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TRIAL CHAMBER VI

Before: **Judge Robert Fremr, Presiding Judge**
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. BOSCO NTAGANDA

Public

PUBLIC REDACTED VERSION of the
"Response of the Common Legal Representative of the Victims of the Attacks to the Defence Closing Brief" (ICC-01/04-02/06-2305-Conf)

Source: **Office of Public Counsel for Victims (CLR2)**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the "Legal Representative" or "CLR2") hereby files his response to the Defence Closing Brief pursuant to the Chamber's Order of 28 December 2017 authorising him to do so within two weeks of the filing date of the Defence Closing Brief.[1]

2. In its Closing Brief, the Defence fails to provide any elements that could raise reasonable doubt in the Prosecution's case. Moreover, the Defence's often unsubstantiated challenges to the reliability and/or credibility of the Prosecution's and the Legal Representative's witnesses are incapable of providing other plausible explanations that would undermine a finding of Mr NTAGANDA's guilt beyond reasonable doubt.

3. The Legal Representative believes that the Prosecution is better placed to address the inconsistencies and inaccuracies of the Defence's reading and interpretation of the testimony of the Prosecution witnesses.

4. The Legal Representative further disagrees with the Defence's contentions on a number of legal submissions made by himself and the Prosecution, such as the nature of the attacks or the legal definitions attaching to the crimes of 'attacking civilians' and pillage. However, the Legal Representative will not address these matters in his present submissions, as he believes to have sufficiently clearly set out his position thereon in his own Closing Brief filed on 20 April 2018, and he reiterates his previous submissions in their entirety.

5. Thus, in the present submissions, the Legal Representative will only address some matters arising from the Defence Closing Brief that relate to the interests of the victims he represents in order to demonstrate the weakness of the Defence's position.

[1] See the "Order providing directions related to the closing briefs and statements" (Trial Chamber VI), No. ICC-01/04-02/06-2170, 28 December 2017 (the "28 December 2017 Order"), para. 15.

II. CONFIDENTIALITY

6. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present response is classified as 'confidential' since it refers to a document filed with the same classification. A public redacted version will be filed in due course.

III. PROCEDURAL BACKGROUND

7. On 5 December 2017, Trial Chamber VI (the "Chamber") held a status conference during which it heard submissions of the parties and participants on the modalities of the closing briefs and statements.[2]

8. On 22 December 2017, the Chamber issued an order, whereby it provided directions related to the closure of the presentation of evidence in the case.[3]

9. On 28 December 2017, the Chamber provided further directions in relation to the closing brief.[4] It set the filing deadlines for the Prosecution and Legal Representatives at four weeks from the date on which the Presiding Judge would declare the presentation of evidence closed.[5]

10. On 16 March 2018, the Chamber closed the presentation of evidence in the case.[6]

11. On 13 April 2018, the Chamber, by Majority and upon request from the Prosecution, extended the filing deadlines applicable to the parties and participants

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[2] See the transcript of the hearing held on 5 December 2017, No. ICC-01/04-02/06-T-258-ENG-ET WT (the "Transcript of the Status Conference").
[3] See the "Order providing directions related to the closure of the presentation of evidence" (Trial Chamber VI), No. ICC-01/04-02/06-2166, 22 December 2017.
[4] See the 28 December 2017 Order, *supra* note 1.
[5] *Idem*, para. 8.
[6] See the "Decision closing the presentation of evidence and providing further directions" (Trial Chamber VI), No. ICC-01/04-02/06-2259, 16 March 2018.

by four days, respectively.[7] The Prosecution's and Legal Representatives' Briefs were thus to be filed by 20 April 2018. By the same decision, the Chamber extended the page limits for the parties' Closing Briefs to 450 each, and those of the Legal Representatives' Closing Briefs to 170 and 115, respectively.[8]

12. The Legal Representatives and the Prosecution filed their respective Closing Briefs on 20 April 2018.[9]

13. On 4 May 2018, the Chamber, partly granting a request from the Defence, extended the page limit previously set for the Defence Closing Brief to 500 pages in total, to allow it to respond to some of the submissions made by the Legal Representatives.[10]

14. On 8 May 2018, the Prosecution filed a corrected version of its Closing Brief.[11]

15. On 21 May 2018, the Defence filed a request whereby it sought an extension of the filing deadline for its Closing Brief by an additional three weeks.[12]

16. On 29 May 2018, the Chamber granted the Defence request for an extension of time in relation to its Closing Brief in part, directing the Defence to file its Closing on 2 July 2018.[13]

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[7] See the "Decision providing further directions on the closing briefs" (Trial Chamber VI), No. ICC-01/04-02/06-2272, 13 April 2018, para. 15.

[8] *Idem*.

[9] See the "Closing Brief of the Common Legal Representative of the Victims of the Attacks", No. ICC-01/04-02/06-2275-Conf, 20 April 2018 (the "CLR2 Closing Brief"); the "Closing Brief on behalf of the Former Child Soldiers", No. ICC-01/04-02/06-2276-Conf, 20 April 2018; and the "Prosecution's Final Closing Brief", No. ICC-01/04-02/06-2277, 20 April 2018.

[10] See the "Decision on Defence request for an extension of page limit for its closing brief" (Trial Chamber VI), No. ICC-01/04-02/06-2283, 4 May 2018, para. 11. See also the "Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief", No. ICC-01/04-02/06-2280, 26 April 2018 (the "Defence 26 April 2018 Request")

[11] See the "Annex to the Corrected version of Prosecution's Final Closing Brief", No. ICC-01/04-02/06-2277-Conf-Anx1-Corr, 8 May 2018. The Legal Representative will refer exclusively to this corrected version of the Prosecution's Closing Brief as regards any relevant references thereto.

[12] See the "Request for an Extension of Time", No. ICC-01/04-02/06-2287, 21 May 2018 (the "Defence 21 May 2018 Request"), paras. 1 and 9.

17. On 2 July 2018, the Defence filed the "Defence Closing Brief"'. A corrigendum thereof was filed on 9 July 2018.[14]

IV. SUBMISSIONS

a. General Submissions on the Defence Closing Brief

18. The Defence submissions on how the Prosecution "*picked the wrong organisation and the wrong accused*",[15] are unconvincing and fall short of casting doubt – let alone reasonable doubt – upon the evidence heard in this case.

19. As acknowledged by the Defence in paragraph 455 of its Closing Brief, it relies essentially on *two* sources of evidence to counter the entire Prosecution case. The first is the testimony of the Accused, which it submits is "[S]*ignificantly* […] *corroborated*"[16] by the 'Ntaganda-Logbooks'; the latter being the second source. As regards this second source, it is submitted that it is far from being a reliable source since, as acknowledged by the Accused himself and his Defence, "[m]*istakes in the Logbook are not uncommon*."[17]

20. While the evidence of an accused, as previously stated, should be treated no differently than that of other witnesses,[18] there are very obvious shortcomings to this principle when the Accused's evidence is indeed the *only* contradictory evidence presented. Given the Accused's evident interest in the outcome of this case, it cannot seriously be suggested that the Judges are to disregard abundant credible evidence adduced by the Prosecution in favour of the Accused's version which is largely unsupported by *any* other evidence, be it testimonial or documentary. It is only on

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[13] See the "Decision on the Defence request for an extension of time to file its closing brief" (Trial Chamber VI), No. ICC-01/04-02/06-2291, 29 May 2018, para. 15.
[14] See the "Corrigendum of Annex 1 to the Defence Closing Brief", No. ICC-01/04-02/06-2298, 9 July 2018 (the "Defence Closing Brief").
[15] *Idem*, para. 8.
[16] *Ibid.*, para 462.
[17] *Ibid.*, para. 1070.
[18] See the CLR2 Closing Brief, *supra* note 9, paras. 109-111.

occasion that his version is corroborated by D-0017,[19] a witness who conceded having received money from the Accused "*to help* [him] *out and* [his] *family as well*"[20] and who testified after the completion of the Accused's public testimony. The Accused's version of events is not sufficient to credibly offer a different, plausible explanation and rebut the allegations against him.[21]

21. It is equally insufficient for the Defence to simply label all other evidence 'fabricated'[22] and 'biased'[23] without providing plausible reasons as to the motives for

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[19] See e.g. Defence Closing Brief, *supra* note 14, para. 154, fn. 348; para 175, fns 407, 415, 417; para. 442: "**The evidence reveals** that this attack was not directed against civilians" and accompanying footnote 442 which solely cites to the testimony of D-0017; para. 198, fn. 457; para. 201, fn. 464.

[20] See T-255-CONF-ENG ET, 30 November 2017, p. 39, lines 20-22.

[21] The Legal Representative has already provided sufficient submissions on the contradictory and evasive nature of parts of the Accused's testimony in his Closing Brief and sees no reason to repeat these in the present response.

[22] See the Defence Closing Brief, *supra* note 14, para. 450: "Analysis of the evidence adduced in the form of HRW, MONUC and Un reports – along with the testimony of witnesses involved in their creation and/or admission – reveals that it cannot be relied upon by the Chamber due mainly to its [*sic*] **bias nature**, […]"; para. 454: "P-0315's evaluation, and notes, of her discussion with NTAGANDA in 2010 reflects either **bias** or misunderstanding […]"; para. 512: "Although **P-0055, a** [*sic*] **bias witness**, testified that he saw civilians taking off roofs off houses, whom Mr NTAGANDA purportedly referred to as our combatants, his evidence is uncorroborated and unreliable. **P-0907, another** [*sic*] **bias witness**, who testified [*sic*] being present on that day did not mention the presence of Hema civilians"; para. 639: "To this day, what happened to BWANALONGA remains unknown. **P-0901, a** [*sic*] **bias witness**, testified 'to this day I never learned the truth'"; para. 644: "Although document DRC-OTP-0127-0118 suggests that BWANALONGA was arrested at the parish, […] The [*sic*] **bias tone** of the document […] also contribute to the unreliability […]"; para. 795: "P-0769, **a biased witness**, stated: […]"; para. 809: "[…] For example, **P-0963, a** [*sic*] **bias witness**, testified not knowing whether UPC commanders 'knew anything about' rapes allegedly committed"; para. 820: "[…] Furthermore, even **biased witness P-0055** denied that Mr NTAGANDA had any role in planning the operation"; para. 824: "[…] even according to **biased witness P-0017**, […]"; para. 1261: "[…] **P-0010** demonstrated time and again that she was **a stubborn and biased witness**, unconstrained by the truth"; para. 1364: "P-0046's opinion […] should also be viewed in light of **the biased attitude** […]"; para. 1423: "**P-0116** offered negative generalisations […] that are entitled to no weight and whose unsubstantiated repetition **demonstrates his bias**"; para. 1423: "[…] **P-0116's biased approach** […]"; para 1452: "**P-0768** […] **was a biased and unreliable witness** […]"; para. 1559: "**P-0768**'s testimony […] comes from **a thoroughly biased witness** […]". Emphases added. Internal references omitted.

[23] *Idem*, para. 205: "In that regard, **P-0907**'s account of these attacks is farfetched, implausible and unreliable in light of the evidence **he fabricated** in relation to the Mongbwalu operation"; para. 246: "In support of its contention that numerous crimes were committed during the *First Attack*, the Prosecution depends on unreliable evidence including inter alia: the testimony of five insider witnesses who lied and **fabricated evidence** under oath; […]"; para. 248: "The testimony of **P-0768, P-0017, P-0963, P-0907** and **P-0901** reveals that they lied under oath and **to large extent fabricated their narrative**. […]"; para. 253, *inter alia*, invented a false narrative […]; **fabricated personal knowledge** of events […]"; para. 268: "[…] **P-0768 fabricated [REDACTED]** on his way to Mongbwalu […]"; para. 300: "P-0017, *inter alia*: fabricated evidence concerning his presence at [REDACTED] […]"; para. 304:

either fabrication or bias – let alone identify the nature of the alleged bias. As for the alleged bias, the only concrete explanation the Defence offers concerns witness P-0031 in relation to whom it alleges an ethnic bias in favour of the Lendu ethnic group. All other allegations of bias are entirely unsubstantiated.

22. The Defence also fails to substantiate most of its allegations that witnesses 'fabricated' evidence. The only more concrete allegation pertains to witnesses P-0887 and P-0907 in relation to whom the Defence claims that they "*[REDACTED]*"[24] Yet, the Defence does not precise what the alleged wider "*scheme*" is, of which they allege these witnesses were 'a part'.

23. It also remains unclear what incentive or motivation witnesses would have had to fabricate evidence; especially since this allegation is levied against almost *all* witnesses in this case. Notably, all of these witnesses' untruthfulness is measured against the word of the Accused. Without more, it is simply incredulous that dozens of witnesses and hundreds of victims would specifically seek out Mr NTAGANDA as a target and scape goat and consistently incriminate him as one of the major actors responsible for the events that took place in Ituri in late 2002 and the beginning of 2003 form which Prosecution's case arises. Notably, all the Prosecution witnesses and

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"**P-0017 fabricated all of the above**"; para. 329: "In light of **P-0017's propensity to fabricate evidence** […]"; para. 357: "[…] P-0907 is yet another *insider* **who lied under oath and fabricated** evidence"; para. 418: "The testimony of **P-0887, V-2, P-0877, P-0892 and P-0912** reveals that in various ways, they lied under oath, distorted the facts or **fabricated incriminating evidence**"; para. 427: "Evidently, [V2] was not living in Mongbwalu at the time and she **fabricated** her narrative"; para. 430: "Moreover, **P-0877** did not personally witness any crimes committed by FPLC members. His evidence was entirely **based on hearsay or fabricated** […]"; para. 433: "**P-0877 evidently fabricated** and added these entries for the purpose of using them as justification for the information he provided to the Prosecution"; para. 435: "**P-0894 fabricated the incriminating evidence** he provided concerning five murders […]"; para. 446: "In light of the testimony of P-0892 and P-0912, it is simply impossible that P-0912 was raped in 2002, at the age of [REDACTED]. **P-0892 and P-0912 clearly fabricated their narrative**"; para. 596: "Only one FPLC member testified about the first FPLC attempt to liberate Mongbwalu, **P-0907, who fabricated his narrative** on these events"; para. 609: "P-0017's evidence regarding Mr NTAGANDA […] and **his fabricated evidence** concerning fleeing civilians hiding in Sayo church"; para. 631: "[…] **As for P-0017**, even if he saw bodies, which is doubtful in light of **the considerable evidence he fabricated**, […]"; para. 663: "P-0017, the sole witness on this event, **fabricated his narrative**"; para. 668: "**P-0768 fabricated his narrative** regarding [REDACTED]"; para. 698: "**P-0190 lied and fabricated incriminating evidence under oath**". Emphases added. Internal references omitted.

[24] *Ibid*., para. 419.

victims called to testify mentioned Mr NTAGANDA as the one responsible for the crimes committed by the UPC/FPLC troops, and not KISEMBO, LUBANGA or other commanders, and often referred to these troops as "*BOSCO's soldiers*".[25] No reasonable and convincing arguments are advanced by the Defence to substantiate its claim that witnesses fabricated evidence. It is but baseless speculation and should be dismissed as such.

24. Moreover, the Defence's indiscriminate wholesale attacks on all witnesses' credibility is implausible and its statement according to which "[a] *witness willing to lie and to fabricate such a narrative would be willing to lie on anything in order to incriminate*"[26] is applicable *mutatis mutandis* to the Accused who has a much greater interest than all Prosecution witnesses taken together to provide a convenient narrative of facts and circumstances in order to escape criminal responsibility.

25. The Defence in many instances fails to advance any reasons for its assertions why it would appear that a particular witness was not truthful. On other occasions it asserts that the evidence must be untrue, because the Accused disagrees with it, at best corroborated by the re-organised 'Ntaganda Logbook' or the testimony of D-0017.[27] These weak and petulant arguments fall decidedly short of raising any doubt, let alone reasonable doubt.

26. Furthermore, by providing essentially a summary of the Accused's testimony, the Defence fails to meaningfully engage with the evidence and submissions of either the Prosecution or the victims in this case, which can only lead to the conclusion that there is no evidence on the record that could indeed challenge in any manner the whole evidence presented to demonstrate the guilt of the Accused beyond reasonable doubt.

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[25] See e.g. T-131-CONF-ENG CT, 14 September 2016, p. 27, line 15; T-164-CONF-ENG CT, 24 November 2016; p. 23, line 3; T-201-CONF-ENGET, 10 April 2017, p. 20, line 19.
[26] See the Defence Closing Brief, *supra* note 14, para. 1135.
[27] See *supra*, para. 20.

27. In addition, the Defence recurrently asserts that "*the evidence reveals* […]" when in fact the 'evidence' referred to is the word of the Accused.[28] On yet other occasions, such statements are altogether unsupported.[29] While these could be understood as a concluding line, it is noteworthy that the relevant preceding discussion of evidence refers to nothing but the Accused's own testimony.

28. On other occasions, the Defence cites purported testimony of trial witnesses, when in fact the quoted portions of the transcripts reflect the words spoken by Counsel rather than *viva voce* evidence of the witness.[30] It is not for Counsel to give evidence. It can also not seriously be argued that an affirmative answer of a witness to a long question containing several hypotheses can rightfully be understood as the witness having agreed with every single word used by Counsel in formulating the question when all the witness in fact said was 'yes' or 'no'. This is neither a faithful reading of the record, nor does it particularly contribute to assisting the Chamber in assessing the testimony of the witness in question.[31]

29. Finally, the Defence's submissions on the credibility of certain witnesses are internally contradictory, when it makes statements such as: "*Not only is P-0901's evidence false, it irreparably undermines his credibility* […]"[32] while at the same time claiming that those parts of his evidence that corroborate the Accused's testimony are probative.[33] While it is a well-established principle that a Chamber may rely on

[28] See e.g. the Defence Closing Brief, *supra* note 14, para 194: "[…] The evidence reveals that this attack was not directed against civilians" and accompanying footnote 446; para. 219: "In fact, the evidence reveals that the FPLC refrained from launching operation, even to defend. The sole attack in which the FPLC was involved was in Tchomia, was directed at Lendu combatants who occupied the town, and not at civilians", fn. 487.
[29] *Idem*, para. 198: "[…] The evidence reveals that exactions might have been committed in Bunia by UPDF, APC, or Lendu combattants, but there is no reliable evidence that an attack was committed against the civilian population by the FPLC"; para. 304: "Second, the evidence establishes that P-0017 did not remain in Mongbwalu after the liberation of Sayo".
[30] See the Defence Closing Brief, *supra* note 14, paras 317 fn 829; 323 fn 868. See also *infra*, para. 43.
[31] See e.g. the remarks of the Presiding Judge at T-201-CONF-ENG ET, 10 April 2017, pp. 49, lines 20-25 and 50, lines 1-10.
[32] See the Defence Closing Brief, *supra* note 14, para. 412.
[33] *Idem*, para. 384.

some parts of a witness's account and reject others,[34] it is unreasonable to suggest irreparable harm to a witness's credibility when at the same time relying on his or her testimony if and when convenient to support the Accused's version of events. This approach just illustrates that many credibility challenges mounted against witnesses in this case are without any merit.

i. Discrepancies in the victim application forms

30. In relation to a number of dual-status witnesses, the Defence, *inter alia*, alleges untruthfulness based on the fact that information provided in the victims' application forms does not entirely correspond with their testimony under oath in court.[35] Concretely, and by way of example, the Defence makes assertions such as: "*Moreover, as revealed by* inter alia *her VAF, P-0887 was not a truthful witness*."[36] The Defence further contends that the witness's claims that the form was filled in by a third person and not read back to her are nothing but an indication that she is lying and "*blaming the person who assisted her*".[37]

31. As has been previously argued before this Chamber, the victim application process [REDACTED]. The Legal Representative respectfully requests that the Chamber take these considerations into account when evaluating the testimony of the dual status witnesses concerned.

b. <u>Specific submissions in relation to matters pertaining to witnesses called by the Legal Representative and other victims participating in this case</u>

ii. Victims' motivation to testify

32. The Defence's assertions in relation to most victims' testimony, namely that their testimony was motivated by financial motives is particularly baseless. In this regard, the Defence, for instance, cites the example of V2, who, when asked about

[34] See the CLR2 Closing Brief, *supra* note 9, para. 108, fn. 140.
[35] See e.g. the Defence Closing Brief, *supra* note 14, paras 419, 436, 444.
[36] *Idem*, para. 419.
[37] *Ibid.*, para. 422.

expectations in relation to possible reparations, answered that she would want to be able to rebuild her house and resume her trade.[38] The Legal Representative will address this specific challenge *infra* at paragraph 40.

33. The Legal Representative would like to recall that reparations are as much part and parcel of the Rome Statute framework as victim participation at trial. It is submitted that it is therefore entirely without merit to impute generalised dishonest intentions to every single victim filling in a participation form, simply because they may also have an interest in restitution and/or reparation. As has been done by the Legal Representative during his questioning, one must clearly distinguish the evidence about events form the concrete prejudice suffered that may give rise to reparations or restitution in the event of a conviction, and the specific victim's expectations in this regard.

34. Furthermore, it cannot be stressed enough that it is an integral part of the Rome Statute system – one distinguishing it from the *ad hoc* tribunals – that victims have a statutory and legitimate right to reparations. This right should never be allowed to be unjustly misconstrued to impeach victims who come forth to testify in a blanket manner.

iii. Witness V2

35. The Defence attempts to discredit Witness V2, on the bases that (i) she lied and was generally untruthful;[39] (ii) her inability to locate Sayo on a map;[40] (iii) "*not knowing that the houses abandoned by Hemas were then occupied by Lendus*";[41] (iv) "*not knowing that there were almost no more Hemas living in Mongbwalu at the time*";[42] (v) not being able to locate the Kodulu quarry;[43] (vi) not being able to provide any

[38] See T-202-CONF-ENG CT, 11 April 2017, p, 41, line 18.
[39] See the Defence Closing Brief, *supra* note 14, para. 425.
[40] *Idem*, para. 426.
[41] *Ibid*., para. 426.
[42] *Ibid*., para. 426.
[43] *Ibid*., para. 426.

identifying documents for her children.[44] Lastly, the Defence contends that the fact that the victim did not "[tell] *her new husband about her rape*"[45] contributed to showing that she was a "*totally unreliable*" witness.[46]

36. At the outset, it is submitted that the argument that the fact that the victim did not tell her new husband about her rape is a particularly remarkable and inappropriate attack on a victim of sexual violence and has no connection with her credibility. In this regard, the Legal Representative recalls his earlier submissions on victimisation connected with sexual violence.[47]

37. As regards the other arguments put forth, some of these challenges are outright preposterous, such as her inability to read and understand maps or being in the possession of identifying documents for her children; others are simply without merit as they are solely based on the Defence's own statements and assertions. The Defence misstates what the witness said. In relation to its assertion that the witness did not "[know] *that there were almost no more Hemas left living in Mongbwalu at that time*", it cites to the witness describing her business activities:[48]

[REDACTED]

38. In addition, it is worth noting that when she was asked questions about conducting business activities with Hema, the relevant time period was not put to her and just shortly before she was asked about the time period "*towards the end of 2001 and in 2002*".[49] Moreover, it also warrants s recalling that the purported 'failure to recall' argument is based on nothing other than the Defence's case[50] and what the

[44] *Ibid.,* para. 428.
[45] *Ibid.*
[46] *Ibid.*
[47] See the CLR2 Closing Brief, *supra* note 9, paras 434 *et seq*. referring to the testimony of Maeve Lewis, Dr. John Yuille, P-0014, and P-0365.
[48] See the Defence Closing Brief, *supra* note 14, para. 426, fn. 1265.
[49] *Idem*, p. 72, lines 24-25.
[50] See e.g. the Defence Closing Brief, *supra* note 14, para. 364 under the heading "*P-0907 provided truthful testimony about the atrocious living conditions and the mistreatment of the population in Mongbwalu before November 2002*". See also *Ibid*., Chapter II, Section I titled "*Ending the oppression of the Mongbwalu population*", para. 240 *et seq*.

Defence would have liked to 'establish' with the witness. In this context, it is simply absurd to speak of an 'inability to recall'. Rather, Defence counsel sought her to "*confirm*"[51] that Hema had been chased out of Mongbwalu and that Hema homes had been occupied by Lendu, to which she simply stated that she did not know; a legitimate answer according to the general instructions every witness is given by the Presiding Judge at the beginning of their testimony. None of the Defence submissions made in this regard pertains to an objective inability to 'recall' a *fact* and should therefore be rejected as such.

39. In paragraph 687 of its Closing Brief the Defence, *inter alia*, contends that "[t]*hus Mr NTAGANDA is not charged with the rape of V-2 which took place in Beba*."[52] As previously set out in his Closing Brief, the Legal Representative reiterates that the evidence regarding her rape by UPC soldiers in the village of Beba has been adduced in relation to the contextual elements of the crimes against humanity committed by Mr NTAGANDA and his troops.[53] Moreover, it was for this purpose that the Chamber has authorised the Legal Representative to call her as a witness in the first place.[54] The Defence contention that V2's rape was not proven,[55] is a further speculative assertion. It is for the Judges to evaluate V2's testimony in this regard. As previously recalled, her testimony does not require corroboration[56] if accepted by the Judges.

40. Finally, the Defence asserts that "[c]*learly, V-2 testified to obtain financial assistance 'to rebuild* [her] *house and help* [her] *resume* [her] *trade'*."[57] The answer used to illustrate the Defence assertion that the witness was solely motivated by the motive of obtaining financial assistance is taken out of its proper context. The witness gave

[51] See T-202-CONF-ENG CT, 11 April 2017, p. 73, line 6.
[52] See the Defence Closing Brief, *supra* note 14, para. 687.
[53] See the CLR2 Closing Brief, *supra* note 9, Section VII A, paras. 126, 147 *et seq*.
[54] See the "Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns" (Trial Chamber VI), No. ICC-01/04-02/06-1780-Conf, 10 February 2017, para. 25.
[55] See the Defence Closing Brief, *supra* note 14, fn. 1991.
[56] See the CLR2 Closing Brief, *supra* note 9, para. 108.
[57] See the Defence Closing Brief, *supra* note 14, para. 429.

this answer when specifically asked about possible reparations in this case.[58] It should be assessed as such, in its proper context if/when there would be a reparations stage in this case.

41. It is for the Judges to assess her credibility and reliability based on the entirety of her testimony and her in-court demeanour. Her evidence has its place among that of other witnesses who testified about the events pertaining to the widespread and systematic attacks perpetrated against the civilian non-Hema population, as well as limited parts of the Mongbwalu operation.[59] It must therefore be assessed in conjunction with the other evidence in this case. As has recently been pointed out by their Honours Judges Van den Wyngaert and Morrison, "[w]*hen the Appeals Chamber says that the Trial Chamber must analyse the evidence holistically, all this means is that the evidentiary weight of individual items of evidence should not be determined in isolation, but rather in conjunction with other relevance*."[60] It is submitted that the baseless challenges of the Defence are incapable of discrediting V2 as a witness to these events.

iv. Witness V3

42. The Defence asserts that V3 agreed to testify against Bosco NTAGANDA "*obviously driven by emotions arising from [REDACTED] disappearance*"[61] and calls his testimony 'unreliable' without providing convincing reasons for this assertion, let alone state why it is 'obvious'. Simply contrasting his testimony with the divergent testimony of the Accused is insufficient to cast doubt upon the veracity of V3's account, which was spontaneous and internally consistent as well as corroborative of

[58] See T-202-CONF-ENG ET, 11 April 2107, p. 41, lines 12-19.
[59] See the CLR2 Closing Brief, *supra* note 14, paras. 125-126, 147-150. See also *Ibid*, paras. 175-176 and the "Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns" (Trial Chamber VI), No. ICC-01/04-02/06-1780-Conf, 10 February 2017, para. 25.
[60] See *The Prosecutor v. Jean-Pierre Bemba Gombo*, Separate Opinion of Judges Van den Wyngaert and Morrison to the Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute', No. ICC-01/05-01/08-3636-Red-Anx2 A, 8 June 2018, para. 15.
[61] See the Defence Closing Brief, *supra* note 14, para. 677.

other evidence adduced in this case.[62] The Defence also claims that Mr NTAGANDA "*was not in Kilo when the events V-3 described happened on [REDACTED]*" which it sees as "*established*" by NTAGANDA's logbook;[63] notably not by any independent witness. However, as previously pointed out, V3's account that Mr NTAGANDA was present in Kilo around Christmas 2002 is corroborated by P-0850.[64]

43. In addition, the Defence misrepresents V3's testimony when asserting that he testified that Mr NTAGANDA and KISEMBO had "*no less than five meetings*" with [REDACTED] during the time they were present in Kilo.[65] The reference the Defence provides as a basis of this claim reads as follows: "Q [Defence counsel]: *On the basis of your testimony, Mr Witness,* ***I reach the conclusion*** *that Mr Bosco Ntaganda allegedly met [REDACTED]* ***on at least five occasions****, that is to say the* ***three meetings****, plus the event involving [REDACTED] during that period when the UPC arrived in Kilo up until the moment in time when he disappeared, would you agree with me? A: Yes, that's right.* ***From what you're reading****, it's five occasions;* ***they met together to discuss on three occasions***."[66] The answer of the witness speaks for itself.

44. Furthermore the Defence claims that V3's account was "*entirely implausible and not credible*" which it *inter alia* bases on him being "*contradictory to other witnesses*" in relation to matters such as "***not knowing*** *about other trouble, fighting or looting in his village before 2002*".[67] This is not a valid challenge to his credibility. As set out *supra* in paragraph 37, all witnesses are routinely instructed in the following manner:

> *"10 PRESIDING JUDGE FREMR: All right. So, Mr Witness, on behalf of the*
> *11 Chamber I would like to welcome you. You are going to testify before the*
> *12 International Criminal Court. You will be soon asked questions both by the judges*
> *13 and lawyers over here in the courtroom. In this connection, I would like to guide*
> *14 you as follows: Please listen carefully to those questions. If you do not understand,*
> *15 feel free to ask for the question to be repeated. We want you to tell the truth and tell*
> *16 us what* ***you saw, heard or sensed yourself****. If you didn't see or hear it yourself but*
> *17 you found out some other way then you should explain how. Please testify just on*

[62] See the CLR2 Closing Brief, *supra* note 9, section VII.A. 4. Kilo.
[63] See the Defence Closing Brief, *supra* note 14, para. 679.
[64] See the CLR2 Closing Brief, *supra* note 9, para. 249.
[65] See the Defence Closing Brief, *supra* note 14, para. 679.
[66] See T-202-CONF-ENG CT, p. 84, lines 18-24. Emphasis added.
[67] See the Defence Closing Brief, *supra* note 14, para. 679.

18 that which you remember, don't guess, don't make things up. ***There is nothing***
19 ***wrong in saying, 'I don't know' or 'I don't remember'***."[68]

c. Additional Matters

45. On 4 May 2018, the Chamber partially granted the Defence request for a substantial extension of page limit to address a number of matters arising from the closing briefs submitted by CLR1 and CLR2 in this case. In particular, the Defence sought an extension of 100 additional pages because it "*deemed necessary to address specific submissions found in various sections of the CLR2 Closing Brief, such as (i) 'submissions on factual circumstances of the crimes'; (ii) 'submissions of victims having suffered on account of the crimes committed by Mr Ntaganda and his subordinates'; and,* inter alia *(iii) 'criminal responsibility of Mr Ntaganda for the crimes committed and the suffering inflicted upon the victims'*."[69]

46. The Defence Closing Brief is devoid of *a single* reference to the Legal Representative's Closing Brief. While it is, of course, open to the Defence to structure its final submissions in whichever way it wishes, and while it is equally open to the Defence not to respond to the Legal Representative's submissions, it is an entirely different matter to request and obtain an extension of page limit *on the basis of* having to respond to matters raised in the Legal Representative's Closing Brief and then not using the granted extension in this way. In effect, this is nothing more than a circumvention of the original page limit.

47. Furthermore, the Defence Closing Brief falsely imputes an ostensible statement, or rather, a purportedly 'notable' lack thereof, to the Legal Representative. Concretely, the Legal Representative takes issue with a specific erroneous assertion of the Defence in which it underscored a supposed telling absence of submissions by 'the LRV2' in conjunction with the allegation of rape committed in Bambu. The

[68] See T-202-CONF-ENG CT, p. 3, lines. 10-19. Emphasis added.
[69] See the Defence 26 April 2018 Request, *supra* note 10, para. 14.

Defence misstates that "[t]*he LRV2, notably, makes no submissions on rape in Bambu*".[70] The basis for this statement is a *Registry* report, and more specifically a footnote in this report which reads: "*CLR1 represents 283 former child soldiers and LR2 represents 1,846 victims of the attacks*". In an event, as set out in his Closing Brief, the Legal Representative can only comment on the evidence presented by the Prosecution.

V. CONCLUSION

48. The Defence Closing Brief mainly constitutes a summary of the Accused's testimony and generalised, largely unsubstantiated allegations that nearly all witnesses in this case were biased, fabricated evidence, or had other ulterior motives for implicating the Accused. It is respectfully submitted that these challenges are incapable of rebutting the abundant evidence to the contrary, namely that Mr NTAGANGA is individually criminally responsible for the commission of the many atrocious crimes committed against the civilian population as charged in this case.

RESPECTFULLY SUBMITTED,

Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks

Dated this 7th Day of November 2018

At The Hague, The Netherlands

[70] See the Defence Closing Brief, *supra* note 14, para. 941 and corresponding footnote 2705 which refers to the "10th Victims' Report, ICC-01/04-02/06-2296-Corr, fn.5."