- 24 the case manager, Mr Douglas Grieve.
- 25 SINGLE JUDGE TRENDAFILOVA: Yes. Thank you so very much.

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1 I have just to recall, you know me. I am the Single Judge designated for this case, the
2 Presiding Judge of Pre-Trial Chamber II. Ekaterina Trendafilova is my name.
3 To my left is the senior legal adviser of the division, Mr Gilbert Bitti; the legal officer,
4 Eleni Chaitidou; the associate legal officer, Niccolo Pons; and Arthur Fallas, the intern
5 to the Chamber.
6 Also we have the representative of the Registrar, the court officer. I know his first
7 name, Uros, but I don't know the surname. So would you reflect your surname in
8 the record.
9 Now, without further ado, I would like that we proceed with this very important
10 status conference that I decided to convene because, as it was highlighted during the
11 initial appearance of Mr Dominic Ongwen, this is the first and oldest case before the
12 ICC and of course no one could expect that there was a standby team and readiness
13 on the part of the Prosecutor to immediately proceed with quite active steps
14 undertaken by the Office of the Prosecutor.
15 And we have to discuss a lot of questions to see where you stand with regard to the
16 evidence that has been used for the purposes of the application for the arrest warrant
17 pursuant to Article 58 of the Rome Statute.
18 We also have to discuss some disclosure matters, we have to discuss a lot of issues
19 related to further investigation if this is going to be the intention of the Prosecutor.
20 Of course we are not investigative Judges in this sense, we are not advising and
21 instructing the Prosecutor how to proceed, but still, in order for the Chamber to
22 properly organise its work and the proper conduct of the proceedings and also the
23 fair conduct of the proceedings vis-à-vis Mr Ongwen, it is vital that we proceed with
24 all the questions that have been attached to the decision for the initial appearance, and
25 in the same decision this status conference was scheduled for today 2 o'clock.

1 Of course I'm open to any suggestions on the way the Prosecutor would deem it more
2 efficient and expeditious to address all these questions, but maybe it will be much
3 more organised for the purposes of the Chamber thereafter working on every single
4 issue that has been put as a question to the Office of the Prosecutor because, subject to
5 our discussion regarding these questions, we are going to proceed with a number of
6 decisions. As I have been referring, decision on disclosure, decision on the calendar
7 for disclosure, redaction issues, in particular principles, policies, the victims'
8 participation.

9 So I would still suggest that we go question by question. Of course we can
10 summarise, you can summarise the answers to some of the questions.

11 And I have to say that given our ongoing work already that started as soon as
12 Mr Ongwen arrived at the detention centre in The Hague, the Chamber is working on
13 this case. We have conducted some review, not only of the 419 documents that are
14 filed in the case record of the case, but we also made a review of the annexes to the
15 application under Article 58 for the issuance of arrest warrants.

16 So we have our views, but of course the triggering mechanism in these proceedings is
17 the Office of the Prosecutor, and I'm looking forward on behalf of the Chamber to
18 hear from you.

19 So now the senior trial lawyer, you have the floor. There are some general questions.
20 Shall we start with them?

21 MR GUMPERT: In fact, I want to start, if I may, with question number 4.

22 But before I do that, may I invite my case manager to circulate a document which will
23 serve as an aide-mémoire for the submissions that I'm about to make and which sets
24 out specific answers to each of the 15 questions which the Chamber has asked in the
25 order in which they were asked.

- 1 SINGLE JUDGE TRENDAFILOVA: Thank you very much. Of course maybe the
2 order could slightly be confused because, as I mentioned a minute ago, we have been
3 quite active in doing our review as well. So I have incorporated some additional
4 questions and maybe the numbering will slightly change, but thank you very much.
5 This is very useful just because it's going to guide us, in addition to the transcripts, in
6 our work, mindful of the answers to these questions provided kindly by you.
7 Yes, you would like to start with question number 4 about the severance of the case.
8 MR GUMPERT: Question number 4 I believe is about disclosure.
9 SINGLE JUDGE TRENDAFILOVA: You see, I already made some changes.
10 MR GUMPERT: Well, Madam Judge, we've been proceeding on the basis of the
11 annex to the filing, which is the only document we've had available so us.
12 SINGLE JUDGE TRENDAFILOVA: Well, this is, this is something different because
13 I have been working on this. Yes, I have added something. Okay. You would like
14 to start with disclosure after this set of questions under the topic "General". Yes,
15 please.
16 MR GUMPERT: That's the first question I'd like to address, but there are two other
17 things which I would seek to say first.
18 The first concerns the publicity -- that's not quite the right word -- the availability of
19 this document and the record of this hearing to the Defence. It's of course entirely a
20 matter for the Chamber, but for the Prosecution's part, I can see no difficulty or
21 disadvantage in the Defence being fully aware of what the issues which face the
22 Prosecution are. There's no secret about any of them.
23 And I would like the document that I have just handed to your Honour and the
24 transcript of these proceedings to be made available to Defence as soon as possible.
25 It may be out of an abundance of caution that they would have to be checked once the

1 last word has been spoken.

2 SINGLE JUDGE TRENDAFILOVA: Yes, very good.

3 MR GUMPERT: But the sooner that Madam Cissé knows what it is that we've been
4 talking about - that we haven't been conspiring behind her back, that we've been
5 discussing very real difficulties or questions of timing - the better. That would be
6 my submission.

7 SINGLE JUDGE TRENDAFILOVA: Well, if I could make one point. And I'm very
8 pleased to hear that the Office of the Prosecutor is making this suggestion because
9 this is extremely important for the fairness with which Mr Ongwen and his Defence
10 should be treated. However, the Chamber can never conspire with any of the parties,
11 so this was my special point that I wanted to make. This is out of the question.
12 Absolutely impossible.

13 And I still appreciate that the Prosecutor is of the same opinion and joins the
14 Chamber in its objective neutral role basing the decisions of the Chamber only on the
15 law and the evidence. Yes. So this point is taken.

16 MR GUMPERT: The second is that all of the answers which are set out in this
17 document, and which I will give your Honour in the course of answering any
18 questions there may be, is premised on the likelihood that there is going to be a trial, a
19 full trial of this matter. The Prosecution bears in mind the potential in any trial for
20 proceedings being shortened by virtue of Article 65 of the -- of the Statute.

21 SINGLE JUDGE TRENDAFILOVA: Yes.

22 MR GUMPERT: And notes in that respect that during the time before Mr Ongwen
23 was transferred into the custody of the ICC, he made at least one public broadcast,
24 which is currently publicly available on YouTube, in which he appeared to apologise
25 for his wrongdoing. Of course any initiative for Article 65 procedure would have to

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1 come entirely from him. There can be no pressure or any activity on the part of the
2 Prosecutor until or unless that comes forward, but I note that possibility because of
3 course --

4 SINGLE JUDGE TRENDAFILOVA: But only -- but as you correctly referred to
5 Article 65, this could only come into play, this provision of the Rome Statute, if the
6 charges will be confirmed and the case will be sent to trial. So this --

7 MR GUMPERT: Indeed.

8 SINGLE JUDGE TRENDAFILOVA: -- is -- yes. So for now we are not to discuss
9 this issue.

10 MR GUMPERT: No, I don't seek to discuss it now, but it seems to me that it could
11 affect the timeline well before the confirmation hearing because if the Defence were to
12 make such a notification --

13 SINGLE JUDGE TRENDAFILOVA: Yes.

14 MR GUMPERT: -- say now or very shortly, one would imagine that an expedited
15 more towards a confirmation hearing would become very much easier.

16 SINGLE JUDGE TRENDAFILOVA: Yes. And maybe you're referring to the
17 precedent of Banda and Jerbo case?

18 MR GUMPERT: I'm very sorry, I didn't catch that.

19 SINGLE JUDGE TRENDAFILOVA: The Banda and Jerbo case.

20 MR GUMPERT: I'm aware that there is such a precedent in the Banda case, yes.

21 SINGLE JUDGE TRENDAFILOVA: Okay.

22 MR GUMPERT: So having said that, may I turn to what was for us question 4. I'm
23 sorry if it has subsequently taken on another number.

24 The question we were asked which we're aware of is: What is the overall amount of
25 evidence that the Office of the Prosecutor is currently in possession of and intends to

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1 use for the purpose of the confirmation of charges hearing? Is the Office of the
2 Prosecutor in a position to disclose in the coming weeks? And how much time will
3 disclosure review require?

4 Are those still questions which are current and which I can usefully address your
5 Honour on?

6 SINGLE JUDGE TRENDAFILOVA: Yes. You know yourself the evidence on
7 which you actually decided to -- that some of the conditions or all of the conditions as
8 provided under Article 58 are met to approach the Chamber. We have already
9 reviewed the annexes to the application pursuant to Article 58 and we have identified
10 several groups of annexes. With regard to some of them, there is no problem to be
11 made public in the view of the Chamber, but still I would like to seek the observations
12 from the Office of the Prosecutor.

13 And these are those that contain -- that are too general in nature. Like, for example,
14 some statistic on the situation back then ten years ago on the situation in Uganda that
15 was referred to the Chamber. Also some maps and some list of websites and also
16 some parts of the annexes that you will decide, they're not related at all to
17 Mr Ongwen, they shouldn't be disclosed in public apart from the first group that
18 I was referring to.

19 And of course you have to decide those annexes that are relevant to the camp -- the
20 attack on the camp for which Mr Ongwen --

21 MR GUMPERT: Lukodi.

22 SINGLE JUDGE TRENDAFILOVA: -- has been charged by the Office of the
23 Prosecutor, namely, this is Lukodi camp. It is expected on behalf of the Chamber
24 that we are going to receive some more information from the Prosecutor, in particular,
25 whether there are some security issues, whether this is going to affect pursuant to

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1 Rule 82(2) further investigation to be conducted by the Prosecutor.

2 So these are all issues that I would like to hear from you, your responses now or in
3 writing providing your observations.

4 MR GUMPERT: The observations to the question we were asked in writing are to be
5 found on pages 4, 5 and 6. It may help the Court to appreciate the scale of the task
6 with regard to disclosure. The total number of objects in the Uganda collection is
7 something just under 18,000. There are 94,620 pages, pieces of paper, in the total
8 collection.

9 SINGLE JUDGE TRENDAFILOVA: Nine hundred?

10 MR GUMPERT: It's there in the document. All of these figures are in the document.
11 94,620. All of them will have to be reviewed for potential incriminating value to be
12 used as evidence at the trial, for potential exculpatory value and for potential value to
13 the Defence in mounting their defence.

14 SINGLE JUDGE TRENDAFILOVA: Yes.

15 MR GUMPERT: Under those three separate headings.

16 SINGLE JUDGE TRENDAFILOVA: You mean Rule 77, data or material --

17 MR GUMPERT: I do indeed.

18 SINGLE JUDGE TRENDAFILOVA: -- for the preparation of the defence?

19 MR GUMPERT: Yes.

20 SINGLE JUDGE TRENDAFILOVA: Okay.

21 MR GUMPERT: Material for the preparation of the Defence.

22 And we haven't been able to begin that until now for reasons which your Honour has
23 really --

24 SINGLE JUDGE TRENDAFILOVA: Quite clear.

25 MR GUMPERT: -- already articulated. Some of those documents, in fact the large

1 majority, about 75 per cent of them, are electronically unsearchable. That is to say,
2 they simply have to be regarded in the old-fashioned way with the human eyeball to
3 decide whether they fit any of those criteria. That's particularly handwritten
4 documents or other documents which aren't susceptible to electronic character
5 recognition.
6 About 25 per cent of them are capable of being electronically searched and that of
7 course enormously speeds up the procedure of assessment for those three categories.
8 Focusing in on what our positive case is, there are about 4,000 documents, that's about
9 12,000 pages, which relate to the core of the Prosecution case, and that core is
10 constituted by 32, three-two, witnesses.
11 Another perhaps important figure is that we have various key search terms - for
12 example "Lukodi" will be one of those terms - which we can search electronically.
13 There are just over 50,000 pages which are susceptible to that search.
14 We've produced a list of 167 items which are, we regard, as being the core documents
15 which we are prioritising for review, potential redaction and following on from that
16 as soon as possible disclosure to the Defence. That is what we are beginning work
17 on now.
18 They break down into 112 documents in the investigation concerning the Lukodi
19 camp, in other words, the place and the time where offences are said to have been
20 committed, and another 55 which relate to Mr Ongwen's profile, so perhaps
21 contextual elements of potential offences which may need to be proved outside a
22 specific time frame or location.
23 So the answer to the question what is the overall amount of evidence that's currently
24 in our possession and which we intend to use for the purpose of the confirmation
25 charges is I hope contained within those seven specific points which I've just dealt

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1 with and which are set out in the document.

2 SINGLE JUDGE TRENDAFILOVA: Yes.

3 MR GUMPERT: The second part of question 4 is: Are we in a position to disclose
4 this evidence in the coming weeks? I'm afraid that the one-word answer to that is no.
5 I don't imagine that it was expected that it will be a blank yes. We can't disclose the
6 bulk of it because, firstly, we have to check, particularly with regard to the prioritised
7 material, witness statements, our obligations under Article 68 and Rule 81 to ensure
8 their security and the security of other persons who may be mentioned in their
9 witness statements.

10 We are currently in negotiation with that part of the Office of the Prosecutor which
11 deals with the security of witnesses. They are acting as speedily as they can, but that
12 process is going to take some time, and I will come specifically to how long we think
13 it will take in a moment, but the first reason why we can't disclose the material in the
14 coming weeks is that reason.

15 Secondly, we need to review all of the materials in our collection, that is to say, nearly
16 a hundred thousand pieces of paper. We'll do so in a structured and organised
17 fashion.

18 And when we have reviewed it and have decided that it needs to be disclosed and
19 have proposed redactions, we will get it in front of the Chamber as quickly as we can
20 so that a decision can be taken on redactions and disclosure can be made.

21 It seems to me that that can be a rolling process, which I hope will begin today in the
22 meeting which I have with Madam Cissé after this hearing where we propose to
23 disclose to her, to provide her with copies of the open source documents which were
24 footnoted in the application for the warrant of arrest and which probably coincide or
25 at least overlap with the documents which the Chamber has identified as being likely

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- 1 targets as meeting disclosure.
- 2 SINGLE JUDGE TRENDAFILOVA: Yes, we identified them quite clearly.
- 3 MR GUMPERT: Yes.
- 4 SINGLE JUDGE TRENDAFILOVA: Yes.
- 5 MR GUMPERT: I don't think we're in possession of that -- of any specific
- 6 identification by the Chamber yet, are we?
- 7 SINGLE JUDGE TRENDAFILOVA: No.
- 8 MR GUMPERT: No.
- 9 SINGLE JUDGE TRENDAFILOVA: No. This was done just for the purposes of
- 10 today's meeting.
- 11 MR GUMPERT: Yes.
- 12 SINGLE JUDGE TRENDAFILOVA: And, well, at one point we can just -- we can
- 13 just provide this, but it's very important that the source of this information that has
- 14 been reflected in the annexes, which is the Office of the Prosecutor, has its own
- 15 assessment of everything that was provided to the Chamber for the purpose of the
- 16 application, because you are the owners of this information and you know how this
- 17 could affect the ongoing investigations, also how this could affect some of the
- 18 witnesses and anyone else who could be at risk with regard to the activities of the
- 19 Court and the contribution to these activities in particular at this point to the Office of
- 20 the Prosecutor.
- 21 So I think that it will be very useful if the Chamber could be provided with this
- 22 assessment, although we have something, and -- well, let us see how we can proceed.
- 23 Not something. We actually did a quite thorough review.
- 24 But I would like to ask you, because we -- of course you're relying on the paper that
- 25 you kindly prepared for us and this is going to be very helpful, but I wouldn't like

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1 that we just miss some of the important points in the questionnaire that I have
2 provided you.
3 Like, for example, you're quite rightly linking different issues, the one on disclosure
4 to the respective units within the Office of the Prosecutor that are dealing with
5 witness protection, and I had further on in my questionnaire some query whether you
6 have already contacted the Victims and Witnesses Unit. I was referring also to a
7 decision of November 2008, the Appeals Chamber judgment, that was particularly
8 addressing this Prosecutor's approach to protective measures and the relations with
9 the Victims and Witnesses Unit which is a unit within the structure of the Registry,
10 which is neutral body, has both to serve the judiciary and the Prosecutor's office.
11 So in this regard, I would -- I would really very much appreciate that after I hear from
12 you, then we still just try to see whether we're not missing some of the answers,
13 because based on today's status conference - which does not mean that this will be the
14 last one, we can have tomorrow a status conference if after the end of today's hearing
15 it appears that some of the questions remained unaddressed by the Office of the
16 Prosecutor and by me, of course - I would like that the Chamber starts immediately
17 preparing these decisions for which the information provided by the Prosecutor will
18 be very important in order to properly organise the disclosure and anything else that
19 at this time in the development of the proceedings should be properly handled on the
20 part of the Chamber.

21 So what else about the disclosure of evidence?

22 MR GUMPERT: I'm still on question 4.

23 SINGLE JUDGE TRENDAFILOVA: Yes.

24 MR GUMPERT: And I'm on page 5 of the document, those who are following in
25 there.

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- 1 SINGLE JUDGE TRENDAFILOVA: Yes.
- 2 MR GUMPERT: Another difficulty which was addressed separately in the questions
3 which are the last (Microphone not activated) --
- 4 SINGLE JUDGE TRENDAFILOVA: Yes.
- 5 MR GUMPERT: We have taken proactive steps --
- 6 SINGLE JUDGE TRENDAFILOVA: Very good.
- 7 MR GUMPERT: (Microphone not activated) quite a long time ago.
- 8 THE COURT USHER: Microphone, please.
- 9 MR GUMPERT: This year for another reason.
- 10 Sorry. I'll need to start again for the record, I suspect.
- 11 Still on the answer to the question number 4 which the Chamber raised, there are
12 difficulties with Article 54(3)(e) material because much of the material of which we
13 are in possession is subject to conditions under that article.
- 14 However, we are already reasonably well advanced. We began addressing that with
15 the holders of the rights, if I can put it that way, under 54(3)(e) some time ago and I've
16 got detail to give your Honour about that.
- 17 SINGLE JUDGE TRENDAFILOVA: So you have there the approximate number of
18 pieces of evidence, material that has been obtained by the Office of the Prosecutor --
- 19 MR GUMPERT: Yes.
- 20 SINGLE JUDGE TRENDAFILOVA: -- on the basis of confidentiality, 54(3)(e), and
21 you started seeking the consent of the information provider. And are there a lot of
22 pieces of evidence? Because at the time when this case, as the first situation that has
23 been investigated by the Prosecutor together with the DRC, the policy of the Office of
24 the Prosecutor was to receive a lot of this material. Thereafter, these policies have
25 been -- this policy has been changed given all the complications in the Lubanga case.

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- 1 So are there a lot of items? A lot.
- 2 MR GUMPERT: Yes. And it's specifically addressed in the answer to question 13 --
- 3 SINGLE JUDGE TRENDAFILOVA: Okay.
- 4 MR GUMPERT: -- which is on page of this document.
- 5 SINGLE JUDGE TRENDAFILOVA: Good.
- 6 MR GUMPERT: We've given you all of the information that we have to the best of
- 7 our current ability.
- 8 SINGLE JUDGE TRENDAFILOVA: Yes.
- 9 MR GUMPERT: But I'm still on question 4, if I may, because --
- 10 SINGLE JUDGE TRENDAFILOVA: Of course.
- 11 MR GUMPERT: -- the last part of question 4 is perhaps the most important.
- 12 The Court asks: How much time will disclosure review require? And the answer
- 13 to that is quite specific. From experience in previous cases, the average time
- 14 required to process documents, especially when there is a large number of documents
- 15 which are not electronically searchable, taking into account the whole mechanism,
- 16 that is to say, initial review, decision as to whether it's disclosable or not, if it is
- 17 disclosable, proposed redactions, secondary review within the Prosecution and then
- 18 provision to the Chamber for the approval of any redactions, the average speed at
- 19 which such pages can be processed is 50 pages per person per day.
- 20 Assuming that we --
- 21 SINGLE JUDGE TRENDAFILOVA: And you have set up the team so you're not
- 22 relying on one person if we are to calculate the number of items?
- 23 MR GUMPERT: No. If we were to rely upon one person, it would take ten years.
- 24 SINGLE JUDGE TRENDAFILOVA: Yes.
- 25 MR GUMPERT: We hope that we will be able to deploy ten persons to do that work.

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1 SINGLE JUDGE TRENDAFILOVA: Okay.

2 MR GUMPERT: We currently have a team, although they're not all full time, of
3 seven persons and I've been promised sufficient resources to take that up to ten.

4 SINGLE JUDGE TRENDAFILOVA: Okay.

5 MR GUMPERT: Assuming those promises are kept - and they are difficult promises
6 to keep because, as you're aware, there are budget constraints, I do make that
7 assumption - essentially we will need 200 working days from today to conduct that
8 review.

9 SINGLE JUDGE TRENDAFILOVA: This makes how many months? Eight?

10 Nine?

11 MR GUMPERT: Well, it's usually said that there are 220 working days in a calendar
12 year when one allows for holidays and other disturbances. So that's something
13 like 11 -- well, it isn't something like. It is 11 months.

14 SINGLE JUDGE TRENDAFILOVA: 11 months.

15 MR GUMPERT: We would say in round terms that based on previous experience
16 doing the very best we can to do a proper job of disclosure that we will need a year
17 from now; and therefore, we will be asking that the confirmation hearing should be in
18 the new year of 2016.

19 All of the other time lines which are in this document and which I'm about to answer
20 your Honour's questions on are less than that. That's the biggest task which faces us
21 and so we are saying that if you were to allow us effectively a year between now and
22 the confirmation hearing, we would be able to accomplish a proper evidence review
23 and disclosure -- redaction and disclosure procedure and accomplish all of the other
24 tasks about which your Honour has asked in these various questions. I'll come back
25 to those, but that's the longest time frame and that's why I wanted to address question

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1 4 first.

2 SINGLE JUDGE TRENDAFILOVA: Okay.

3 MR GUMPERT: How quickly can we do it? In a year.

4 SINGLE JUDGE TRENDAFILOVA: Well, we have to decide on this because

5 everyone -- of course common sense dictates that such an old case would require to

6 review the evidence, whether at all this evidence is available, and many other issues

7 that we'll address related to whether you would like to expand the investigation,

8 whether you would like to amend the charges to new charges since this period, which

9 is wholly within the independent assessment and policy of the Office of the

10 Prosecutor.

11 But based on this, of course we have also to be quite clear about the reasonable time

12 standard, as I have highlighted, and the right to be tried without undue delay,

13 although the circumstances are such that no one was expecting Mr Ongwen to

14 surrender, but we have to handle it. So let us see how gradually we are going to

15 address this matter.

16 Could you proceed, Counsel.

17 MR GUMPERT: Yes. Well, if I may now, then I'll revert back and take your

18 questions in order.

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: Shall I pause while those notes are digested?

21 SINGLE JUDGE TRENDAFILOVA: We will come to this. I was reminded about

22 the first general questions because everything depends very much on what will be the

23 approach of the Office of the Prosecutor to this case whereby we do not have only

24 Mr Ongwen, we have Mr Kony, we have two others suspects, and we have to discuss

25 whether this will be the case as a whole, we will proceed with the case as a whole, or

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1 there will be some -- there will be ideas that we have to think it over how to proceed,
2 just severing the case of Mr Ongwen from the case since 2005. We shall decide on
3 this.

4 Also I would like to ask the lead counsel, are you going just to, after having done, so
5 to say, a very quick review to the extent possible, given the enormous amount of
6 evidence still in your possession, whether you're not going to prioritise the evidence
7 so that we establish, as you yourself made this point and which has been the constant
8 practice of all Chambers, the purpose of the calendar is such kind of different pieces
9 of evidence to be disclosed at different times so first those that are not so problematic
10 that could even without any redactions be disclosed thereafter, upon your decision
11 and the priorities that you have identified, are you going to prioritise the evidence?

12 MR GUMPERT: Yes. And we're starting with a disclosure to Madam Cissé today
13 after this hearing of 538 pages of open source documents which are referred to in the
14 application for the warrant of arrest. They are publicly available, she could find
15 them for herself, but it's obviously going to be a lot more convenient for her if we --

16 SINGLE JUDGE TRENDAFILOVA: Guide her.

17 MR GUMPERT: -- point things out to her. So we're going to provide her with
18 electronic copies of those this -- I have a meeting with her at 4.30 this afternoon --

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: -- and I shall be providing her with those then.

21 So that's the first priority.

22 SINGLE JUDGE TRENDAFILOVA: Yes.

23 MR GUMPERT: The second priority will be all the documentary material relating to
24 the 32 witnesses whom we believe we would be referring to at confirmation hearing.
25 They are the 32 individuals who we say provide evidence on which the Court will be

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1 able first to confirm and subsequently to convict Mr Ongwen of these offences.

2 That's our case.

3 We will prioritise their witness statements and any other documents relating to those
4 witnesses and ensure that the Defence have those, albeit it will be in redacted form, as
5 early as that may be.

6 So that is our next priority. That is the first thing which we will be starting work
7 upon.

8 We will set our priorities of course thereafter but --

9 SINGLE JUDGE TRENDAFILOVA: Yes. It's important that at least as a start you
10 have identified what comes first thereafter and the rest of the priorities will maybe
11 naturally come into play.

12 MR GUMPERT: I should be honest, we -- I, at any rate, am still working my way
13 through the evidence of those 32 individuals to satisfy myself that we do in fact have
14 a case. I'm not there yet in the limited time that's been available to me.

15 SINGLE JUDGE TRENDAFILOVA: Yes. Yes.

16 MR GUMPERT: But we are certainly prioritising that, and as your Honour says, we
17 will set appropriate priorities and make sure that the documents which are most
18 important get into the hands of the Defence as soon as possible.

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: Question number 1 was one which your Honour has just referred
21 to effectively: Do we intend to reinvestigate and how long will it take for us to do so?
22 Would it be helpful if I addressed that next? That was your first question.

23 SINGLE JUDGE TRENDAFILOVA: Yes, of course. Of course.

24 MR GUMPERT: The answer to that is yes. And I can give you some subheadings
25 which will guide the investigations which we intend to undertake. There are four of

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1 them. The first thing we have to do is to check whether the witnesses, in particular
2 the 32 core witnesses, are still alive, available to give evidence, willing to give
3 evidence, whether they can still remember the things they said.

4 SINGLE JUDGE TRENDAFILOVA: That is what I was about to add, whether --

5 MR GUMPERT: Indeed.

6 SINGLE JUDGE TRENDAFILOVA: -- their memory serves them well.

7 MR GUMPERT: Yes. So if some of them -- if for some of them the answer is
8 no - and we must at least plan for that possibility - then we may need to find other
9 witnesses if that is possible. So there's the first head of investigation: Checking
10 whether our existing witnesses are available and if not, seeking to replace them.

11 SINGLE JUDGE TRENDAFILOVA: Yes.

12 MR GUMPERT: Secondly, and it's linked, there are certain matters which it seems to
13 us, the team, looking at the case now a decade on, need to be further investigated
14 where existing witnesses will need to be re-interviewed on different topics.

15 SINGLE JUDGE TRENDAFILOVA: Yes.

16 MR GUMPERT: For instance, questioning of those who may have served in the
17 Lord's Resistance Army about their experiences of Mr Ongwen or another example
18 where there are radio transcripts of intercepted radio communications --

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: -- made by Mr Ongwen. We will need to ask witnesses questions
21 potentially about voice identification or also to interpret the private language which
22 was used within the LRA so that people like us ordinary people can understand what
23 the speakers are talking about. So that's the second topic of investigation.

24 There is a small number of potential witnesses who have not yet been interviewed.

25 For example, only three victim witnesses could be found at the time when the

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1 investigations were done in 2005/2006 of the attack on the Lukodi camp. I don't
2 know what the reason for that was. It may have been because it was too close in
3 time, there was too much sensitivity, maybe because many of them either died or ran
4 away, but we will be giving an earnest attempt to try and find a larger number of
5 victims so that your Honour --

6 SINGLE JUDGE TRENDAFILOVA: Yes.

7 MR GUMPERT: -- eventually -- your Honour and your colleagues in the Pre-Trial
8 Chamber and eventually we hope the Judges of the Trial Chamber get a broader
9 picture of what actually happened from a larger number of people than three.
10 And lastly, there is a degree of technical investigation.

11 SINGLE JUDGE TRENDAFILOVA: Yes.

12 MR GUMPERT: We have 770 sound recordings which purport to be of radio
13 communications between members of the LRA which were intercepted by organs of
14 the Ugandan government. That is material which is subject to 54(e) restrictions.

15 SINGLE JUDGE TRENDAFILOVA: Yes. Are you going to have the cooperation of
16 the Ugandan government given the facts that we know with regard to the ICC as an
17 institution?

18 MR GUMPERT: I didn't bring my crystal ball. I earnestly hope so. One can't tell.
19 There's no reason from their current behaviour towards us to doubt their good faith
20 and full cooperation.

21 SINGLE JUDGE TRENDAFILOVA: Good.

22 MR GUMPERT: On the other hand --

23 SINGLE JUDGE TRENDAFILOVA: No, I know.

24 MR GUMPERT: -- we note some remarks they have made not in wholly
25 complimentary terms --

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1 SINGLE JUDGE TRENDAFILOVA: Yes.

2 MR GUMPERT: -- about the -- about the Court. There's no reason to doubt the
3 good fifth of the Ugandan government and we are taking steps to ensure that we get
4 that cooperation.

5 SINGLE JUDGE TRENDAFILOVA: What actually I meant, apart from the facts that
6 we all know about the participation of Ugandan government and the forces in the
7 surrender of Mr Ongwen, whether you, in addition from your sources, you have
8 received at least some hints, some impression whether the Court and in particular the
9 office could rely on this. But at the end of the day, if you can answer this question, it
10 would be nice, if not --

11 MR GUMPERT: Well, I'm going to hand over to the international cooperation
12 adviser --

13 SINGLE JUDGE TRENDAFILOVA: Yes.

14 MR GUMPERT: -- Mr Choudhry because this is his particular area of expertise.

15 SINGLE JUDGE TRENDAFILOVA: Yes.

16 MR CHOUDHRY: Your Honour, in answer to that question quite simply the
17 position of the Prosecutor is that the discussions to seek lifting of restrictions in
18 respect of Article 54(3)(e) have progressed significantly. The Ugandan government
19 has in principle indicated a willingness to cooperate; however, that discussion is still
20 currently ongoing. We are hopeful. I think the position of the Prosecutor is that we
21 are hopeful that we will secure their approval to provide those documents to the
22 Court and to the Defence.

23 SINGLE JUDGE TRENDAFILOVA: Thank you very much. Thank you.

24 MR GUMPERT: So that's I hope an adequate summary of the answer, yes, we're
25 going to do some more investigation.

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- 1 SINGLE JUDGE TRENDAFILOVA: Yes.
- 2 MR GUMPERT: How long will it take? Well, less than a year. So by comparison
3 with the length of time which will take the disclosure process, this process will take
4 less time.
- 5 SINGLE JUDGE TRENDAFILOVA: Of course.
- 6 MR GUMPERT: I think it will be foolish of me to try estimate because it depends
7 what we find out.
- 8 SINGLE JUDGE TRENDAFILOVA: Yes.
- 9 MR GUMPERT: But this in itself won't hold up the confirmation hearing.
- 10 SINGLE JUDGE TRENDAFILOVA: Yes.
- 11 MR GUMPERT: If you were to permit us the time which we have asked for or
12 approximately that time for disclosure.
- 13 SINGLE JUDGE TRENDAFILOVA: But there should be still a formal application to
14 the Chamber and I wouldn't advise that you come immediately because it has to be
15 properly reasoned.
- 16 Of course I just want to make the point that all these questions on behalf of the
17 Chamber have to serve the purpose of the Chamber having, in a way, a very clear
18 adhere, to the extent possible, given the shortage of time, about how we have to
19 proceed with our own duties and responsibilities pursuant to the Statute, and it's too
20 early of course to expect that you can come up with some precise, definitively clear
21 answers to our questions, but without this status conference it would be extremely
22 difficult for the Chamber and we cannot disorganise, proceed with our
23 responsibilities.
- 24 Yes. I'm sorry.
- 25 MR GUMPERT: Not at all. Not at all. Can I move on to question 2 which asked

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1 about amendment of charges?

2 SINGLE JUDGE TRENDAFILOVA: Yes. That was very important about the seven
3 counts.

4 MR GUMPERT: Yes. Yes, we are thinking of amending the charges. The first is
5 that we are now in possession of material which we believe links Mr Ongwen to the
6 attack on the camp at Pajule, P-A-J-U-L-E. We didn't have that information at the
7 time we applied for the warrant of arrest, but we're in quite an advanced state of
8 investigation about that matter and I emphasise here if this matter is going to go to a
9 full contested trial, if it is, we will almost certainly be seeking to add charges against
10 Mr Ongwen. Those charges are already in the application because they stand
11 against other persons named.

12 SINGLE JUDGE TRENDAFILOVA: Yes.

13 MR GUMPERT: But at the moment he is not linked to that attack, so far as the
14 Chamber is aware, whereas we now have evidence that he is. So that's the first
15 thing.

16 The second thing is that we are giving very serious consideration to adding sexual
17 and gender based violence crimes, in particular, with regard to the alleged habit of
18 senior LRA leaders of taking women hostages and using them as, I won't mince my
19 words, as sex slaves. They call them wives, but --

20 SINGLE JUDGE TRENDAFILOVA: Yes.

21 MR GUMPERT: -- that's an abuse of the word.

22 SINGLE JUDGE TRENDAFILOVA: Yes.

23 MR GUMPERT: There is a slightly less developed investigative body of material for
24 us there. We've spoken to some relevant witnesses. We need to develop that more.
25 But we would -- we're giving serious consideration, and once again, if there is to be a

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1 full disputed trial of this matter, to seeking to add -- to ask the Pre-Trial Chamber to
2 confirm charges relating to sexual offences.

3 The third possibility is in relation to child soldiers. I don't think I need to say any
4 more about that.

5 The fourth would be a potential recharacterisation or alternative charges in respect of
6 the offences currently alleged. Your Honour will be aware that the mode of liability
7 at present is that Mr Ongwen ordered an attack on the camp. That's what we say.

8 SINGLE JUDGE TRENDAFILOVA: 25(3)(b).

9 MR GUMPERT: Indeed. However, we're aware that some of the things he is
10 alleged to have ordered are less liable to being ordered than others. For instance,
11 one of the things he's charged with at the moment is an attack on a civilian population.
12 Well, as far as we can detect, the evidence proves exactly that. He said to his soldiers
13 go and attack a civilian population.

14 On the other hand, one of the other things that he is said to have ordered is the
15 commission of inhuman treatment and there are -- I won't go into detail here, but
16 there are various disturbing passages of behaviour by Mr Ongwen's troops which
17 constitute the actus reus of inhuman treatment. But it may be difficult for the
18 Prosecution to prove that he specifically ordered that kind of brutality and, therefore,
19 we are giving specific consideration to the possibility of adding, in respect of some or
20 all of the existing crimes, liability by virtue of Article 28 command responsibility.

21 There's no further investigation to be done there. It would simply be a question of
22 redrafting.

23 SINGLE JUDGE TRENDAFILOVA: Reclassification.

24 MR GUMPERT: Yes, reclassification, that's right.

25 We believe that we will have made up our minds about all of those things within the

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1 next three months, and we would therefore be able to inform the Chamber and the
2 Defence within that relatively short time period. Of course there would be
3 associated matters. There would be new measures of protection, particularly if there
4 were sexual crimes. There would be ongoing matters which would arise which
5 would not fall within that three-month period, but they would be perfectly capable of
6 being resolved and in good order within the one year which I've already spoken of as
7 being the longest period of time.

8 So that's my answer to the Chamber's question number 2.

9 SINGLE JUDGE TRENDAFILOVA: Yes.

10 MR GUMPERT: Shall I move on to question number 3 or are there --

11 SINGLE JUDGE TRENDAFILOVA: Yes, of course, please.

12 MR GUMPERT: What's the position of the Prosecutor with regard to the possibility
13 to initiate proceedings against Kony, Otti and Odhiambo?

14 SINGLE JUDGE TRENDAFILOVA: Actually, the question should a little bit slightly
15 be reformulated to proceed in absentia against them, because proceedings were
16 initiated with the application for arrest warrant. So do you intend to proceed with
17 the whole case?

18 Because you know, Mr Prosecutor, you know that this possibility for the pre-trial
19 stage of the proceedings to be conducted in the absence of a person subject to Article
20 61(2)(b) to satisfy the Chamber that the person is not -- has fled or is not available.
21 I'm not going to quote this provision. And the Chamber has been long, long ago
22 considering to proceed against the five at the time. After the death of Mr Raska
23 Lukwiya, of course, we have four suspects in this case.

24 But now the time has come when we are -- amongst the Judges, the three of us, we
25 have been considering this issue. But as law dictates, and not only because of the

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1 law but because we have to see the implication on the length of the proceedings, on
2 the scope of the investigation, on budgetary implications, everything else that is
3 related to a decision to proceed with regard to Ongwen and also in absentia for the
4 rest.

5 Rule 123 and the rest dictate that we have to enter into consultations with the
6 Prosecutor, but even if there was no such rule, we would have done this for the
7 reasons that are quite clear.

8 So what is the view of the Office of the Prosecutor and of Madam Bensouda as well?

9 MR GUMPERT: We're resolutely against the idea.

10 SINGLE JUDGE TRENDAFILOVA: You're against?

11 MR GUMPERT: Yes. We think that the impact upon the witnesses, the outlay of
12 limited resources, the inevitable increase of time until such proceedings could occur,
13 they all enormously outweigh any potential benefit, not least because Mr Otti and
14 Mr Odhiambo are almost certainly dead and there is almost no prospect, as least there
15 is no realistic prospect that Mr Kony is about to step forth and surrender himself.
16 It could be an enormous expense of, well, time, money, effort for no benefit at all.
17 We would say we've got Mr Ongwen here, we should move ahead as fast as we
18 conceivably can to bring him to trial.

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: And that process will be considerably impeded if we try to include
21 proceedings against absent defendants -- absent suspects I should say.

22 SINGLE JUDGE TRENDAFILOVA: So of course the Chamber is going very
23 carefully to consider the points that you have made because they are not -- it's very
24 clear what will be all the implications of a decision to proceed in absentia for the rest.

25 Although you remember there was a time when Mr Kony attended peace proceedings,

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1 it was around 2007 I think as far as I recall. Also there was some information
2 provided to the Chamber about him voluntarily surrender to the Court. So maybe
3 the Chamber was contemplating a possibility to, if this scenario would work, that the
4 Chamber and the proceedings are not starting again against him and so on.
5 So anyway, we have been considering this and we are going to pay due attention to
6 everything that you convey to the Chamber and to me.
7 Now, about the rest -- although if the Chamber is to sever the case of Mr Ongwen and
8 the case for the rest, we have received only an official document back then in 2000, I
9 think, '7 about Mr Raska Lukwiya, and we have terminated the proceedings. So
10 there was some information at one point in time about Mr Dominic Ongwen that he is
11 dead, which actually, obvious to everyone, is not true.
12 So could the Chamber ask the Prosecutor, if possible and if this wouldn't take much of
13 your limited resources and time, that in this cooperation with the government of
14 Uganda that the Chamber considers some official documents, some more reliable
15 proof for the death of Vincent Otti and Okot Odhiambo?

16 MR GUMPERT: Your Honour, yes.

17 SINGLE JUDGE TRENDAFILOVA: This is a side question. This is not something
18 so very important at this point in time when we're dealing with the case against
19 Mr Ongwen, but still, we have been considering addressing this issue to you.

20 MR GUMPERT: I don't have it at my fingertips, but I understand that we have in
21 fact submitted to the Chamber information regarding the death of Mr Otti.

22 SINGLE JUDGE TRENDAFILOVA: Yes.

23 MR GUMPERT: We are currently investigating the reported death of Mr Odhiambo
24 and we are actually as I speak in negotiation with the government of Uganda with a
25 view to taking DNA samples which we could analyse to establish --

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1 SINGLE JUDGE TRENDAFILOVA: Yes.

2 MR GUMPERT: -- whether or not it is indeed his body.

3 SINGLE JUDGE TRENDAFILOVA: Yes, that is about what we were to propose, if
4 the government of Uganda is going to be quite open to cooperation, that we have
5 DNA samples and assessments. But this is, as I said, not so vital. Of course it will
6 be preferable to rely on some proofs that could be much more reliable than some
7 publications.

8 Well, yes.

9 MR GUMPERT: I dealt with question 4 so I propose, if I may, to move on to
10 questions 5 and 6. I'll take them together because they both really relate to redaction.

11 SINGLE JUDGE TRENDAFILOVA: Yes.

12 MR GUMPERT: Your Honour is already aware of the total quantity of material
13 which needs to be considered for redaction, disclosure first, redaction thereafter.
14 The first thing we will be doing will be making redactions of the application of the
15 warrant for arrest. I think that is actually addressed in a separate question, but it is.
16 That's our first priority. In fact we have a document, indeed I believe it was
17 submitted to the Court. There are some further proposals we need to make relating
18 to the current position of witnesses as opposed to what the position was in 2007.

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: We believe that we will be in a position to submit that document
21 with our proposed redactions in full on 9 February.

22 SINGLE JUDGE TRENDAFILOVA: Very good. Proposals for redactions to the
23 arrest warrant?

24 MR GUMPERT: Yes.

25 SINGLE JUDGE TRENDAFILOVA: Yes.

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- 1 MR GUMPERT: No, no, not the arrest warrant.
- 2 SINGLE JUDGE TRENDAFILOVA: The application.
- 3 MR GUMPERT: The application.
- 4 SINGLE JUDGE TRENDAFILOVA: Yes.
- 5 MR GUMPERT: The Defence already have --
- 6 SINGLE JUDGE TRENDAFILOVA: Yes.
- 7 MR GUMPERT: It's another issue, which you've asked about --
- 8 SINGLE JUDGE TRENDAFILOVA: Yes, they do.
- 9 MR GUMPERT: The Defence already have the full version of the arrest warrant, but
- 10 what they want obviously --
- 11 SINGLE JUDGE TRENDAFILOVA: Yes.
- 12 MR GUMPERT: -- as anybody would, is the application. We believe that we'll be
- 13 able to have it to you and your fellow Judges on 9 February and whenever it's
- 14 available for the Defence thereafter.
- 15 SINGLE JUDGE TRENDAFILOVA: Yes. We have just to do our job on our part.
- 16 MR GUMPERT: I understand.
- 17 SINGLE JUDGE TRENDAFILOVA: And we shall try to do this as expeditiously as
- 18 possible.
- 19 MR GUMPERT: Yes. So then of course there are the 32 core witnesses. As I've
- 20 already said, we're prioritising that for review, redaction, submission to the Chamber
- 21 with the hope that those documents can be in the hands of the Defence. But I haven't
- 22 got a date for you. It's our top priority after the application for the warrant of arrest.
- 23 SINGLE JUDGE TRENDAFILOVA: Yes.
- 24 MR GUMPERT: I can't believe it will be that many weeks after that date, but it
- 25 depends on our resources and what the problems thrown up in the investigation into

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1 their current security circumstances are. We haven't yet got our mission in -- most of
2 these people -- all of these people live in Uganda. We haven't yet got boots on the
3 ground in Uganda to make those inquiries which we need to.

4 SINGLE JUDGE TRENDABILOVA: Yes.

5 MR GUMPERT: Realistically I understand it's likely to be around Easter time by the
6 time we are able to provide versions of those documents for the Chamber's agreement
7 or otherwise of redactions and putting them in the hands of the Defence.

8 SINGLE JUDGE TRENDABILOVA: To the witness statements?

9 MR GUMPERT: The witness statements.

10 SINGLE JUDGE TRENDABILOVA: Pursuant to Rule 76. Yes.

11 MR GUMPERT: Yes.

12 SINGLE JUDGE TRENDABILOVA: That is it.

13 I'm sorry, Mr Prosecutor. I would like to go back to the warrant of arrest because we
14 have, as you know, victims in the case, and you may be -- although you are very busy,
15 but it comes to our knowledge, maybe you follow the press release, that victims are
16 very much interested about the scope of the case so that they can proceed with their
17 applications as provided in the statutory documents.

18 So do you think that it will be possible, as soon as possible the Chamber would very
19 much prefer, that you come with suggestions for redactions to the warrant of arrest
20 that is now confidential in order to make it public so that victims could have
21 knowledge about, for the moment, before amendment to the charges to be sought by
22 the Office of the Prosecutor from the Chamber, that victims and the VPRS, the OPCV
23 start organising their work?

24 If you have some need to discuss with the members of your team, it's nothing that is a
25 pressing need to give me this answer right now, but just would reflect it in your notes

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ICC-02/04-01/15-T-5-ENG-ET-WT 28-01-2015 31/47 SZ-PT

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1 that the Chamber has to also be considering this right of the victims of these crimes

2 going on for 28 years.

3 And of course if the Chamber is to go ahead and sever the cases, of course victims can

4 apply in these proceedings only with regard to the crimes that were committed by

5 Mr Ongwen allegedly.

6 So the warrant of arrest, to cut it short, has to be public with the redactions as

7 proposed by the office and approved by the Chamber.

8 MR GUMPERT: As far as we're concerned, the warrant of arrest, not the application,

9 the warrant of arrest can be made public this afternoon.

10 SINGLE JUDGE TRENDAFILOVA: Oh. Good. Thank you. Yes, thank you.

11 MR GUMPERT: I see some consternation on the other side of the court.

12 SINGLE JUDGE TRENDAFILOVA: No, no, no, no. Well, if there are any issues of

13 course thereafter we can --

14 MR GUMPERT: There are none for us.

15 SINGLE JUDGE TRENDAFILOVA: Very good.

16 So, Counsel, I'm sorry, I asked you in particular that we go back to the arrest warrant

17 just for the purpose of addressing the expectations of victims. Now, going back to

18 the witnesses, there are a number of questions there.

19 MR GUMPERT: I misspoke with regard to a date. Because of the necessity to

20 complete our security assessments and thereafter redactions, we believe that we will

21 be able to disclose or at least to present the disclosure with redactions those

22 statements on a rolling basis with a view to having all of them available by 8 May.

23 SINGLE JUDGE TRENDAFILOVA: Well, it was mentioned as Easter time.

24 MR GUMPERT: Yes, it's a little after that.

25 SINGLE JUDGE TRENDAFILOVA: Yes, okay.

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(Closed Session)

ICC-02/04-01/05

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1 MR GUMPERT: But of course on a rolling basis, so some of them will be before that.

2 We hope that that will be the date.

3 SINGLE JUDGE TRENDAFILOVA: This is much easier. On a rolling basis, it's
4 easier for you to handle, for us to handle and this expedites -- the progress of the
5 proceedings will be expedited. Thank you very much for this clarification.

6 The risk assessment about the witnesses, you have to revisit every single witness.

7 MR GUMPERT: Yes.

8 SINGLE JUDGE TRENDAFILOVA: Of course, as you made your point at the
9 beginning, whether they're alive, hoping they're alive, whether they remember
10 something, whether they will be willing to assist, all this.

11 And also have you already informed the Victims and Witnesses Unit? And a related
12 question, whether they have been --

13 I'm minding the interpreters' right to a break. We at least can go for one hour and a
14 half or maybe -- yes, one hour and a half.

15 And the related question about some of the witnesses who could be in the witness
16 protection programme, I don't believe this to be the case.

17 MR GUMPERT: Your Honour is quite right. If I can take you to page 10 of the
18 document, we've got answers to these questions.

19 SINGLE JUDGE TRENDAFILOVA: Mr Prosecutor, let me tell you. I'm so very
20 much eager to listen to you that I wouldn't like to just proceed with my reading. I
21 shall read thoroughly the document, but I would prefer to listen to you because it's
22 really very important and very useful.

23 MR GUMPERT: Updated risk assessment takes about a day and a half to do that for
24 each of the witnesses, 32 witnesses, 48 days.

25 SINGLE JUDGE TRENDAFILOVA: Yes.

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- 1 MR GUMPERT: We're starting that process in about a week and a half's time. We
2 haven't got staff to do it before then.
- 3 SINGLE JUDGE TRENDAFILOVA: Yes.
- 4 MR GUMPERT: Those are the hard figures. They're all approximations, but
5 nonetheless that's the best we can do.
- 6 SINGLE JUDGE TRENDAFILOVA: Yes.
- 7 MR GUMPERT: The position, as your Honour correctly says, is that none of the
8 witnesses which have been referred to the VWU for protection or support are on that
9 list of 32. We simply don't have those issues in this case apart from the fact that one
10 of those witnesses is currently being considered by the Prosecution for a support
11 referral. That hasn't -- that referral hasn't been made yet.
- 12 SINGLE JUDGE TRENDAFILOVA: Yes.
- 13 MR GUMPERT: I won't say any more about it. I can say it's not based upon a
14 security threat, which may make life easier in that respect.
- 15 SINGLE JUDGE TRENDAFILOVA: Good.
- 16 MR GUMPERT: One of the witnesses amongst the 32 was previously in the
17 protection programme but has left it now.
- 18 SINGLE JUDGE TRENDAFILOVA: But left?
- 19 MR GUMPERT: Yes.
- 20 SINGLE JUDGE TRENDAFILOVA: Voluntarily?
- 21 MR GUMPERT: Yes. Certainly not involuntarily.
- 22 SINGLE JUDGE TRENDAFILOVA: Yes. No, because there was a case when --
- 23 MR GUMPERT: There was.
- 24 SINGLE JUDGE TRENDAFILOVA: -- witnesses were -- yes.
- 25 MR GUMPERT: Ejected.

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1 SINGLE JUDGE TRENDAFILOVA: Yes. You remember. And also excluded from
2 the protection programme.

3 MR GUMPERT: Yes. No, this is not such a case. Further protective measures
4 might arise, of course. These are people we haven't spoken to for seven years. We
5 can't make promises on their behalf, but we know of nothing at the moment.

6 SINGLE JUDGE TRENDAFILOVA: Yes.

7 MR GUMPERT: And if problems arise, and indeed this is true of everything I've
8 said today, things may change. The best we can do is to absolutely promise to the
9 Court that if things change in a way which is going to affect time limits and plans,
10 chronologies, we will inform the Court immediately.

11 SINGLE JUDGE TRENDAFILOVA: Thank you. Thank you so much.

12 We have addressed the issue of 54(3)(e) obtained on a confidential basis so --

13 MR GUMPERT: We were going to go to a bit more detail than that, but if --

14 SINGLE JUDGE TRENDAFILOVA: Okay.

15 MR GUMPERT: -- you don't want it --

16 SINGLE JUDGE TRENDAFILOVA: On the contrary.

17 MR GUMPERT: -- it's here, it's written down.

18 SINGLE JUDGE TRENDAFILOVA: I'm very much interested. I'm very much
19 interested because I hope we are not going, or a Trial Chamber, if the case is to
20 proceed to trial, we are not going to end up with the experience in Lubanga so --

21 MR GUMPERT: Yes. We all share that hope.

22 SINGLE JUDGE TRENDAFILOVA: Yes.

23 MR GUMPERT: Can I hand over to Mr Choudhry again.

24 SINGLE JUDGE TRENDAFILOVA: Yes.

25 MR GUMPERT: This is his specialist area.

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1 SINGLE JUDGE TRENDAFILOVA: Yes.

2 MR CHOUDHRY: Thank you, your Honour. As senior trial counsel has indicated,
3 your Honour, there is a significant portion of the material that is affected by Article
4 54(3)(e). The total amount, to give your Honour an idea, of pages amounts to
5 approximately 47,000 pages. However, 90 per cent of that material was provided by
6 only four distinct providers, one of which is the Ugandan government.

7 SINGLE JUDGE TRENDAFILOVA: That's good.

8 MR CHOUDHRY: In response to your Honour's question 13 as to the steps that
9 have been taken, again, as has been indicated, the OTP has -- or the Office of the
10 Prosecutor has made efforts to seek lifting and commence that process in April of last
11 year. The results of that progress have proved to be successful in the sense that two
12 of the main providers have indicated their consent to approve disclosure of that
13 material, one in written form and the other in verbal form.

14 That approximates, your Honour, to 33,000 pages where approval has been granted.

15 SINGLE JUDGE TRENDAFILOVA: Very good.

16 MR CHOUDHRY: The remaining 30 per cent of that material is currently being
17 negotiated. And in relation to that, the Office of the Prosecutor is currently
18 discussing matters with the Ugandan government and we are hopeful.

19 And in relation to the remaining providers, we are currently contacting them with a
20 view to taking similar procedures and seek their approval.

21 So that's the position in answer to question 13, your Honour. And what the
22 Prosecution can undertake is to inform the Court with any developments.

23 SINGLE JUDGE TRENDAFILOVA: Thank you very much. Of course we all know
24 that the Chamber has special focus on those confidentiality material that fall under
25 67(2) that are exculpatory or mitigating for the purposes of the trial, if there would be

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1 a trial, and the conviction to follow and also the material under Rule 77, because for
2 the rest, if you do not receive the agreement of the information -- of the provider of
3 this confidential information, the Prosecutor office simply is not going to be able to
4 use it. But we have to especially be very much on the alert about 67(2) and Rule 77.
5 But this is a very good development that you are informing the Chamber, quite
6 hopeful for the duration of the pre-trial proceedings that these matters will be
7 resolved. Thank you very much.

8 Now, we come to the language issue. You heard during the status conference
9 Ms Cissé, who made a very strong point and request that everything that is in this
10 case has to be provided in the language that Mr Ongwen fully understands and
11 speaks, which is Acholi, translated.

12 Whether this is going to be the case or not, you know the policy of the Pre-Trial
13 Chamber and I cannot speak about the interpretation of the Trial Chamber if the case
14 is to proceed to trial, but apart from our policy that we do not have any reasons to
15 abandon, still, the core pieces of evidence and the most important documents in the
16 proceedings that are identified in our previous decisions have to be translated into
17 Acholi.

18 So where do you stand, Mr Prosecutor?

19 MR GUMPERT: Well, unexpectedly comfortably, actually. The core evidence here,
20 as we've said, comes from 32 witnesses, 16 of whom were interviewed on videotape
21 in Acholi and the transcripts of those interviews are in both Acholi and English.

22 SINGLE JUDGE TRENDAFILOVA: Very good.

23 MR GUMPERT: The other core part of the evidence is likely to be intercepted radio
24 transmissions. Those radio transmissions were between members of the LRA and
25 were in Acholi.

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1 SINGLE JUDGE TRENDAFILOVA: So this is really quite unexpected but very good
2 because you know what happened in another case, mainly Banda and Jerbo, taking so
3 many years.

4 MR GUMPERT: Of course there's a wealth of material which isn't in Acholi which is
5 in English, but it's not the core material, and the Chamber ultimately will have to
6 decide, having heard the submissions of the parties --

7 SINGLE JUDGE TRENDAFILOVA: Yes.

8 MR GUMPERT: -- how much of that non-core material requires to be translated. It
9 will be quite a lot I should think, but not all of it --

10 SINGLE JUDGE TRENDAFILOVA: Not all of it.

11 MR GUMPERT: -- we will submit.

12 SINGLE JUDGE TRENDAFILOVA: Yes.

13 MR GUMPERT: So I don't underestimate -- I mean we are urgently getting -- well,
14 part of your question was how much time is required and what are we doing about
15 getting Acholi translators as well. We're moving forward as fast as we can. We
16 don't have any at the moment.

17 SINGLE JUDGE TRENDAFILOVA: Yes.

18 MR GUMPERT: We have identified our first such translator. We are hoping that
19 within ten days, or in approximately ten days' time, says my crib, we will have hired
20 our first Acholi translator. But at the moment, we simply don't have that capacity.

21 SINGLE JUDGE TRENDAFILOVA: Yes.

22 MR GUMPERT: Fortunately, as I say, the job is not quite as mountainous as it might
23 have been thought to be because some of the original material is in Acholi.

24 SINGLE JUDGE TRENDAFILOVA: Yes.

25 MR GUMPERT: There is quite a long passage about this in the document which I

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1 probably don't need to go into.

2 SINGLE JUDGE TRENDAFILOVA: Yes. Yes.

3 MR GUMPERT: We have resource limitations, we have challenges, there's a lot of
4 material, but on the whole the essential material is the statements of 16 witnesses and
5 332 pages. 332 pages of English needs to be translated into Acholi.

6 SINGLE JUDGE TRENDAFILOVA: Yes. Of course, Mr Prosecutor, there will be a
7 decision about the translation, but just to mention to you that by all probability you
8 will be advised to sit down together with the Defence counsel, be it Ms Cissé or
9 someone else, we don't know, it's the Registrar's duty, and to go through this material
10 in English. And this is the purpose of having of an educated and trained counsel.

11 The counsel together with you will decide which of these pieces that are available in
12 English is core for the purposes of best defence to be provided to Mr Ongwen.

13 But in more details I shall come in the decision because not everything could be
14 translated. And this is different if the person would appear alone without the
15 support of Defence counsel, then no doubt.

16 So do we have something left?

17 MR GUMPERT: Well, we wanted to seek your Honour's indulgence to make some
18 more general submissions about the time.

19 SINGLE JUDGE TRENDAFILOVA: Yes. And I'm -- of course because we work
20 also in a team quite intensively, I will also ask our legal officers whether, although it
21 is a very good discussion I have to say, very useful, but at the end, I would really once
22 again ask you to give me, to the extent possible, a clear picture how the disclosure is
23 to proceed to be organised by the Chamber.

24 You said that right now after we finish you're going to disclose and I have reflected
25 how many pieces of evidence to the Defence. Thereafter, because we have to

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1 establish this calendar so that the disclosure proceedings are smooth and that it
2 wouldn't be the case that the Defence and Mr Ongwen would be flooded just 30 days
3 before the date of the confirmation hearing with enormous amount of pieces of
4 evidence because actually then the Chamber is not doing properly its job.
5 Would you once again repeat to me, Mr Prosecutor, now -- I'm very much sorry, but I
6 didn't reflect your name. I hate not to address people by name. I appear to be a
7 person with bad manners that I believe I am not, but your surname could you once
8 again repeat to me.

9 MR GUMPERT: My surname is Gumpert, which is spelt G-U-M-P-E-R-T.

10 SINGLE JUDGE TRENDAFILOVA: So, Mr Gumpert, would you tell me not like a
11 final structure that you would find to be workable with regard to disclosure, but still
12 we have to be guided in establishing the calendar ourselves, which is not going to
13 happen these days because first we will come with a decision on the principles of
14 disclosure, but still we have to start working and to go out of this meeting as is the
15 case with everything else with quite good ideas what is going on.

16 MR GUMPERT: I don't want to promise more than I can deliver. The reality is that
17 the team has been concentrating on the material which is said to prove that we have a
18 case against Mr Ongwen at all, that is to say, 32 witnesses --

19 SINGLE JUDGE TRENDAFILOVA: Yes.

20 MR GUMPERT: -- and a small number of radio intercepts. I personally, we the
21 team, haven't got to the end of that material yet --

22 SINGLE JUDGE TRENDAFILOVA: Of course.

23 MR GUMPERT: -- but I think it's absolutely proper that that's the first thing we look
24 at and therefore I'm not really in a position to give a detailed appreciation of how we
25 will approach disclosure of all of the rest of the material because I don't know what it

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1 is.

2 SINGLE JUDGE TRENDAFILOVA: Yes.

3 MR GUMPERT: But doing the best I can sitting here now, there will be disclosure
4 today of open source material, by 9 February we will have provided the Chamber
5 with the proposed redactions so that they will have the application for the warrant of
6 arrest.

7 SINGLE JUDGE TRENDAFILOVA: Yes.

8 MR GUMPERT: By 8 May they will have in their hands, assuming that all goes
9 well -- sorry, no, the Chamber will have --

10 SINGLE JUDGE TRENDAFILOVA: Yes, the Chamber because --

11 MR GUMPERT: -- the statements, indeed, by the 32 witnesses who we say are at the
12 core of this --

13 SINGLE JUDGE TRENDAFILOVA: Yes.

14 MR GUMPERT: -- redacted in a way that we say is appropriate for you to consider
15 and eventually permit to be disclosed to the Defence.

16 SINGLE JUDGE TRENDAFILOVA: And then have to implement.

17 MR GUMPERT: Indeed.

18 SINGLE JUDGE TRENDAFILOVA: In the Acholi as well, so it will take some time.

19 MR GUMPERT: Yes, I --

20 SINGLE JUDGE TRENDAFILOVA: Because what we will do, you will submit to us
21 the witness statements in English because unfortunately we do not speak Acholi.

22 MR GUMPERT: Well, no, your Honour. In fact in respect of 16 of the documents
23 they are transcripts which have on the same page Acholi and English.

24 SINGLE JUDGE TRENDAFILOVA: Oh, good.

25 MR GUMPERT: So we won't need to go to separate documents.

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- 1 SINGLE JUDGE TRENDAFILOVA: Yes.
- 2 MR GUMPERT: They are in existence.
- 3 SINGLE JUDGE TRENDAFILOVA: Yes.
- 4 MR GUMPERT: We will have to find the language resources by 8 May to be able to
- 5 suggest --
- 6 SINGLE JUDGE TRENDAFILOVA: Yes.
- 7 MR GUMPERT: -- redactions both in Acholi and in English.
- 8 SINGLE JUDGE TRENDAFILOVA: Yes.
- 9 MR GUMPERT: That's a tough task --
- 10 SINGLE JUDGE TRENDAFILOVA: Yes.
- 11 MR GUMPERT: -- but we'll manage it.
- 12 SINGLE JUDGE TRENDAFILOVA: Yes, it is.
- 13 MR GUMPERT: So you will be presented with a single -- an enormous series of
- 14 single documents which reflect the totality of our redaction proposals.
- 15 SINGLE JUDGE TRENDAFILOVA: Yes. Yes. So it's very, very useful what you
- 16 clarified now. So 8 of --
- 17 MR GUMPERT: 8 May. That's as far as I can usefully project.
- 18 SINGLE JUDGE TRENDAFILOVA: It's not set in stone of course. It depends.
- 19 And thereafter, depending on the ongoing investigation.
- 20 MR GUMPERT: Yes.
- 21 SINGLE JUDGE TRENDAFILOVA: So I'm already designing how I will proceed
- 22 with the decision because in every case it is not copy, paste.
- 23 MR GUMPERT: Can I just check with my team that I haven't committed us to
- 24 something which they all regard as wholly impractical.
- 25 SINGLE JUDGE TRENDAFILOVA: Yes.

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1 (Pause in proceedings)

2 SINGLE JUDGE TRENDAFILOVA: We have consulted our teams and of course I
3 will listen to you if you would like first and I will raise the points that in addition
4 I would like to address to you. How do you prefer?

5 MR GUMPERT: Yes. The application for an extension of the provisional date
6 which you fixed, your Honour, on Monday, are there particular matters which it will
7 be helpful to the Court if we addressed?

8 SINGLE JUDGE TRENDAFILOVA: Well, this was one of the two issues that I'm
9 going to raise just because in order for us to organise the proceedings, not perfectly,
10 strictly fine and being absolutely, absolutely clear about every single state in the
11 development of disclosure for the other proceedings, we also have to know and we
12 were about to ask you when approximately you intend to approach the Chamber
13 with this request.

14 Of course I'm not here, but this is not a problem to guide the parties because I'm not
15 helping the case, but what I would like to share with you, it would appear to me, and
16 I will listen to your views on this, that immediately to come up with a request for the
17 postponement that is provided in Rule 121 is not in my view the best way to go ahead
18 with this very important matter because it will give to the public the impression that
19 Ms Bensouda was not able to stand up and to say, when I asked do you have some
20 issues to raise with regard to the date that was set for the confirmation of charges
21 hearing, she said no. And just in two days to come up with this will not very well
22 present the Office of the Prosecutor -- and you're working so hard as I see based on
23 what you have disclosed now to me -- that only in two days you realised that you
24 have to postpone it.

25 So I would suggest that you come with a reasoned decision maybe, it's up to you, in

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1 ten days, in a week, in two weeks and to give reasons that are quite clear. That the
2 first case, the arrest warrant the investigation 2004/2005, the arrest warrant since 2005
3 issued by the Chamber 8 July, thereafter nothing has happened, this is unexpected
4 and that a lot of evidence has to be revisited, new evidence have to be also sought by
5 the office, along these lines I would say.

6 Because it is the Chamber that could do this proprio motu as well, but I do not see
7 valid reasons for the Chamber, having set the 24 August, now to come and change the
8 decision. The initiative has to be with the Prosecutor.

9 But how much time do you think you will need in order to come up with a reasoned
10 decision?

11 MR GUMPERT: Reasoned application?

12 SINGLE JUDGE TRENDAFILOVA: Yes, reasoned application so that we take a
13 reasoned decision.

14 MR GUMPERT: Yes. Well, I entirely take your Honour's steer on the timing of the
15 matter. It's not a complicated issue. Most of the reasons, motivations are already
16 set out in writing in this document. I would propose therefore that we will make
17 such an application in the middle of February.

18 SINGLE JUDGE TRENDAFILOVA: Middle of February. Well, 20 days from today.

19 MR GUMPERT: Twenty days from today, yes.

20 SINGLE JUDGE TRENDAFILOVA: Even less.

21 MR GUMPERT: So be it. If you have a preferred date, I can see there are
22 preferences on the other side of the court.

23 SINGLE JUDGE TRENDAFILOVA: Yes, a little bit earlier, can you --

24 MR GUMPERT: Earlier? Yes.

25 SINGLE JUDGE TRENDAFILOVA: -- come in ten days?

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- 1 MR GUMPERT: In ten days. I'm not very good at arithmetic. We're on the 27th?
- 2 SINGLE JUDGE TRENDAFILOVA: 28th.
- 3 MR GUMPERT: 7 February, is that a working day?
- 4 SINGLE JUDGE TRENDAFILOVA: Well, again, it's nothing that if you identified 7
- 5 February that you cannot come on 10 February.
- 6 MR GUMPERT: Right, okay.
- 7 SINGLE JUDGE TRENDAFILOVA: Because --
- 8 MR GUMPERT: We'll have it done by 10 February.
- 9 SINGLE JUDGE TRENDAFILOVA: Because, Mr Gumpert, well, I made this point
- 10 about the initial appearance and the reaction of the Prosecutor, Madam Prosecutor, it
- 11 wouldn't appear very nice not to have raised this issue and to come immediately in
- 12 two days. But at the end of the day, it's the policy of the office, but I would like to
- 13 have this appearance of the integrity of the proceedings of the organs, but it's up to
- 14 you.
- 15 MR GUMPERT: Your Honour, there are remarks I could make about why it was
- 16 that no response was made even though we knew then --
- 17 SINGLE JUDGE TRENDAFILOVA: No, no, it's fine.
- 18 MR GUMPERT: -- that we wouldn't be able to comply with the suggested day, but
- 19 there's really no point in my doing so. I take your Honour's steer and I guarantee
- 20 that we will have an application in the works by 10 February.
- 21 SINGLE JUDGE TRENDAFILOVA: Yes. It's not a difficult one, as you rightly said,
- 22 yes, I agree with you.
- 23 And the second point, when you mentioned -- that I have to raise and the members of
- 24 the team were a little bit worried about, when you mentioned that you are going to
- 25 disclose immediately after we finish after your meeting with Ms Cissé at 4.30 those

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1 material that is publicly available, I immediately thought that this has to be reflected
2 in the disclosure decision. But I really very much appreciate -- no, I do appreciate
3 that the Office of the Prosecutor is so robustly going ahead with the proceedings, so I
4 will find a way to reflect this in the disclosure decision, but please file with the
5 Registry the evidence that was disclosed to Ms Cissé, to Mr Ongwen and
6 communicate it to the Chamber as required by Rule 121 I think paragraph 3 or
7 paragraph 2. I'm not very much sure, but it's Rule 121.

8 So that is it and it is very much appreciated that you, Mr Gumpert, are so well
9 organising the proceedings. I'm impressed. And I can speak freely about this
10 because I'm not going to be sitting on the Bench during the confirmation of charges
11 hearing so nothing will depend on my intimate conviction as I expressed now about
12 the preparation.

13 Do we have something else? Do you want?

14 MR GUMPERT: I don't believe so. There are, as I said, some closing submissions in
15 the document which you will have an opportunity to read.

16 SINGLE JUDGE TRENDAFILOVA: Yes.

17 MR GUMPERT: I'm not going to rehearse them now. Indeed there's a quotation
18 from your Honour in respect of the Ntaganda decision and the timing of that
19 decision.

20 SINGLE JUDGE TRENDAFILOVA: Yes.

21 MR GUMPERT: But there is no purpose in my delaying things. You will have the
22 opportunity --

23 SINGLE JUDGE TRENDAFILOVA: We shall study --

24 MR GUMPERT: -- to read that.

25 SINGLE JUDGE TRENDAFILOVA: We shall study that.

Ex Parte Status Conference
(Prosecution only)

(Closed Session)

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Pursuant to Pre-Trial Chamber II's Order ICC-02/04-01/15-238, dated 22-05-2015, this transcript is reclassified as Public.

1 MR GUMPERT: So I think that the last thing, Mr Guariglia, the director of the
2 Prosecution Division, remarked that this might well be the last hearing which you
3 will be conducting.

4 SINGLE JUDGE TRENDAFILOVA: Who knows. If Kony would surrender.

5 MR GUMPERT: Indeed. We did contemplate various possibilities which might
6 lead to another one, but on that basis he wanted me to express the regard and respect
7 and affection which those of us in the Prosecution Division have for your Honour. I
8 haven't myself been here long enough to have experience of that, but I understand
9 that the encounters we have had have been both instructive and enlightening and that
10 the Prosecution Division is in your debt for enabling it to become a more efficient
11 institution.

12 SINGLE JUDGE TRENDAFILOVA: Well, thank you so much. I hope that the
13 Defence could speak the same because otherwise it would appear that I was as if
14 Prosecutor oriented, which is not the case, but thank you very much.

15 It is very useful truly. I'm not polite and I do not say this because I'm responding to
16 the kind words emitted by Mr Guariglia. It was really very useful to me. I hope
17 that it was equally useful for the members of our very small team. And I hope that
18 the proceedings will unfold properly, smoothly. And of course if there is anything
19 that has to be resolved in this case, please do not hesitate to address the Chamber and
20 the Single Judge. You know that the issues on which the Chamber has to pronounce
21 as a full Chamber are limited. For the rest I am up until the 10th ready to take a
22 decision.

23 Have a good day. I thank very much the interpreters, as always very, very
24 supportive, very helpful.

25 I thank you very much for the very well-prepared paper that we will study

Ex Parte Status Conference

(Closed Session)

ICC-02/04-01/05

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- 1 attentively, and let us hope that this case proceeds in a very, very efficient way so that
- 2 Mr Ongwen is tried without undue delay, if at all.
- 3 Have a good day.
- 4 The hearing is closed.
- 5 (The hearing ends in closed session at 3.35 p.m.)