

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Geoffrey Henderson
7 Status Conference
8 Thursday, 11 September 2014
9 (The status conference starts in open session at 9.13 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Court officer, please announce the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The Situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 against Bosco Ntaganda, ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Good morning everyone and sorry for delay. I would like for us to welcome the
20 parties and participants and -- oh, Mr Ntaganda is not with us? He's over there.
21 Okay. Welcome, Mr Ntaganda. And since this is the newly constituted
22 Chamber, I start with introducing ourselves.
23 So on my right that is Judge Kuniko Ozaki, on my left Judge Geoffrey Henderson and
24 I am Robert Fremr, presiding over this case.
25 Now, can counsel please introduce themselves for the record. I would like to start

1 with Prosecution.

2 MS SAMSON: Good morning, Mr President, your Honours. For the Prosecution
3 today we have to my left Ms Diane Luping, a trial lawyer; Ms Marion Rabanit,
4 associate trial lawyer; Mr Rens Van Der Werf, assistant trial lawyer; Ramu Bittaye in
5 the back row, case manager; and myself, Nicole Samson, trial lawyer.

6 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

7 Then I would like to continue with Defence.

8 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
9 your Honours. Good morning to all parties and participants in the courtroom this
10 morning. Mr Ntaganda is represented this morning by the Defence team composed
11 of Maître Andrea Valdivia; and to my right behind me Mélissa Beaulieu; to my side,
12 to my right, Margaux Portier; and I am Stéphane Bourgon. I am lead counsel for
13 Mr Ntaganda.

14 I would like to make the most of this opportunity, Mr President, to say that today I
15 will be speaking English and, if need be, I will make a number of references in French.
16 Thank you.

17 PRESIDING JUDGE FREMR: We will appreciate. We will appreciate. Thank you,
18 Mr Bourgon.

19 Now, representatives for victims.

20 MS PELLET: (Interpretation) Good morning, Mr President. I am Sarah Pellet and
21 I represent the first group of victims, child soldiers. I am counsel in the OPCV.
22 And behind me we have Mohamed Abdou. I thank you.

23 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
24 your Honours. The victims of the attacks are represented today by myself,
25 Dmytro Suprun, I am counsel in the OPCV, also by Ludovica Vetrucchio who is

1 associate.

2 PRESIDING JUDGE FREMR: Thank you. Thank you.

3 And now I please to introduce themselves Registry representatives.

4 MS DAHURON-JACOBY: Good morning, your Honours. Today to represent the

5 Registry, to my left, Bibiana Becerra Suarez, legal co-ordinator; Natacha Schauder,

6 VWU Acting Chief of Operations Unit; and behind me for the VPRS, Soraya Brikci,

7 Acting Chief of the Section; and Jamila Zoubit-Afifi, ALO. Thank you. And myself,

8 Charlotte Dahuron-Jacoby, of the Court Management Section.

9 PRESIDING JUDGE FREMR: Thank you very much.

10 At the beginning I will like to say, mainly for the better understanding of the public,

11 that the purpose of today's status conference is to discuss steps which will have to be

12 done before the trial can commence.

13 The provisional agenda for this status conference was issued on 21 July. The

14 Chamber has received filings on the topics listed in that agenda from Prosecution,

15 Defence, then also a joint filing by the legal representatives for victims and from the

16 Registry.

17 The Chamber notes that whilst the Defence made propose two items to be added to

18 the discussion, it has not in fact made any observations on the agenda items.

19 Yesterday we issued the final agenda.

20 I will also like to say that the framing of the charges as well as the commencement of

21 the trial on the merits will be dealt with as agenda items. In this connection, I have

22 to emphasise that according Article 64(8)(a) of the Statute, at the commencement of

23 the trial, the Trial Chamber shall have read to the accused the charges and shall afford

24 him an opportunity to make an admission on guilt or to plead non-guilty. Since

25 according our reading the commencement of trial means precisely the first day of trial

1 on the merits, not status conference, so we will do it that day.

2 Before moving to the agenda items, the Chamber wishes to make some general
3 comments on its expectations for this trial and on how it wishes to conduct it.

4 First of all, I would like to say that this Chamber will do its best to fulfil its obligation
5 according Article 64(2) to ensure that a trial is fair and expeditious and is conducted
6 with full respect for the rights of the accused and due regard for the protection of
7 victims and witnesses.

8 For the sake of expeditiousness of trial, the Chamber encourages inter partes
9 communication. The parties are free to seize the Chamber of matters that cannot be
10 agreed on between them, but in principle, they should attempt to discuss and agree
11 on a procedure before bringing a matter before the Chamber.

12 To assist efficient inter partes communications, the Chamber urges the parties to be
13 civil to each other. Besides the interaction in the courtroom, that also extends to the
14 communications by email and, importantly, the language employed for filings.

15 As to the filings, the Chamber stresses that these should be concise as possible.

16 I know that is great art to be concise which is not very common to lawyers. Parties
17 and participants need not necessarily exhaust page limits stipulated by the ICC
18 regulations according our review. Thomas Jefferson said, I quote, "The most
19 valuable of all talents is that of never using two words when one will do," unquote.

20 Even on the limited number of filings made in this case, the Chamber observes that
21 parties and participants should endeavour to the improvement in this regard.

22 I also reiterate that all email communications directed to the Chamber should use the
23 Trial Chamber VI Communications address that you have been provided with by the
24 legal staff of this Chamber. Sending your emails to this address will automatically
25 copy the message to the legal team advising the Judges.

1 The Chamber doesn't need to be included on inter partes exchanges between the
2 parties and the participants. However, when seizing the Chamber of something, all
3 parties and participants should be copied on their email communications with the
4 Chamber, unless there is a specific justification for doing otherwise.

5 In general, it is the rule that emails to the Chamber should not contain any
6 substantive matters, as such requests should be made in proper filings. Naturally, if
7 a matter requires urgent attention and can only be brought to the Chamber within an
8 actionable time frame by email, this can be done. However, it should be an
9 exception and the Chamber may direct the party concerned, place the matter on the
10 record by way of filing at a later stage.

11 With respected to time frames, the Chamber wishes to indicate that it will press the
12 parties and participants to keep a steady pace in these proceedings. The Chamber
13 may, therefore, shorten response deadlines and will, from its side, ensure that
14 decisions are made within due course. But it's obvious that to achieve
15 expeditiousness, the Chamber needs the assistance from you, from the parties and
16 participants.

17 Finally, the Chamber will, of course, receive filings in either of the working languages
18 of the Court; however, we wish to notify the parties and participants that the primary
19 working language of this Bench is English. Therefore, all decisions and orders will
20 be issued by us in English. We understand that fortunately counsel for both parties
21 in this case are capable of working in either language, which will of course assist the
22 efficiency and accuracy of proceedings.

23 As this Bench will be drafting its decisions in English, and in the interests of ensuring
24 that the parties' arguments are reflected as accurately as possible, the Chamber
25 expresses its preference for submissions to be made in English as well, but I stress that

1 this is merely a preference.

2 One additional point before we will start with the agenda itself. It concerns Defence
3 lead counsel, Mr Bourgon.

4 Mr Bourgon, you have recently taken over as lead counsel for Mr Ntaganda. The
5 Chamber hopes that you have had a good start. We appreciate that you will to be
6 given time to familiarise yourself with the case file. You have made a request for an
7 ex parte status conference to address, amongst others, resources for the Defence team.
8 On that issue, the Chamber has directed you to file written submissions, if you wish
9 to do so. Can you nonetheless give the Chamber just brief, brief information about
10 how your familiarisation is going and how much time you wish to be granted for this
11 purpose.

12 Please, Mr Bourgon, you have the floor.

13 MR BOURGON: Thank you very much, Mr President. Mr President, I arrive on
14 the ground on 19 August for a period of two weeks during which I met with the
15 accused, Mr Ntaganda, and the remaining members of the Defence team.

16 At this point in time, I say that familiarisation of the case is ongoing and proceeding
17 swiftly. However, I do wish to bring to to the attention of the Chamber the fact that
18 the team has now lost its two main members, of course my -- the preceding lead
19 counsel and a legal assistant who were very familiar with the facts of the case. At
20 this point in time, a lot of the work that had to be done or was accomplished will
21 necessarily have to be reviewed again, if not done over again. So it's in this respect
22 that time might be required, additional time.

23 I will not address the issue of resources, I will do this in writing, but if I can just
24 mention the fact that we are very close to an agreement with the Registry in terms of
25 the resources that I need and in order to complete preparations in time and to be able

1 to keep up with the Prosecution.

2 That's my aim. My aim is, and I will say that on a number of occasions today,
3 Mr Ntaganda is looking forward to a trial within a reasonable time. He's not
4 interested in any way in delaying a trial. However, of course we're ready to start a
5 trial if we have time to prepare, if we have the resources necessary to be ready to
6 proceed.

7 That's -- I will keep it at that for this morning, Mr President. Thank you.

8 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon, for this optimistic
9 response.

10 Now, let us go into specific items of the agenda of this status conference.

11 I will always try to summarise written submissions pertaining each single item that
12 have been made by parties or participants and then will give them -- we will give you
13 the floor in order to discuss it.

14 And please keep in mind we have limited time for this hearing, so be, please, as
15 concise as possible.

16 So let's start with item A of the updated agenda, which is languages to be used at
17 trial.

18 The Prosecution and the legal representatives for victims have indicated which
19 languages they expect the witnesses and victims to testify in. The Registry has
20 indicated that it can support the languages listed by the Prosecution and the victim
21 representatives, but that it requires a number of weeks' notice to arrange translation
22 into some of the languages.

23 The Defence has not indicated what languages it expects its witness to speak, but the
24 Chamber appreciate that at this stage it is rather difficult for the Defence to give such
25 an indication. However, in its filing, the Defence did specifically address the

1 language spoken by the accused in its filing. If the Chamber understands the
2 Defence correctly, Mr Ntaganda only speaks Kinyarwanda. I note that the Registry
3 indicated that it can provide for simultaneous translation into Kinyarwanda
4 throughout the proceedings, but the trial concerns more than only the proceedings in
5 the courtroom. The Defence wished to address the translation of documents into
6 Kinyarwanda.

7 And as a preliminary matter, the Chamber notes that the parties do not appear to
8 have had any direct inter partes discussion to date on the scope of translation into
9 Kinyarwanda which may be required. Therefore, the Chamber does recommend
10 that such discussion be undertaken and notes that it may not be efficient to receive
11 lengthy submissions on that issue at this stage prior to any such discussion.

12 Nonetheless, it would be helpful for the Chamber to understand the position of the
13 parties in principle on this matter.

14 Before giving the Defence the floor, I should remind all speakers to speak slowly and
15 to pause for several seconds in between speakers. This is necessary in order to
16 ensure accurate transcription and interpretation.

17 So now I give floor, Mr Bourgon.

18 MR BOURGON: Thank you, Mr President. Regarding the issue of document
19 translation, although Mr Ntaganda disagrees with the Prosecution's view that his
20 right to obtain documents in a language he can fully understand is limited,
21 Mr Ntaganda does not and has no intention of requesting the translation of every
22 single document in Kinyarwanda, or has no intention of requesting the translation of
23 documents for the sake of having his right respected.

24 Quite to the contrary, Mr President, Mr Ntaganda's position on this issue is guided by
25 three priorities, and in fact those three priorities is what will be the basis of all my

1 submissions today, and these priorities are as follows: Mr Ntaganda and myself, as
2 legal counsel on his behalf, are interested in identifying and fully understanding the
3 case he has to meet. Although this might look as a very basic premise, it is of the
4 utmost importance to know the case he has to meet, based, of course, on the
5 confirmation of charges decision.

6 Priority number two is, of course, making the best use of the time available to prepare
7 for trial and this is where the issue of document translation comes in play -- comes
8 into play.

9 If we have some basic documents, Mr Ntaganda has some basic knowledge of French
10 and he can read some of these documents. If the documents are lengthy or complex,
11 then we will be requesting, of course, the translation of these documents. If some
12 documents are in English, he has no knowledge of English, in which case sometimes
13 of course counsel can assist him, but that's where we want to ask for the Court's
14 indulgence in the fact that if I had to take every single document in English and sit
15 with Mr Ntaganda and explain the document even before
16 document even before we start working, for those situation, we'll be asking for
17 translation of documents.

18 In clear, Mr President, even though it will be possible to adopt the position that was
19 adopted at the confirmation of charges, that position was that counsel representing
20 Mr Ntaganda at the time agreed not to receive translation in order to speed up the
21 process. We agree with that, but where translations will be required we will be
22 asking, of course, the Prosecution for those translations.

23 In terms of timing, I would say, Mr President, that over the next month and, in any
24 event, by the end of October, we will be able to make a full assessment and to inform
25 the Prosecution of those documents for which we will be requesting translation, and

1 from that point on it will be a topic that we can address with further effectiveness.

2 Thank you, Mr President.

3 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon, for your clear and
4 constructive approach and also approach of your client.

5 Now, Prosecution, please.

6 MS SAMSON: Thank you, Mr President, and your Honours.

7 As, Mr President, you alluded to in your opening remarks, it will be necessary for the
8 Prosecution to have a very clear idea of the number of documents, statements in
9 particular under 76(3) that the Defence wishes to have translated. And thereafter the
10 Prosecution can provide estimates to the Chamber of how long that endeavour will
11 take. As was made clear in our filings and as the Chamber is well aware, translation
12 is hugely time consuming. But with productive inter partes discussions the
13 Prosecution is confident that we can fulfil any required translations within the
14 reasonable limits that Mr Bourgon has set out. We have already commenced some
15 preliminary translation on the anticipation that these are the types of statements that
16 the Defence would like to have translated. Even if those are not requested by the
17 Defence, we are happy to provide those to the Defence.

18 So in a nutshell, your Honours, while we stick to our position that translations are
19 limited to prior statements and even can be more limited using additional means of
20 allowing translation of this material to the accused, such as by way of sight
21 translation, or as the Defence helpfully suggested, translation in a language other than
22 that which the accused may fully understand and speak but for which we has a
23 knowledge. And the Registry proficiency test has indicated that Mr Ntaganda's
24 knowledge of Swahili at least orally is at an intermediate level and a basic level for
25 French. I thank you.

1 PRESIDING JUDGE FREMR: Thank you, Mrs Samson. Maybe on this note, the
2 Chamber notes that the Prosecution appears to currently only have two Kinyarwanda
3 translators as you mentioned in your submission and one reviewer. While we must
4 all work within certain resource constraints, the Chamber would not consider it
5 acceptable for substantial delays to result -- just from translation issues.

6 Given that the Prosecution recognises its filing that even the minimum level of
7 translation would require a significant amount of work, are there any active steps
8 being taken to increase Prosecution Kinyarwanda translation capacity, either through
9 further recruitment or other means? For example, the Chamber notes that the
10 Registry appears to have certain Kinyarwanda translation capacity, and should there
11 not be other alternatives, we may need to explore whether the Registry could provide
12 resources to assist. This is obviously a matter which the Registry representatives
13 may also wish to speak to.

14 However, Prosecution, please, first could you address this point?

15 MS SAMSON: Yes, Mr President. Indeed the Prosecution has alternatives at its
16 disposal. At the pre-trial phase we did liaise closely with the Registry and worked
17 together to provide where possible joint translation. In addition to the two
18 translators, we also have one additional reviser, and we routinely outsource
19 information to competent qualified Kinyarwanda interpreters.

20 So that said, we are taking steps, we had in the past. We did not have difficulty
21 meeting the translation deadlines that were set by the Single Judge at the pre-trial
22 phase given the limited and focused translations that was required before, and as I've
23 indicated, we have taken steps internally since the confirmation hearing to actively
24 continue translations. We did not cease translating at that moment, but we were in
25 an anticipatory mode not knowing precisely the scope of the translations that the

1 Defence will request.

2 PRESIDING JUDGE FREMR: Thank you very much, Mrs Samson.

3 Registry, could you comment on that? If you want.

4 MS DAHURON-JACOBY: Well, The Registry maintains its position of pre-trial, that
5 if assistance is required, of course then the same liaison will occur and we expect -- we
6 are confident that we will be able to assist.

7 PRESIDING JUDGE FREMR: So at the moment, thank you, as concern this issue,
8 thank you very much all of you for the constructive approach. And I believe that
9 thanks to Mr Bourgon and his client, a reasonable approach may be the original
10 estimation, which seemed to us rather pessimistic, will get better.

11 But, Mr Bourgon, you have the floor, please.

12 MR BOURGON: Thank you, Mr President. Just one quick note for the benefit of
13 the Trial Chamber. One of the type of the documents that we will be seeking
14 translation of is any statement taken pursuant to Article 55(2). So, I mean, this
15 should be something I guess that is common understanding from the Prosecution, but
16 just in terms of a lead start so that they can identify which documents to begin
17 immediately, this is definitely the type of document that we will be seeking
18 translation of. Thank you, Mr President.

19 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

20 So I guess we can move to item B, which is timing, volume and modalities of
21 disclosure of evidence pursuant to Rule 76.

22 The Prosecution has updated the Chamber on the status of its disclosure. The
23 Prosecution also mentions that it is conducting further focused investigations, which
24 may lead to further disclosure.

25 As to translations of prior statements, the Prosecution has commented that its

1 obligation to translate material into Kinyarwanda pursuant to Rule 76(3) is extremely
2 time consuming, but we have already partly touched this issue.

3 The Prosecution further argued that the right of the accused to have prior statements
4 in a language he understands is not unlimited.

5 We note that it is only in February and March 2015 that the Prosecution envisages
6 being in a position to finalise and disclose its witness list. The Chamber has noted
7 the reasons provided for requiring this additional investigative time, some of which
8 have arisen as a consequence of the confirmation hearing and subsequent
9 confirmation decision. However, others -- re-establishing contact with some
10 witnesses and identifying new witnesses -- appear to be the sort of ordinary
11 investigative steps that ought to have been actively underway since at least
12 March 2013.

13 So, Prosecution, you may wish to speak to this point.

14 MS SAMSON: Yes, your Honour. The Prosecution was endeavouring to provide
15 the Chamber with the totality of aspects that it is looking into in its further focused
16 investigations. And while indeed these witnesses that we haven't yet been able to
17 locate, we have been looking for them since March 2013; in some instances, however,
18 it has not proven successful. We continue the efforts to find these witnesses that we
19 consider to be important to the case based on our prior contacts with them and in
20 establishing the case that we're bringing.

21 Your Honour, in relation to the disclosure that we are proposing, we have as,
22 Mr President, you've alluded, already disclosed a substantial number of our witnesses,
23 including their identity prior to the confirmation hearing approximately 38 witnesses.
24 The remaining nine from the confirmation hearing pool we are confident that we are
25 able to address in the coming months. For four of them, of course, we will make an

1 application to the Chamber to have a rolling disclosure system whereby we would
2 disclose their identities 30 days prior to the date of trial.
3 For new witnesses we will also endeavour to assess their security concerns and
4 process disclosure as quickly as possible, including any applications to the Victims
5 and Witnesses Unit for referral into the Court's Protection Programme. At present
6 we do not envisage that is going to be a significant factor or in any way cause a delay
7 to those proceedings. But, your Honours, the Prosecution did wish to provide the
8 Chamber with a very frank and candid presentation of where we stand in relation to
9 our future investigations and disclosure.

10 PRESIDING JUDGE FREMR: Thank you very much, Mrs Samson.

11 Mr Bourgon, any comment on that issue?

12 MR BOURGON: Thank you, Mr President. Well, indeed, I do have some quite
13 substantial comments to make on this issue. I think it is probably the most
14 important issue that we will be dealing with this morning, which is, of course,
15 Rule 76.

16 Now, Rule 76 governs as we all know the pre-trial disclosure of all information
17 regarding Prosecution witnesses. And as such in our view it is certainly one of the
18 most important provisions dealing with disclosures.

19 Now, the aim of Rule 76 is to ensure that the accused, as I've mentioned at the
20 beginning, that the accused is fully aware of the case he has to meet. What does that
21 mean? Well, pursuant to Rule 76, the accused should be in a position to know the
22 list of witnesses for the Prosecution, including, of course, the number of witnesses.
23 He should be able to know, unless there are some decisions to the contrary, the names
24 of these witnesses so that he can proceed with investigation. And he should get
25 copies of any prior statement.

1 Now, I also understand that Rule 76 is a two-step process with witnesses whom the
2 Prosecution has already intended -- decided to call and those that the Prosecution will
3 decide at a later date.

4 However, there is a direct link between Rule 76 and the right of Mr Ntaganda to
5 know exactly the case he has to meet. In this case we're grateful for the Prosecution's
6 submissions and, indeed, they have been very candid, especially in their additional
7 submissions. But then again their additional observations, we are quite concerned
8 by what we read in that text that was provided by the Prosecution. In fact, there is a
9 paucity of information on the final list of witnesses the Prosecution intends to call.

10 To us it is quite surprising or somewhat surprising, the extent to which the Prosecution
11 does not appear to know exactly the type of case it is going to lead against
12 Mr Ntaganda, despite the confirmation of charges decision.

13 We respectfully request the Trial Chamber to pay close attention to the little
14 information available at this time, and I'd like to offer a few examples in this regard,
15 taken of course from the Prosecution's submission.

16 Now, when I look at the witnesses disclosed so far and those witnesses that have been
17 relied upon for the confirmation hearing, I would say that the situation might appear
18 to be normal. However, the information disclosed in the observation lead to the
19 conclusion that by the time we reach March, the list of witnesses for the Prosecution is
20 likely to be significantly different from the list that we have today.

21 I refer the Trial Chamber to the initial observations of the Prosecution at paragraph 8.

22 Now, that's the beginning regarding the confirmation hearing witnesses. 49

23 witnesses were relied upon, for 38 of them we have the identity, which is -- which is
24 quite acceptable, and for nine -- for five of the nine remaining witnesses, the

25 Prosecution proposes to give us the identity -- to disclose the identity within the next

1 three months or, as we can read from paragraph 8, three months prior to trial.

2 And then for the four remaining witnesses for whom we do not have the identity, the

3 Prosecution proposes to give that -- to disclose the identity 30 days before trial. Now,

4 of course, that's another topic we'll be talking about today.

5 Looking at the initial observations at paragraph 9, then we start getting into some

6 information that is of concern. We read at paragraph 9 that along with the identity

7 of evidence -- the identity in evidence of several additional witnesses upon whose

8 evidence it intends to rely, but whose statements have not yet been disclosed."

9 Now, several additional witnesses. We'd like to know, Mr President, exactly what

10 the Prosecution is referring to. How many witnesses? What topic will those

11 witnesses testify about? And, again, of course, the issue of identity.

12 At the -- and their additional observation at paragraph 31, we say again that we see

13 perspective additional witnesses include both crime-base and insider witnesses. So

14 we are past the confirmation hearing and we are still looking for insider witnesses.

15 We're talking prospective insider witnesses. I think this is an issue of concern at this

16 point in time.

17 If we look at paragraph 33, then the Prosecution states very candidly that it wishes to

18 identify, and interview of course, expert witnesses. Now, we are given some

19 information on expert witnesses and of course that's an issue that we will be

20 exchanging upon to see if we can give joint instructions to expert witnesses, but we

21 know there will be an expert witness on historical background, we know sexual

22 violence, trauma, satellite imaginary and forensic, but we don't know the number of

23 witnesses and, with the timing that is now provided by the Prosecution, we will only

24 get these reports by May of 2015. I mean, that's very late to get that type of

25 information in order to prepare for trial.

1 At paragraph 37, again we come back on the issue of the Article 55(2) interviews
2 which will be conducted. Although it says here "a limited number," but then we
3 don't know how many of these witnesses are -- the Prosecution is considering.
4 The Prosecution says that since the confirmation hearing it has collected additional
5 audio recordings already of interviews. This is at paragraph 38 of its additional
6 submission. We do not know, however, how many witnesses the Prosecution -- how
7 many such audio recordings the Prosecution is in the possession of, nor do we know
8 the topic.

9 At paragraph 39 it says, "The Prosecution intends to complete ...", maybe I'll slow
10 down a bit, "... additional interviews pursuant to Article 55(2) within the next several
11 months." So, again, additional interviews.

12 I could go on to paragraph 48, 49 and 50, where we find out that the Prosecution
13 intends to determine its list of witnesses to be relied upon at the end of February.
14 Now, if that list -- if we followed this schedule, later on we'll be talking about a
15 commencement date for trial. Now, this is the decision made by the Prosecution to
16 call certain witnesses, or to call its definitive list of witnesses, but when we talk about
17 the commencement of trial what will happen to disclosure of all statements related to
18 these witnesses that they do intend to call?

19 I've already said that Mr Ntaganda is interested in trial without delay, as long as we
20 get all the necessary information. There cannot be a fair trial unless we get
21 disclosure that's taken place a minimum of three months before start of trial. So
22 whatever -- whenever we get into the discussion dealing with the commencement of
23 trial, then we should work backwards and at least full disclosure should have taken
24 place, Mr President, in our respectful submission three months before the beginning
25 of trial.

1 The Defence cannot be kept off balance by -- by continuing disclosure and continuing
2 identification of new witnesses. We have a heavy workload in front of us. We are
3 not lacking work and we'll be very busy. However, every time a new witness comes
4 forward, as you can well-understand, Mr President, it does have an impact on the
5 preparations and on any Defence strategy that we are trying to put together at this
6 point.

7 If I look at other trials - and you will see, Mr President, for example, the Lubanga trial,
8 or Katanga and Ngudjolo, Kenyatta, Ruto and Sang - all of these trials the Trial
9 Chamber has issued a ruling that disclosure had to be completed in full three months
10 prior to commencement of trial. We respectfully request the Trial Chamber to issue
11 the same kind -- the same kind of ruling. We note, by the way, that in the Bemba
12 trial the Trial Chamber even decided that the Defence would get five months after full
13 disclosure before commencement of trial.

14 Now, I think it must be recalled, and I stand to be corrected on this issue, but I believe
15 that this is the largest case so far before the ICC in terms of number of witnesses, in
16 terms of number of documents. In order if this is going to work, Mr President,
17 I believe that we need a cut-off date for investigation.

18 I propose -- my colleague from the Prosecution said that they are looking for
19 witnesses that they had previously identified and now they cannot find them. Well,
20 there must be a finality - there must be an end - to this search for these witnesses, or
21 of course if they continue to search for the witnesses, which I can understand, they're
22 the Prosecution and they have a duty to fulfil, then maybe those names should be
23 given to the Trial Chamber as to who they are looking for - on a confidential basis - so
24 that later on when they ask for these witnesses to be added to their list because
25 suddenly they find them, we're not talking about a new witness, but we are talking

1 about a witness that was identified previously.

2 There was a last issue I wanted to bring up to the Trial Chamber's attention and that
3 was the issue of the disclosure of the prior statements. There appears to be, based on
4 the information I've received -- now, my colleague and I have already met once
5 already and we will meet again, but there appears to be a misunderstanding as to
6 what is the obligation pursuant to Rule 76 in terms of all prior statements.

7 It is the understanding of the Defence that that includes any prior statement must be
8 officially disclosed by the Prosecution and not simply, "You know where to get it
9 because these are public statements." I believe that if Witness X is called by the
10 Prosecution, then all the material related to Witness X should be disclosed officially
11 by the Prosecution. That concludes my remarks on Rule 76.

12 Now, this is the part of the status conference where I'm the less positive, but it is of
13 significant importance for Mr Ntaganda. He's got to know the case he's has to meet.
14 I have limited time I'm going to put a new team together we will endeavour to do
15 everything we can to co-operate with the Prosecution and with the Chamber, but at
16 some point in time we will be seeking for the Trial Chamber to help us in at least
17 setting some cut-off dates so that we can know what we have to work with and what
18 case we are up against.

19 Thank you, Mr President.

20 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think the Chamber got
21 your point and I think we appreciate your candid observation.

22 I think one comment from my part. I think Defence now really highlighted the
23 importance of this issue. It's true that issue of disclosures in some previous cases of
24 the ICC caused -- you know, was source of troubles and delays, so I think we all will
25 have to pay great attention to this issue.

1 Now, Ms Samson, maybe it would be -- you appreciate at least of course Mr Bourgon
2 put several questions and even some proposals, if you maybe at least some of them
3 could respond or comment.

4 MS SAMSON: Yes, thank you, Mr President. I simply wanted to address a few of
5 the observations made by the Defence.

6 First of all, the Prosecution fully understands its obligations under Rule 76 to disclose
7 prior statements and we have not entered into any discussions with the Defence in
8 relation to prior statements to date. We intend to disclose prior statements. We've
9 never made any representation that we don't.

10 Last -- secondly, your Honours, the Prosecution's proposal for a start date of trial, as
11 set out in our submissions, perfectly reflects what the Defence is requesting, which is
12 that three months prior to trial it have insight into which witnesses the Prosecution is
13 relying upon, the evidence related to those witnesses will be disclosed at that time,
14 exceptionally where the Chamber permits for limited witnesses a rolling disclosure
15 regime, but in principle the Prosecution's proposal adequately reflects the needs of
16 the Defence to have material three months prior to the start of trial.

17 Ongoing investigations are not precluded at this stage. It is also not required that
18 the Prosecution at the end of the confirmation hearing have a definitive list of its
19 witnesses. Naturally we have a very good indication of where we're going in terms
20 of witnesses, but that assessment remains ongoing and the Prosecution's proposed
21 timeline reflects an ongoing set of discussions with the Defence, disclosures that the
22 Prosecution intends to achieve as and when security concerns permit that.

23 The Prosecution is not suggesting a wholesale dumping of witness materials three
24 months prior to trial, but rather an ongoing disclosure regime with a final dead-line
25 being set three months prior to trial.

1 So on that point, your Honours, the Prosecution feels it is fully satisfying the needs of
2 the Defence and that's -- those are my observations at this time.

3 PRESIDING JUDGE FREMR: Thank you, Ms Samson. Again, I appreciate your
4 constructive approach and the whole Bench I think believe that you will keep this
5 approach for the further proceedings as well.

6 Now I think we can move to item C, which is whether the Prosecution anticipates
7 issues concerning the protection of witnesses and other persons, the disclosure of
8 identities of witnesses, as well as referrals to the Court's Witness Protection
9 Programme.

10 As to the submissions, the Prosecution in its written submissions has anticipated that
11 there may be ongoing security risks impacting the protection of witnesses and other
12 persons throughout the trial. The Prosecution also indicates that there are some
13 witnesses for whom the Prosecution will request authorisation to disclose their
14 identities as late as 30 days before the start of trial. However, the Prosecution also
15 indicated that it does not foresee the referral of any individuals into the ICC
16 Protection Programme at this time.

17 The Registry indicated, in its submission, that the VWU remains available to assist the
18 parties and provide them with a Protection Referral Form to facilitate any request.
19 The Chamber wishes to learn more about the Prosecution's assessments regarding
20 witness protection and, in particular, whether delayed disclosure can be avoided in
21 this case by protecting witnesses by other means. The Chamber also wishes to hear
22 the Defence's position on this issue.

23 Defence, you will have seen that the Prosecution provided some detailed information
24 in relation to redactions. In particular, they have proposed the adoption of a
25 redactions protocol similar to that adopted by Trial Chamber V in the Ruto and Sang

1 and Kenyatta cases. In your response, can you also specifically address this proposal
2 please.

3 So I will start now again with Prosecution.

4 MS SAMSON: Thank you very much, Mr President.

5 Let me begin by addressing the issue you raised first, which deals with the security of
6 witnesses.

7 For the most part, your Honours, as we've reflected in our written submissions, the
8 Prosecution believes that it has a solid handle on security needs for the witnesses and
9 does not anticipate at this time referrals to the Court's Protection Programme,
10 although this assessment remains ongoing.

11 In relation to the issue of rolling disclosure, or delayed disclosure 30 months (sic)
12 prior to trial, the Prosecution is balancing the implications and impact referrals to the
13 Court's Protection Programme have on the life of a witness and are trying to minimise
14 that relatively destructive proceeding with alternative measures that could achieve
15 the same security result, and permitting disclosure 30 days prior to trial, as was done
16 in previous cases at this Court, can achieve that.

17 The Prosecution is always amenable to looking into more carefully any other
18 proposals, but on balance it is the Prosecution's assessment that rolling disclosure can
19 achieve in better terms for the witness the -- can better deal with security concerns in
20 better terms for the witness than a referral to the Court's Protection Programme.

21 We do have one witness for whom we are considering more carefully a referral, but
22 that decision has not been fully made today.

23 Thank you. And on the issue of redactions, the Prosecution does not have a
24 significant -- significantly more to say than was in its written filing. The process of
25 applying for redactions is quite time-consuming. In our experience the time it takes

1 also for the Chamber to issue decisions naturally takes time, so protocol as has been
2 adopted in the Kenya proceedings can help with the efficiency and expediency with
3 which we disclose materials by having the parties and ultimately the Chamber
4 approve a system whereby standardised redactions can be implemented by the party
5 with very clear notice to the other party as to what category is being applied.

6 Non-standard redactions are justified by way of an application to the Chamber.

7 Lifting of redactions is also dealt with by way of a protocol. And the Prosecution
8 and Defence have had very preliminary discussions on this topic. I'm certain the
9 Defence will give you its views. It appears that this type of protocol is certainly

10 within reason, something that the parties can agree to and submit to the Chamber at
11 an appropriate time for the Chamber's consideration.

12 PRESIDING JUDGE FREMR: Thank you, Mrs Samson.

13 Now, Mr Bourgon.

14 MR BOURGON: Thank you, Mr President.

15 This issue on the agenda raises, in our view, two different topics, the first one being,
16 of course, the -- the delay authorised for the disclosure of the identity of certain
17 witnesses, but it also raises another topic which is five different protocols which are
18 now being considered in order to facilitate the proceedings in this case.

19 As a preliminary matter, Mr President, having been recently appointed, I ask for the
20 Court's indulgence in, of course, understanding that I cannot agree simply by looking
21 at these documents despite the work that was done by Mr Ntaganda's team before. I
22 need to look at these documents and to -- of course in consultation with Mr Ntaganda
23 in order to adopt a position.

24 Now, that being said, the -- it is the intention of the Defence to work with the Office of
25 the Prosecution, to work with the VWU, with the -- with the Victims and Witnesses

1 Unit, with the common legal representatives and in order that we -- and other entities,
2 of course, in order to get all of these protocols finalised as soon as possible.
3 A few words on the redaction protocol that is being proposed. Of course this
4 protocol introduces the notion of standard justification disclosure versus -- as
5 opposed to non-standard justification disclosure.
6 We understand the aim of the Office of the Prosecution in proposing this protocol.
7 We agree that it would, indeed, save a lot of time. As a preliminary, and very
8 preliminary view on the matter, it does raise some concerns about massive redactions
9 that might be unnecessary without any involvement of the Chamber, but that's my
10 very initial preliminary view.
11 I need to analyse the past practice, especially where such a protocol was put in place,
12 and that was in the Ruto and Sang and Kenyatta cases. I intend to -- to speak to
13 counsel there, at least to get their views as to how things went in that case, and my
14 aim would be that by the end of October we could be in a position to finalise this
15 protocol in one way or another.
16 So that's the redaction protocol.
17 A few words on the -- and also, I think, it's a -- it's a good time to speak about all of
18 these protocols. There is the unified protocol on the familiarisation of witnesses.
19 For this one, we agree, in principle. Of course I must review carefully all of the
20 contents of the protocol and, again, we would aim that by end of October we would
21 have this protocol, at least have our -- fully our views out in the open by the end of
22 October.
23 As for the protocol on the vulnerability assessment and support to witnesses, again,
24 we agree in principle with the protocol. I must review the same with Mr Ntaganda
25 and, again, we aim by end of October to submit our views on the matter.

1 There's also the protocol on the practical questions for the persons having dual -- dual
2 status of witness and victim.

3 Now, this one, of course, affects more directly the work that has to be done by the
4 Defence with prospective witnesses. So this one, of course, in principle, we
5 understand why it -- with the intention behind the protocol and we wish to
6 co-operate with the parties in order to make it happen, but it might require a little
7 more time on Mr Ntaganda's perspective before we submit our views.

8 Now, the last protocol is the one that was proposed, the protocol on handling of
9 confidential information and contact between party and witnesses of the opposing
10 party.

11 Now, this one, of course, goes straight into the investigations that the Defence will be
12 soon conducting. I take this opportunity, Mr President, to highlight the fact that the
13 Defence has not begun thorough investigations yet for the case for the Defence, but
14 that we will be doing so very soon and we'll be doing so in a very systematic manner.
15 So this protocol for us is, indeed, very important. It has a direct bearing on our
16 investigations.

17 Of course, as you know from the record, there has been intense negotiations on the
18 matter before my arrival. There was an agreement on almost every single aspect of
19 the protocol, except for two provisions, which were submitted to the Trial Chamber,
20 due to the Pre-Trial Chamber which ruled against the position of the Defence. The
21 Defence requested leave for appeal and leave was denied. That's where we are
22 today.

23 I would like for this protocol, of course, to assess it very carefully and, again, to
24 submit my views in early October, at least submit my views to the Prosecution. I
25 cannot suggest a time frame for the final adoption, but it is possible that we do it

1 quickly, but it's too early for me to say so at this time.

2 I move to the second topic, of course, in this -- relating with issue number C on the
3 agenda, and that is the delayed disclosure of identity.

4 We say the -- we see the delayed disclosure of identity, in past cases what was very
5 often recommended is that for most witnesses the recommended or the decision that
6 was made was three months prior to commencement of trial, it was the -- the identity
7 was disclosed unless there was some specific reasons to go one month prior to the
8 trial, but I must stress the importance of those specific considerations. It cannot be
9 that we simply put all witnesses and these are three months and these are one month
10 and these are less. There has to be objective reasons why the -- delaying the identity
11 of witnesses is required. And what I need to stress to the Trial Chamber, of course,
12 is that what is the impact on the Defence when we do not have the name. It's much
13 more than a question of name; it's a question also of assessing that witness with, of
14 course, other witnesses.

15 So in all of our developing of our Defence strategy, the fact that we do not have a
16 name, of course, delays investigation, is troublesome for investigation, but it goes
17 further than this because it does affect the development of the case for the Defence.

18 We propose, Mr President, that we -- that the Trial Chamber -- we would like the Trial
19 Chamber to issue a ruling that the normal, the default position would be disclosure of
20 the identity of all witnesses 60 days prior to trial. We believe that this is in line with
21 past cases and that this is a reasonable approach. And, of course, in some cases if the
22 Prosecution is requesting 30 days, then there should be those very special
23 circumstances.

24 The thing is -- something was addressed in past cases and I did not see this in the
25 Prosecution's submissions, but it's bound to come up and that is also that in some

1 exceptional cases the Prosecution in past cases has requested delayed disclosure until
2 30 days before deposition. We would respectfully submit, Mr President, that this
3 should only happen in the most extreme of cases, if ever, and that we would advise
4 not to go -- not to take this route and to follow what is in the provisions, in all of the
5 provisions of this Court, and we always know that the Defence must have the identity
6 before the beginning of trial.

7 This ends my submissions on this issue, Mr President. Thank you.

8 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

9 As to this point, does the Registry want to react in any way? But it depends. If not,
10 I don't want to push you.

11 Okay, fine.

12 Legal representatives, any reaction or comment?

13 MS PELLET: (Interpretation) Yes. Thank you, Mr President. You have received
14 our written filings on the subject and more particularly on the subject of the victims
15 who might be called to testify. We have nothing further to add on the subject, but of
16 course this question must also be taken into account and I thank you.

17 PRESIDING JUDGE FREMR: (Interpretation) Thank you very much,
18 Madam Pellet.

19 (Speaks English) Just maybe one general observation on the part of the Bench. We
20 just can confirm that those protocols will be very important. We appreciate that both
21 parties obviously have an idea to try to get agreement on that, it will be really
22 facilitating our further proceedings, but if not, it will be up to the Chamber to decide
23 and I think we will take into consideration everything what has been done by
24 Prosecution and Defence as well. Especially as concerns disclosures and redactions,
25 I think it would be really important indeed for the further smooth proceedings.

1 Then we have item D - even if we have already touched this issue partly - material
2 already disclosed and intended to be disclosed by the Prosecution pursuant to
3 Article 67(2) of the Statute and Rule 77 of the Rules.

4 Brief summary: The Prosecution has mentioned in its submissions -- submission that
5 there are potentially thousands of documents which it still needs to review for
6 disclosure purposes. The Prosecution proposes to complete its disclosure of all
7 materials upon which it intends to rely for trial, with exceptions for authorised cases
8 of delayed disclosure by March 2015.

9 The Chamber in this regard wishes to give the Prosecution and the Defence the floor
10 as to whether it has any further information to provide on its disclosure process.

11 The Chamber is particularly interested, and I think we said it even before, in ensuring
12 that disclosure is being made as accurately and expeditiously as possible.

13 So, Prosecution.

14 MS SAMSON: Thank you, Mr President.

15 The Prosecution's submission filing 365 on 8 September provided additional figures
16 in relation to the scope of review that we're conducting, and the Prosecution is
17 confident that this is capturing, as we know the case now, the totality of materials that
18 need review. It includes steps such as revised search terms to take into account new
19 Defence positions for which we were apprised during the confirmation hearing; it
20 takes into account a review of our past searches, also in line with the Defence strategy
21 that we became aware of during the confirmation hearing; it also takes into account a
22 very thorough review of documents that we call unsearchable, which of course means
23 that they -- their content or metadata are not captured by our specific search term
24 searches. And this is to ensure that we have covered off all of the material that we
25 have in our possession that could be relevant to the Defence in any way.

1 We are estimating that this review will take approximately six months, given the
2 competing tasks and priorities that the Prosecution team will be dealing with in that
3 same period. We will, of course, necessarily need to continue and re-review as the
4 trial proceeds and issues evolve, but for pre-trial disclosure we're confident that we
5 can accomplish it by the date that we've submitted, six months hence. We are also
6 very cognizant of the issues relevant to materials collected under the provisions of
7 Article 54(3)(e) and we are prioritising where those documents appear in our searches,
8 we prioritise that review so as to make timely requests to our providers.

9 To date we have not encountered significant difficulties in relation to that. We also
10 do not anticipate any significant difficulties prior to the start of trial. Should we
11 encounter any problems, we certainly will keep the Chamber and the parties and
12 participants informed.

13 PRESIDING JUDGE FREMR: Thank you, Mrs Samson. So we hope that your
14 anticipation is right.

15 Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. I do not want to repeat what I said
17 about Rule 76, so I will try to be a little shorter. However, when we look at the
18 complete collection of the Prosecution, which was in its possession as of April 2013,
19 when Mr Ntaganda surrendered, we were talking then on 43,276 documents, for a
20 total of 153,000 some pages.

21 We understand it is a long process to review these documents. There are two
22 concerns: One is we should be getting these documents as soon as possible, and we
23 will be co-operating and meeting with the Prosecution in order to provide some
24 search terms so that they can go through this collection and identify documents that
25 should be given to the Defence pursuant to the rule. So that's one thing in terms of

1 getting the documents as quickly as possible.

2 And the second issue is, of course, knowing as quickly as possible the list of
3 documents the Prosecution intends to rely upon at trial. So there's the complete
4 collection, there are documents identified through different searches and disclosed,
5 but then, of course, there are those documents which will be relied upon at trial.
6 Those are the documents we would like to know.

7 And lastly, Mr President, once again, what we are concerned with is the ongoing
8 investigation. Going back to 2006 and to 2013 and today, we believe that by this
9 time in terms of documents, unless there was some hidden load of documents
10 someplace, that the Prosecution investigation should be complete by now and that
11 what they are working with is what is in its possession and that they are not
12 searching for more documents because we will never see the end. Thank you,
13 Mr President.

14 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

15 Madam Samson, any observation or reaction on the concerns expressed by
16 Mr Bourgon?

17 MS SAMSON: Yes, Mr President, only to reiterate that we're not anticipating that
18 our focused investigations are going to uncover thousands and millions of materials.
19 These are focused investigations. As we collect the material we certainly intend to
20 be assessing for disclosure, applying for redactions or applying the protocol and
21 disclosing forthwith.

22 The list of evidence to which the Defence alludes in our timeline, the Prosecution is
23 also proposing three months prior to trial for disclosure of that document. Of course,
24 the disclosure of much of the evidence underlying that document will have been done
25 months before. So, in our assessment, the Defence's concerns are satisfied by the

1 proposals the Prosecution has made to date.

2 PRESIDING JUDGE FREMR: Thank you very much.

3 Judge Ozaki would like to ask a question, please.

4 JUDGE OZAKI: In this regard, Ms Samson, in your filing 365, in paragraph 36, you
5 said that "Prosecution anticipates that the additional investigation will be completed
6 by January 2015." That means that any additional investigation be completed by the
7 end of this year? That's my first question.

8 The second question is: In the same filing, you mentioned the Prosecution's
9 difficulty due to some other ongoing or parallel duties. Is the additional resources
10 will -- will additional resources help Prosecution to accelerate investigation in this
11 regard? Those are the two questions.

12 MS SAMSON: Thank you, Judge Ozaki.

13 In relation to the issue of the timing for the closure of the Prosecution's investigations,
14 we're suggesting to finalise those by January -- by the end of January 2015. Of
15 course, as I mentioned previously, any investigations that we complete prior to that
16 time we are assessing for disclosure and we will be disclosing in advance of that date.
17 But the final bit of investigations we're proposing take place by the end of January.
18 Given the difficulties in mounting investigations in an area such as Ituri, additional
19 resources only helps so far. The Prosecution, the Defence, the Registry, every entity
20 that travels on missions such as this is faced with difficulties in terms of the length of
21 the stay for the well-being of staff and security of staff. In terms of the logistical
22 support that is required, there are only so many missions that our field staff can
23 support at any one time, and no matter how many investigators we have at our
24 disposal, that number remains static and is an impediment to having ten teams at one
25 time, but the most we were able to achieve generally at the moment is two teams in

1 the field at any one time.

2 So these are practical difficulties that mean that we can do a focused investigation of
3 several weeks, followed by a second one of several more weeks. There are only so
4 many we have running concurrently and it is just a practical impediment logistically
5 for getting these types of investigations underway in the region.

6 PRESIDING JUDGE FREMR: Thank you very much.

7 And it means we can move to further item, item E, which was articulated in this way:

8 Are there any outstanding issues relating to documents or information which the
9 Prosecution obtained on the condition of confidentiality pursuant to Article 54(3)(e) of
10 the Statute?

11 In short summary, the Prosecution informs the Chamber that it is still in possession of
12 outstanding materials which are disclosable but for the fact they are covered by
13 Article 54(3)(e) of the Statute. The Prosecution has indicated that it continues to
14 prioritise its review of this material. The Chamber wishes for an update as to how
15 many documents remain outstanding and the Prosecution's assessment as to whether
16 they can be resolved comfortably before the trial.

17 So, please, Prosecution, you have the floor.

18 MS SAMSON: Thank you, Mr President.

19 As the Prosecution indicated in its filing number 365, there are, indeed, certain
20 outstanding requests for lifting of conditions under Article 54(3)(e). We have
21 indicated that there are 30 items of the 171 that we initially had outstanding requests
22 for. The 30 remain outstanding, although I'm advised that this morning we received
23 lifting for approximately 14 additional items, and we can update the Chamber on
24 those and hopefully process them for disclosure forthwith.

25 We also have recently reviewed a component of the unsearchable materials and

1 identified additional items that we have assessed are disclosable and for those we are
2 in the process of liaising with the providers for lifting of those conditions.

3 And in the last pool of review for unsearchable materials, we have identified a large
4 number. Approximately half of those items are 54(3)(e) as well.

5 Our historic review of unsearchables has not yielded very many requests, so we are
6 also expecting that there will be a much smaller number of those unsearchables for
7 which we'll make a request.

8 So to date we do not expect there to be any difficulties in our timely evaluation of
9 those materials and assessment of their disclosure value in our timely sending of
10 requests for lifting and in the responses that we expect will come from the providers.

11 PRESIDING JUDGE FREMR: Thank you, Mrs Samson.

12 Does the Defence wish to make a brief submission on this item?

13 MR BOURGON: Very quickly, Mr President. We have an issue with the numbers
14 raised in the Prosecution's observations, but I don't think this is the right forum. I
15 will contact my colleague from the Prosecution in order to sort out the matter, but just
16 to put it on the table, based on our understanding of the Prosecution's observations,
17 there were 100 documents pursuant to Rule 77 that needed to obtain the consent of
18 the providers; whereas there were no longer any incriminatory documents.

19 Based on our -- on the figures that we have, there was 70 Rule 77 documents and 30
20 incriminatory documents. So there appears to be here some -- some differences in
21 the numbers, but I will get -- I will approach the Prosecution to sort out the matter.

22 So that's the first issue.

23 The second issue is, we very much would like to continue the practice that was put in
24 place during the confirmation stage of the proceedings, and that is that we were
25 getting reports on a bi-weekly basis. The last report we received is dated 8 July 2014,

1 and we would like to make sure that we continue receiving such reports as to all
2 efforts taken by the Prosecution in order to get the consent of the providers.

3 And also it would very much assist, and I will be asking my colleagues from the
4 Prosecution for this type of assistance, but is to identify with as much precision as
5 possible where the document, which is now -- for which consent is being sought from
6 the provider, what type of document it is. And it is not always clear from these
7 reports. But, again, that's an issue to be done in consultation with the Prosecution.
8 Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

10 Mrs Samson, do you want to react or do you want to just negotiate between you?

11 Okay, fine.

12 It tells us to move to I think very important, crucial item F, added under Defence
13 request concerning possible need for an updated or amended Document Containing
14 the Charges, so-called a DCC. So I think we all probably will use this abbreviation to
15 be briefer.

16 I would like to stress that the Chamber will pay extreme attention to this item since
17 the litigation on the updated DCC was source of several fundamental delays in the
18 course of some previous cases before the ICC. So we definitely want to avoid
19 repetition of such a delay.

20 In this case the Prosecution's DCC was filed on 10 January 2014. Pre-Trial Chamber
21 II issued the confirmation decision on 9 June. The Chamber observes that the
22 confirmation decision in sake of clarity contains five well-marked paragraphs setting
23 out the facts and circumstances confirmed. So in this regard it is different from
24 confirmation decisions in previous cases before the Court.

25 The Chamber further notes that the parties have each referred to an updated or

1 amended version of the DCC in their filings. The Prosecution includes the ongoing
2 work on the amended DCC in its proposed timeline for the preparation for trial.

3 The Defence in its submission has addressed the form of an updated DCC and it
4 wishes to know when it will be provided with such an update.

5 So I would like to stress that at the moment the Chamber finds call for updated or
6 amended DCC as rather premature. At this stage the Chamber has not decided that
7 it is really necessary for the Prosecution to file an updated DCC.

8 We respect that parties could refer to an updated DCC because it seems to be the
9 practice -- common practice at the ICC, but the Chamber would like first to hear the
10 parties, what concrete reasons they see in this particular case for updated DCC.

11 So, please, Prosecution, you have the floor.

12 MS SAMSON: Thank you.

13 Your Honours, indeed it's been the past practice of the institution to -- for the
14 Chambers to order amended DCCs and for the Prosecution to provide one. It has, as
15 you've reflected quite rightly, your Honour, in some cases involved some lengthy
16 litigation.

17 In this case, and with maybe the Gbagbo confirmation hearing decision, we are placed
18 in a slightly different position in that the decision of the confirmation hearing is very
19 clear.

20 Notwithstanding that, given the past practice the Prosecution included this item as
21 something the Chamber may require us to provide and, if it did so, we've provided a
22 proposed timeline for providing it.

23 In my experience in the Lubanga proceedings, we were of course ordered to provide
24 that. We had a different type of confirmation hearing decision. The Trial Chamber
25 thought it was best to have one comprehensive document setting out clearly what the

1 charges were so as to avoid going back and looking at the initial DCC, a very lengthy
2 confirmation hearing decision and trying to figure out over the course of a reference
3 to two documents what the charges precisely were.

4 Another issue that arose in the Lubanga case had to do with an application for an
5 amendment to the charges to include sexual violence, and in its review of whether or
6 not it had the authority to do that the Chamber referred back to the
7 circumstances - facts and circumstances - set out in the amended Document
8 Containing the Charges.

9 So there can be procedural moments during the course of a trial where the Chamber is
10 required to go back to the definitive DCC to determine whether or not an application
11 exceeds the facts and circumstances.

12 Of course, as your Honours are fully aware, Article 74 decisions cannot exceed the
13 facts and circumstances of the charges which may refer to an amended Document
14 Containing the Charges, or may refer to the confirmation hearing as your Honours
15 deem appropriate.

16 As I say, we have suggested that we provide the amended DCC, if required, three
17 months prior to trial. We can provide that at an earlier date, November of this year,
18 if it's something the Chamber deems is necessary.

19 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.

20 Mr Bourgon, on this point?

21 MR BOURGON: Thank you, Mr President. This is indeed a very important issue
22 to Mr Ntaganda and which is why we brought it up in our observations.

23 If we look at the filing 365 from the Prosecution, at paragraph 50(e) the Prosecution
24 proposes to finalise ongoing work on its amended DCC and to provide it to the
25 Defence; that is on March 2015. Of course we don't know if that's 1 March or

1 30 March, but it says March 2015.

2 At paragraph 52, a little lower down the page, the Prosecution suggests that they will

3 provide the pre-trial brief to the Defence in May of 2015.

4 This is what led us to -- to talk about the form of the DCC. In our respectful

5 submission, Mr President, the DCC can be seen in three distinct documents. The

6 first document is nothing but the charges. As a result of the confirmation decision,

7 we simply would like to have one document. We're not talking about references to

8 evidence. We're not talking about footnotes. We'd like to know what is the

9 Document Containing the Charges that we will be working on from this point on?

10 And I think that this can be provided very quickly, Mr President, bearing in mind the

11 clarity of the confirmation decision. So I don't think that this should be a problem

12 for the Prosecution to provide us its view of what are now the final charges against

13 Mr Ntaganda. Once we have this, this would take care of course of the charges

14 themselves.

15 The second version is the version with -- where we have, of course, where is the

16 evidence supporting the charges in the Prosecution's view? And that is basically a

17 DCC with -- footnoted with all references to the evidence.

18 Now, in this respect, this such a document, if Prosecution proposes to submit this

19 document three months prior to trial we are satisfied with that, but there should be an

20 order to that effect, Mr President, to say that three months prior to trial we will get a

21 full document with the DCC and of course all links and all footnoted to the references

22 in the evidence.

23 And the third and final document is the pre-trial brief. Now, the pre-trial brief of

24 course is not provided for in any provision. I've discussed this issue with my

25 colleague yesterday and this is basically the Prosecution's case; the narrative of the

1 case.

2 The Prosecution proposes to issue such a document in May 2015. If we are talking
3 about getting such a document two months before trial, for example, then we would
4 agree that this would be a proper time frame.

5 So all this to say that we propose, Mr President, that the Trial Chamber orders the
6 Prosecution to issue an amended DCC charges only within the coming days, a
7 footnoted DCC three months before beginning of trial and its pre-trial brief or its
8 theory of the case under a narrative format two months prior to beginning of trial.

9 This would allow Mr Ntaganda to know the case he has to meet and to be able to
10 work and develop the case for the Defence.

11 Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

13 Madam Samson, do you want to react? Please.

14 MS SAMSON: Very briefly, your Honours.

15 An amended Document Containing the Charges, should your Honours so require,
16 will take the Prosecution longer than several days, so we are requesting that we have
17 until November 2014 at the earliest to provide that document. In the meantime, the
18 Defence can look at the clearly set out decision of the Chamber at the pre-trial stage
19 on what was formally decided and confirmed.

20 A Document Containing the Charges with footnotes, not a requirement under the
21 Statute. We were not required to provide it prior to the confirmation hearing.

22 Nonetheless, the Prosecution is willing to provide that three months prior to trial if
23 your Honours so require.

24 A pre-trial brief, again, has been ordered in other cases as a useful narrative and
25 summary of the Prosecution's position with evidence. The Prosecution has included

1 it in its proposed timetable one month prior to trial, but has no difficulty providing
2 that two months prior to trial as requested by the Defence.

3 PRESIDING JUDGE FREMR: Yes, thank you.

4 Judge Ozaki would like to put question, please.

5 JUDGE OZAKI: I have another question, Ms Samson. Do I understand your
6 submission correctly if I say that the Prosecution has no views or preferences, either
7 legally or practically, about the necessity of DCC -- amended DCC?

8 MS SAMSON: Your Honour, I had alluded to Article 74 and included the amended
9 DCC in the Prosecution's provisional timeline because in the Prosecution's view it is
10 preferable to have one document that sets out what the charges are quite clearly in
11 one place.

12 In the event that there is, as there was in the Lubanga proceedings, litigation in the
13 context of what are the facts and circumstances, can we amend charges later, it
14 appears to the Prosecution to be -- to be preferable to have one amended Document
15 Containing the Charges.

16 It is not preferable, however, to have lengthy litigation thereafter in relation to that,
17 but we're hopeful that -- in the Kenya models, for instance, I'm aware that the parties
18 entered into a joint discussion, proposed a joint Document Containing the Charges
19 and then submitted that one to the Chamber. That is something that the Chamber in
20 this case could consider. That particular case did not benefit from a quite as clear
21 confirmation hearing decision as we have here. Litigation may not be an issue, but
22 the Prosecution is open to providing something in advance to the Defence to ensure
23 that they are comfortable with the language that we are proposing in the amended
24 document.

25 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.

1 I can confirm that the Chamber is really very well aware of the importance of the
2 issue. We have already discussed it. We will consider it further and, even if I am
3 rather premature, I think it is very likely we will devote our next status conference to
4 this issue and we will give I think clear ruling on that as soon as possible to facilitate
5 position not only parties, but also position of us.

6 Okay, then we can move to item G. We still have 15 minutes before the break, so
7 item G experts.

8 It was formatted like a question which is whether the parties intend to call expert
9 witness pursuant to Regulation 44 of the Regulations of the Court and, if so, whether
10 they intend to give joint or separate instructions to these experts.

11 The Chamber notes that the Prosecution has already identified a need for expert
12 witnesses in the areas - it was already mentioned I think by Mr Bourgon today - of
13 historical context, sexual violence, trauma, satellite imagery and forensics and is
14 actively considering other areas. The Chamber notes that the Prosecution has
15 proposed to hold discussions with the Defence in the coming months and to complete
16 preparation of joint instructions in December 2014. The Defence hasn't yet made any
17 written observation on this issue. The victim representatives have submitted that
18 they should be involved in the selection and instruction of expert witnesses where the
19 testimony of such experts is relevant to the interests of the victims.

20 So the Chamber would like to know why any consultation with the Defence is
21 expected to last until December 2014, because in our view I think we would be in
22 favour of a more optimistic time schedule. We would also like to get from parties
23 response to the victims' representatives who requested to be included in
24 consultations.

25 So please, Prosecution, start with the comments on that.

1 MS SAMSON: Yes, your Honour.

2 The Prosecution's time -- proposed timing for discussions and finalisation of those
3 discussions was dependent in large measure on the time it will take for Mr Bourgon
4 and his team to understand the case sufficiently to be able to instruct experts jointly
5 with the Prosecution.

6 It is anticipated that we will be meeting with Mr Bourgon in the coming weeks to start
7 those discussions and see whether or not it's possible. We hope that we can deal
8 with this issue earlier, but out of an abundance of caution and knowing the time it can
9 take to -- by way of past experience to flesh out issues of joint instruction, it can take a
10 certain amount of time to do that. So we've left ourselves some room there and
11 suggested that by December we should have an opportunity to finish that.

12 In terms of the victim representatives and their participation in joint instruction, our
13 position is that the parties are the entities that jointly instruct experts. Nonetheless,
14 the legal representatives can also submit views on what those instructions should be.
15 In the Lubanga case, when court witnesses were called, these were the only witnesses
16 that were -- for whom there were any input by the parties for instruction. The two
17 parties and the participants were permitted to make observations. The Chamber
18 ultimately decided what the instructions would be, but the Prosecution is open to
19 getting the views of the legal representatives, but the joint instruction would be done
20 through the parties.

21 PRESIDING JUDGE FREMR: Thank you, Ms Samson. Maybe one -- if you allow
22 one additional question from my part? You have mentioned Lubanga case. Have
23 you considered possibility to use expert reports from the Lubanga case in this case?

24 MS SAMSON: Yes, your Honour. We are consulting with certain of the same
25 experts to determine whether or not they would be willing to testify. We are also

1 considering other experts as well, but it is certainly within the scope of what we're
2 considering, yes. And we have actually looked at the same type of expertise for this
3 case as we had in Lubanga, both from the Prosecution's instruction but also
4 significantly those who were instructed from the Chamber, and so we're considering
5 having them called as joint experts.

6 PRESIDING JUDGE FREMR: Well, thank you.

7 Now, Mr Bourgon, on this issue any comments?

8 MR BOURGON: Very quickly, Mr President.

9 Realistically speaking, I cannot see myself in a position to offer any meaningful
10 observation regarding the instruction of joint experts before January in terms of -- or,
11 for me just to familiarise myself with the case and know exactly what we are, from a
12 Defence point of view, looking at in terms of expert witnesses.

13 Now, that being said, if the Prosecution wants to approach before then and inform the
14 Defence as to what it intends to do in terms of experts, then of course we can begin
15 the discussions, but I'd like, just to be very, very upfront with the Trial Chamber, that
16 it be difficult for me to -- to get a meaningful discussion on experts before January,
17 but then of course we are definitely willing to do so in January.

18 As for the seeking the views of the Common Legal Representatives, I agree with my
19 colleague from the Prosecution.

20 Thank you, Mr President.

21 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

22 Now, probably we could also give the floor to legal representatives. Do you want to
23 make any comment?

24 MS PELLET: (Interpretation) Thank you, your Honour. I will speak very briefly
25 because this was one of the issues that we treated in greater detail in our return

1 submissions. We maintain that Regulation 44 does not limit the choice of experts to
2 certain parties, as well as the contribution to the instructions that will be given to the
3 experts, and, that said, representatives of victims have to be consulted at least, they
4 have to have a role to play in this area because, as the Prosecution said, this could be
5 relevant to the victims that we represent, and most of what they are going to say is
6 relevant to the interest of victims, victims of attacks, or child soldiers, and so we are
7 requesting that victims should have a role to play, they should have their say in the
8 matter. Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. And I can assure you that the
10 Chamber will thoroughly consider your position before ruling on this issue.

11 So I think now we still have a few minutes we can move to item H: Evidence to be
12 introduced under Rule 69 as regards agreed facts.

13 So the Chamber also asked for observation on agreed facts. The Defence hasn't filed
14 any observation on this, it was probably rather premature, but the Prosecution has
15 proposed to start preliminary discussions with the Defence this month and finalise
16 these discussions by the end of the year. The legal representatives have submitted
17 that they should be permitted to make observations on the agreed facts on behalf of
18 the victims.

19 The Chamber obviously does not need to highlight the beneficial impact the agreed
20 facts can have on the trial time and the resources of the Court. For such an impact to
21 have any real effect, it is important that the parties know as soon as possible what
22 facts can be agreed on and for which facts evidence needs to be lead.

23 The Chamber, therefore, would like the parties to enter into a discussion with a more
24 ambitious timeline. Please give your views on that and also others the request made
25 by the victim representatives.

1 So Prosecution first.

2 MS SAMSON: Thank you, your Honour. I am expecting, as with the issue of
3 liaising with the Defence on expert instruction, that in order to agree on facts the
4 Defence will need a very thorough understanding of the case. We will see what
5 Mr Bourgon has to say, but I think December at this point is likely the most realistic
6 timeline, it may even be a bit short to be able to do that.

7 From the agreement on facts, the Prosecution and the Defence will then be in a better
8 position to determine which witnesses it intends to call, not being required to call
9 witnesses on facts that had been agreed by the parties.

10 So while the Prosecution is open to entering into those discussions as early as possible,
11 I believe we might be -- it will be important for the Defence to -- to be very well
12 informed of the case before they are able to commit.

13 And the agreement on facts in the Prosecution's assessment is something that is
14 decided between the parties.

15 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

16 Mr Bourgon.

17 MR BOURGON: Thank you, Mr President. Very quickly. I am a firm believer in
18 the benefit of agreed facts and I do intend to approach the Prosecution at the earliest,
19 the earliest however not being before January in order that I can master the case
20 before I enter into any such negotiations with the Prosecution. Thank you,
21 Mr President.

22 PRESIDING JUDGE FREMR: Thank you but, if I am not wrong, I think you haven't
23 addressed the issue of possible involvement of victim representatives. Can you also
24 touch on this issue, Madam Samson.

25 MS SAMSON: Your Honour, is -- I had addressed the fact that the agreement as to

1 facts should be entered into between the parties. Yes.

2 PRESIDING JUDGE FREMR: Okay.

3 Mr Bourgon.

4 MR BOURGON: I take the same position, Mr President; agreed facts should be
5 agreed upon between the parties. That is not to say that the Common Legal
6 Representative cannot have some kind of involvement, but those are agreed facts
7 between the parties. Thank you, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 Now it's maybe your turn, Common Legal Representatives.

10 MR SUPRUN: (Interpretation) Thank you, your Honour. We have presented our
11 position in detail in the written submissions of 14 August.

12 I wish to draw the attention to the Chamber to the fact that Rule 69 of the Rules of
13 Procedure and Evidence explicitly provides that the interests of victims have to be
14 taken into account for all agreements on fact and in law, and this means that victims
15 have their word to say in this process. Thank you.

16 PRESIDING JUDGE FREMR: Merci, Monsieur Suprun.

17 Probably now is the right time to break. We will break for 30 minutes roughly and
18 we will start again at half-past 11.

19 THE COURT USHER: All rise.

20 (Recess taken at 10.55 a.m.)

21 (Upon resuming in open session at 11.34 a.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: So welcome back, and we now can continue with the
25 rest of our agenda. And at the moment the further item should be item I, update on

1 victims' applications and the procedure for allowing victims to participate in the trial
2 proceedings.

3 I can again summarise that the Chamber has received extensive submission from the
4 legal representatives of victims on the procedure for victim participation at the trial
5 stage. It's important to highlight that they are opposed to the approach as adopted
6 in the Kenya case, whilst the Prosecution actually favours such an approach.

7 In the interest of setting a trial date, the Prosecution has proposed to set a deadline for
8 further victim applications. In its filing, the Registry has provided an update on the
9 number of victim applications.

10 We will now ask you respond to each other's proposals. Please make sure to include
11 your views also on a deadline for applications.

12 And because of the character of the case, I would prefer to start with legal
13 representatives. So, Madam Pellet, vous avez la parole.

14 MS PELLET: (Interpretation) Thank you, Mr President. As you said, the legal
15 representatives in their joint filings developed this question, this issue, extensively.

16 So I shall not revisit it once again, but I would like to remind you that there are
17 multiple participation models within the Court, but this should not take us away
18 from the essential matters. Whatever the model chosen by your Chamber, this
19 model must respect the rights of the victims pursuant to Article 68(3), that is, the right
20 to participate in an effective manner in the proceedings.

21 Now, in our written filings dated 14 August, as you recalled, we developed a number
22 of arguments against the adoption by your Chamber of the Kenyan model, but in
23 view of the fact that the Registry also underlined the fact in their lengthy submissions
24 that they -- that this model might be used subject to a number of modifications, we
25 would like to remind the Chamber that this model, even where the modifications

1 proposed by the Registry to be brought in, it would not allow most of the victims to
2 benefit from their rights under Article 68(3) of the victims because the registration of
3 the victims would be done outside of any legal context and as a result, their
4 participation would only be symbolic.

5 Now, at this stage, I will merely remind you that the Appeals Chamber has already
6 rendered a decision on the subject, and in order for Article 68(3) to be transposed into
7 fact within the proceedings, this article must make sure that the participation of
8 victims is significant, and the Appeals Chamber also recalled that if the victims were
9 generally and in all circumstance in an impossible situation with regard to bringing
10 evidence and other further evidence, their rights to participate in the proceedings
11 would be ineffective.

12 Now, we would like to refer you once again to our filings of 14 August when you take
13 your decision on the matter. Furthermore, Mr President, your Honours, this
14 question also calls other observations into play, notably the problem of the model, the
15 participation model, that is one thing, but the victims also need for the Chamber to
16 establish a number of participation modalities. This explains why we did not
17 intervene on the issues regarding disclosure, because we do not know now what the
18 decision of the Chamber will be.

19 But for the victims to able to participate in an effective manner in the proceedings, we
20 need to have a framework within which -- or upon which we can rely. Thank you
21 very much, Mr President.

22 THE INTERPRETER: Message from the English booth: We would like to remind
23 the parties and participants that the counsel should speak at a more leisurely pace.

24 MR SUPRUN: (Interpretation) I would just like to underline what my colleague
25 just said. And I'm sorry.

1 PRESIDING JUDGE FREMR: Okay, go ahead. Go ahead, please.

2 MR SUPRUN: (Interpretation) Yes. Thank you, Mr President. I would just like

3 to join what my colleague said and I would quite simply like to say how it is

4 important for the victims' interests to be represented in this -- in these proceedings

5 and their interests will not be taken into account if the Kenyan model is adopted by

6 this Chamber.

7 I would like to underscore the fact that for most of the victims, reparations is not their

8 first interest and that is not the real reason -- the main reason why they're coming to

9 the court. Most of the victims want to be able to contribute to the administration of

10 justice. They want to see justice rendered.

11 This means that the victims coming to the Court want the Judges, want the Defence,

12 want the Prosecution to be able to hear their story, to be able to hear what their tragic

13 and unfortunate experiences were. So we have to hear their stories told and, if the

14 Kenyan model is adopted, this means that very few victims will be called to testify

15 and to present their views and concerns in person. They will not be able to tell their

16 story as such and they will not be able to have their story heard by the Judges.

17 So in this regard specifically I would like to underscore the fact that we do

18 understand that there are budgetary restrictions, notably the fact that the budgetary

19 restrictions does not, however, affect the right of the victims to participate in the

20 proceedings in an effective and efficient manner.

21 With regard to the question of modalities of participation of course we do not want to

22 force the Chamber on the matter of victim participation, but I would like to say that it

23 is very important with regard to their participation and the modalities of their

24 participation that be taken -- that this be taken into consideration as a priority.

25 Since this morning, we have noted that there are a number of very important issues

1 that are already under consideration at this phase of preparation for commencement
2 of trial. Many of these issues are directly associated with the interests of the victims,
3 which means that if these victims are not in a position to make observations on these
4 matters of proceedings at this phase of proceedings, it means quite simply that their
5 participation at the trial phase will be affected in a substantial manner. That is why
6 to our mind the question of victim participation and the modalities of victim
7 participation in the trial should be addressed as a priority, and I thank you.

8 PRESIDING JUDGE FREMR: Thank you, both of you.

9 Now, Prosecution please.

10 MS SAMSON: Thank you, Mr President.

11 The Prosecution's observations related to three main areas of victim participation.

12 The first is how should this Chamber deal with the assessment of current applications
13 in face of the confirmation hearing decision and any modifications to the charges.

14 It's in light of that first issue that the Prosecution proposed that we adopt the Kenya
15 model only insofar as the Registry could take the preliminary assessment and review

16 of that further to criteria that are set out in the decision and -- but thereafter the

17 Prosecution wishes to have an opportunity to make observations on whether that
18 criteria has been correctly applied before the Chamber makes its ultimate decision.

19 So in paragraph 39 of our filing number 352, we've proposed that model - endorsed
20 that model - with the Chamber having ultimate authority, and I'd add today that the
21 Prosecution would like to also make observations on that.

22 The second issue of victim participation that we've addressed is how do we

23 deal -- how does the Chamber deal with new applicants. For that we have not

24 proposed the Kenya model, but rather the model that the Single Judge had set up at

25 the confirmation hearing pre-trial stage which was to use the new simplified form,

1 have a report being given to the Chamber, the parties and participants making
2 observations as required and then a determination made by the Chamber.

3 Thirdly, in relation to the cut-off date or guillotine date for applications, we've
4 proposed the start of trial. That way the parties, participants, the Chamber and the
5 legal representatives have a very clear idea of the number of participants and from
6 there the representation can take place in the clearest of terms.

7 PRESIDING JUDGE FREMR: Very well. Thank you.

8 Now, Mr Bourgon, it's your turn.

9 MR BOURGON: Thank you, Mr President.

10 The Defence, of course, supports the participation of victims in the framework as set
11 out during the confirmation stage of the proceedings. That being said, we also
12 realise that the participation of victims in the proceedings, as was well recalled a
13 number of times in the jurisprudence of this Court, must be more -- must be effective
14 and in any event must be more than symbolic. However, it is of the utmost
15 importance for us to recall that victims are participants and not parties and the
16 difference - the distinction - is very important in a number of areas.

17 Addressing the specific questions raised in the agenda, regarding the status of victims
18 currently authorised to participate we have the same position as the Prosecution.
19 We agree with their continued participation so long as the Registrar has performed
20 the necessary review based on the decision on confirmation of charges and, of course,
21 that we have opportunity at a later stage to verify that this criteria has been
22 well-applied.

23 And regarding the new applications for victims, we believe that we should maintain
24 the system in place and not go towards the Kenyan model simply because we believe
25 that the involvement of the Chamber is necessary, whenever we talk about victims

1 that are authorised to participate, and that we get to submit our observations from the
2 get-go as soon as an application is made by a potential victim.

3 Lastly, regarding the cut-off date, we have no particular views on the cut-off date.

4 Of course it has to be before the beginning of trial, but we have no specific views. It
5 should be something that will make it that those victims that are authorised at a later
6 stage, in order for them to have a meaningful participation of course they have to be
7 approved before this participation takes place, the sooner the better.

8 Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

10 And now I think the right time to give floor to Registry, and maybe a part of your
11 comments on the submissions of parties I would also like to ask whether there is any
12 update on the number of victims applications please?

13 MS BRIKCI: Mr President, your Honours, there is indeed an update, but it's the one
14 the same as we have provided in our written submission. So far we have received
15 2,000 applications for participation in the case, we expect 400 more in the near future
16 and we have already transmitted during the pre-trial stage of the proceedings
17 1,186 applications. Out of these, 101 -- 1,120 applications were admitted to
18 participate in the proceedings.

19 Maybe one additional information. I'm not going to repeat what was already said in
20 our written filing. To answer the concern of the Defence, we are currently reviewing
21 all the applications from victims participating in the case in light of the new scope of
22 the case.

23 PRESIDING JUDGE FREMR: And maybe one additional question. I don't want to
24 push you to answer if you don't want, but do you have any comment on some
25 criticism on the so-called Kenya model made by legal representatives, or don't you

1 want to comment? It's up to you.

2 MS BRIKCI: We have -- yeah, we have some comments.

3 We have already highlighted in our filing that the second option that we are
4 submitting to you is an option that would have several advantages. It would allow
5 the Registry to put in place a system that we consider is more sustainable in light of
6 the resources we have.

7 It's an approach that would also help us to have more visibility for the next stage - if
8 there is a next stage in the proceedings - the stage of reparations. We would have
9 the possibility -- if the victims are registered and if this is mandatory, contrary to the
10 Kenya system we would have the possibility to know exactly how many victims
11 might be interested for the next stage of the proceedings.

12 In light of the criticism, the particular criticism made by the legal representatives for
13 victims, the fact that it would be made outside the system, would be outside the
14 judicial proceedings, I believe that if the Chamber wishes to implement this approach
15 it would -- it would be -- this concern would be addressed. So it's totally in the
16 hands of the Chamber to decide what is the best option and the Registry will just
17 implement what the Chamber wants.

18 Also in our filing we have explained that we can carry on exploring other options or
19 other ways to implement the two options that are being proposed, if the Chamber
20 wishes so.

21 PRESIDING JUDGE FREMR: Thank you.

22 So just to make -- can make one comment that the Chamber is very well aware of the
23 difference between submissions and opinions made by parties and participants, so we
24 will consider it thoroughly before making a final ruling on that.

25 One question from Judge Ozaki, please.

1 JUDGE OZAKI: A question to the representative of the Registry. Do you have any
2 security concerns for victims, or potential victim applicants, or intermediaries
3 working for them now on the ground? If you -- if you so wish, we can go into
4 private session?

5 MS BRIKCI: Thank you. Yes, we do have some concerns, so maybe we could go
6 into private session?

7 PRESIDING JUDGE FREMR: Okay. Let's go to private session please, court officer.
8 (Private session at 11.54 a.m.) * Reclassified into a public session.

9 THE COURT OFFICER: We're in private session, Mr President.

10 PRESIDING JUDGE FREMR: Thank you.

11 So you can proceed, Registry.

12 MS BRIKCI: Yes, so we have some concerns indeed in relation to security. These
13 concerns were already raised in previous filings before the Pre-Trial Chamber when
14 we transmitted the applications. We had transmitted them in six batches. We have
15 raised these security issues. We could report again to the Chamber later on on the
16 details of these security concerns, but there are indeed security concerns, yeah.

17 (Trial Chamber confers)

18 PRESIDING JUDGE FREMR: So now Judge Ozaki reminds me that it would be
19 appreciated by the Chamber to be provided with some updates on that. Is that
20 okay?

21 Any comment on this specific issue from parties or participants? Please,
22 Madam Pellet.

23 MS PELLET: (Interpretation) Thank you, Mr President.

24 With regard to the security concerns just mentioned by the Registry with regard to the
25 participating victims in the proceedings, these issues have been addressed directly

1 and to date -- to date we have not as legal representatives come up against any
2 security problems with victims participating in the proceedings.

3 Now, I think the Registry was referring to victims for whom the requests have not
4 yet -- for whom their requests have not yet been admitted to participate, but were
5 these security concerns to come into play for participating victims then of course we
6 shall let you know immediately and we can -- we shall then consult, for example, with
7 the VWU.

8 But of course you should be reassured on the fact that within our capacity as legal
9 representatives for victims, we really look into these matters very closely. Thank
10 you.

11 PRESIDING JUDGE FREMR: (Interpretation) Thank you very much.

12 (Speaks English) No further comments on this issue? If not, that's the case, we can
13 move to public session.

14 (Open session at 11.57 a.m.)

15 THE COURT OFFICER: We are in open session, Mr President.

16 PRESIDING JUDGE FREMR: Thank you very much.

17 And it means we go to the last and crucial, also crucial item of our
18 agenda - commencement date of the trial.

19 First introduction from my part: According to Rule 132, the Trial Chamber must set
20 the date of the trial. The Prosecution in its filing proposed June 2015 start date,
21 which it maintained in its second written submission after being requested by the
22 Chamber to consider whether an earlier start date would be feasible.

23 The last Prosecution filing has set out the submissions in detail, so we will first turn to
24 the Defence, and maybe I would like to, just at the beginning, have one question
25 because, Ms Samson, today, you several times used to adding one, two, three months

1 before the commencement of trial, but you didn't say February, March, so should I
2 understand that you still maybe are optimistic that maybe you could just get earlier or
3 just stick on June 2015?

4 MS SAMSON: Your Honour, the Prosecution maintains its position that June is the
5 earliest date upon which this trial could start. All the more so given the Defence's
6 submissions today that certain discussions can't be -- can't reach fruition until June.
7 In some cases -- pardon me, January. In some cases they won't start until January,
8 for instance agreed facts. So we're maintaining the June position.

9 As a principle, there are certain deadlines that we agree can be placed three months or
10 two months prior to the start of trial. In our proposed timeline, that would be
11 March 2015 for a start date of some time in June 2015, the exact date to be determined.
12 Much will depend of course, as your Honour is heading, on the Defence submission
13 of the time it will require.

14 PRESIDING JUDGE FREMR: Thank you.

15 Mr Bourgon, on that point.

16 MR BOURGON: Thank you, Mr President. Commencement date of trial is indeed
17 a very important issue. And as I indicated at the beginning, Mr Ntaganda is very
18 much interested in getting his trial underway as soon as possible.

19 Looking at the Prosecution's observations in the -- both observations, initial and
20 additional, that were filed, if I just refer inter alia to disclosure of witness statements
21 pursuant to Rule 76, it appears that we will not be getting the full disclosure of the
22 witness statements before March of 2015.

23 If I look at disclosure of evidence pursuant to Rule 77, the Prosecution mentioned this
24 morning six months from today to complete the ongoing review of the documents in
25 its possession and disclosure.

1 If I just put this in this context with our request, which really what is the most
2 important issue for Mr Ntaganda today is to have full disclosure three months before
3 beginning of trial, then I cannot see how this trial can get underway before June of
4 2015. Now, of course, this is based on what you heard this morning.

5 Now, from the Defence point of view, what I can assure the Trial Chamber is that we
6 will work as quickly and as diligently as possible. And should the Trial Chamber set
7 a trial date for 1 June 2015, we will do everything that is in our power to be able to
8 begin and to be ready to begin by that date, with the caveat that if there are delays in
9 the obligations or on the undertakings of the Prosecution to disclose certain
10 documents, then the trial date will have to be maybe adjusted accordingly. So that's
11 what I -- what I wish to say.

12 Now, I just want to finish by making one last observation because I keep referring to
13 the three months before trial. Earlier today I indicated, and we came upon the issue
14 of the documents containing the charges, and I referred the Trial Chamber to a
15 three-step process, and I, of course, was candid enough to say that this is not
16 provided for in the Rules.

17 What is the bottom line for us, Mr President, in terms of the documents containing the
18 charges, is that three months before trial I know exactly what the allegations are and
19 what is the evidence that the Prosecution intends to lead in support of each allegation
20 three months in advance. That can give us the possibility to start a trial, and we will
21 do in our best to follow whatever date is set by the Trial Chamber. Thank you,
22 Mr President.

23 PRESIDING JUDGE FREMR: Thank you very much.

24 Now victims representatives for their views.

25 MS PELLET: (Interpretation) Thank you, your Honour. We have already made it

1 clear that the victims would like the trial to start as soon as possible because for some
2 of these victims they have been expecting -- they have been waiting for more than
3 11 years, almost half of their lives for this trial to take place.

4 So given the demands of the trial and the need for a fair trial, we all want for this trial
5 to start early, and we think that the schedule as proposed is reasonable.

6 And, of course, we hope that all obligations will be fulfilled acceptably and that there
7 will be no additional delays, but victims would like this trial to start as soon as
8 possible and to be conducted as fairly as possible as well. Thank you, your Honour.

9 MR SUPRUN: (Interpretation) Your Honour, the victims that I represent would
10 like this trial to start as soon as possible. At the same time, they are aware of the fact
11 that a certain number of procedures which are important, have to be put in place, to
12 ensure the preparation of this trial, and so I have nothing against the commencement
13 date proposed by the Office of the Prosecutor. Thank you.

14 PRESIDING JUDGE FREMR: Thank you very much, both of you.

15 So maybe -- excuse me, Mr Bourgon, you have the floor.

16 MR BOURGON: I'm sorry to intervene at this stage, Mr President. I just wanted to
17 recall. At the beginning I said that I would not make any mention of the resources
18 required, but, of course, our undertaking to work as diligently as possible and to
19 abide by any order of the Trial Chamber setting a date, we will definitely need the
20 necessary resources and I will be filing written submissions in this regard shortly.
21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Yes, it was our expectations, and we will thoroughly
23 consider that, I can assure you.

24 Before I just came to our conclusion, one procedural point: We just, in the silent
25 conference, came to the conclusion that the private session part actually did not

1 contain any facts which could be really -- who deserve to be confidential because
2 there was nothing concretely threatening any witness or victim, so we agreed that this
3 part of the hearing, including transcript, would be reclassified as a public because it
4 will prevent us from having two transcript, which seems to be really needless at the
5 moment.

6 So to sum it up, at the moment, the Chamber, after having listened to all oral
7 submissions, even considering previous written submissions, anyway is not in a
8 position to make categorical conclusion as to the date of trial. Nevertheless it's clear
9 that the parties will have now to enter into active discussions on various topics and
10 multiple draught protocols, but in order to keep control over the course of the further
11 proceedings, the Chamber considers necessary to stay apprised of the progress, for
12 that reason a series of status conferences will be scheduled, next one probably the
13 second-half of October, during which -- and we will specify that -- during which the
14 parties and, if necessary also, the participants will be asked to provide updates.

15 Having said that, any further comments, questions, requests? If it's not the case, I
16 would like to thank you all for coming, and especially for your active and
17 constructive input which, to be absolutely open, made me more optimistic than after
18 having read your written submissions.

19 I also would like to thank interpreters and court reporters and would like to wish you
20 good rest of the day.

21 The hearing is adjourned.

22 THE COURT USHER: All rise.

23 (The hearing ends in open session at 12.08 p.m.)

24 RECLASSIFICATION REPORT

25 Pursuant to Trial Chamber VI's oral instruction dated 11th of September 2014, the

- 1 excerpt of the transcript page 53 line 8 to page 54 line 13 (*) is reclassified
- 2 from private session to open session.