

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 Chang-ho Chung
7 Status Conference
8 Wednesday, 22 April 2015
9 (The status conference starts in open session at 9.34 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: Good morning, everybody. Welcome to this status
14 conference.
15 Now, court officer, please call the case.
16 THE COURT OFFICER: Good morning.
17 Situation in the Democratic Republic of the Congo, in the case of The Prosecutor
18 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
19 And for the record we are in open session.
20 PRESIDING JUDGE FREMR: Thank you.
21 Now, counsel, please introduce yourselves for the record, starting with Prosecution.
22 MS SAMSON: Good morning, Mr President and your Honours. On behalf of the
23 Prosecution, I'd first like to welcome Judge Chang-ho Chung to the Bench. We're
24 happy to see you.
25 Today for the Prosecution we have: Ms Dianne Luping, trial lawyer;

1 Ms Julieta Solano, trial lawyer; Mr Eric Iverson; trial lawyer; Ms Marion Rabanit,
2 associate trial lawyer; Ms Selam Yirgou, case manager; and myself, Nicole Samson,
3 senior trial lawyer.

4 PRESIDING JUDGE FREMR: Thank you.

5 Defence?

6 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
7 your Honours. Good morning to all those present in the courtroom.

8 On behalf of Bosco Ntaganda this morning we are: Margaux Portier, case manager;
9 Isabelle Martineau, intern; William St-Michel; and myself, Stéphane Bourgon.

10 Bosco Ntaganda is present for this status conference this morning.

11 Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Thank you.

13 Legal representatives?

14 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
15 your Honours. For the victims for the attacks against civilian population, I am -- on
16 behalf of the OPCV, Caroline Walter and myself, Dmytro Suprun, counsel.

17 Thank you.

18 MS PELLET: (Interpretation) Good morning, Mr President. Good morning,
19 your Honours. For the child soldiers victims, I am Sarah Pellet, counsel,
20 representing them, and Mohamed Hamed Abdou, associate lawyer.

21 Thank you.

22 PRESIDING JUDGE FREMR: Thank you.

23 And finally Registry?

24 MS DAHURON-JACOBY: (Interpretation) Good morning, Mr President.

25 On behalf of the Registry: Isabelle Oseredczuk, lawyer with the Victims and

1 Witnesses Unit; Pieter Vanaverbeke; and myself, Charlotte Dahuron, Chief of the
2 Court Management Section.

3 Thank you.

4 PRESIDING JUDGE FREMR: Thank you all.

5 On 1 April, this Chamber issued an order scheduling the present status conference for
6 21 April. For some logistical reasons it was moved to today, so I would like to
7 emphasise that the Chamber is grateful for your flexibility in this regard. Thank
8 you.

9 Now we will start with an oral ruling which is following. Its oral decision on
10 Defence postponement request.

11 On 9 October 2014, the Chamber set the commencement date for trial for 2 June 2015
12 and directed the Prosecution to complete disclosure, subject to any delay to disclosure
13 requested and authorised, by 2 March 2015.

14 On 2 April 2015, the Defence requested the Chamber to postpone the presentation of
15 the Prosecution case until 2 November 2015 at the earliest. It did not oppose having
16 the opening statements in advance of that at the time previously scheduled. The
17 Defence submitted that the postponement of the Prosecution case would be in the
18 interests of justice and is required in order for it to adequately prepare for the start of
19 trial.

20 A number of grounds were submitted in support of the request, including: Firstly,
21 the volume of material disclosed by the Prosecution since January 2015 which the
22 Defence submits it could not have anticipated; secondly, the extent of redactions
23 applied and the re-disclosure of material with lesser redactions; thirdly, the inability
24 of the Defence to conduct adequate investigations within the scheduled time frame
25 for reasons related to, amongst other things, (a) the timing and scope of disclosure; (b)

1 difficulties in the conduct of investigations and in the -- sorry, in securing the services
2 of suitable investigators; (c) the impact of the change in composition of the Defence
3 team; and finally (d) the parties having been unable yet to consider proposals for
4 agreed facts or joint instruction of experts.

5 The Defence further provided a detailed estimate of the work it considered remained
6 to be completed before the commencement of trial.

7 In addition, on 13 April the Defence made a confidential ex parte filing in which it
8 provided further details of the investigative challenges it has encountered and made
9 certain submissions in anticipation of the Prosecution's response to the postponement
10 request.

11 On 14 April, both the Prosecution and the legal representatives of victims responded
12 to the postponement request.

13 The Prosecution opposes the postponement request and contests the alleged burden
14 placed on the Defence as a result of the Prosecution's disclosure. However the
15 Prosecution does not oppose a shorter postponement up until 2 September 2015, or
16 alternatively starting the trial on 2 June 2015 and subsequently hearing the evidence
17 at a reduced pace. Should the Chamber postpone the trial - the start date of
18 trial - the Prosecution requests that all disclosure deadlines be extended accordingly,
19 expiring three months before the new start date.

20 The legal representatives of victims oppose the request, as delaying the trial would
21 adversely affect the participating victims.

22 As a preliminary matter, to the extent that the Defence sought to use the confidential
23 ex parte notice of investigative difficulties to reply to anticipated Prosecution
24 arguments, the Chamber has disregarded those submissions. The Chamber
25 considers it inappropriate for the Defence to have used the notice as an attempt to

1 provide an anticipatory reply without having sought leave to reply. Moreover, the
2 Chamber notes that the submissions in anticipatory reply were unnecessarily
3 provided on an entirely ex parte basis. The Chamber therefore directs the Defence to
4 file a confidential redacted ex parte, Prosecution and Defence, version of this notice.
5 Relatedly, the Chamber has noted the Defence submissions in the notice regarding the
6 alleged non-disclosure of material to the Defence, including by reference to seven ex
7 parte filings in the case record. As the Chamber has previously indicated, it is
8 constantly mindful of the classification of documents as between the parties and it has
9 been transparent in relation to submissions relied upon.

10 The Chamber takes this opportunity to note that it considers such speculations on the
11 part of the Defence to be inappropriate and without foundation and should not have
12 been presented in that manner.

13 Turning to the substance of the postponement request, the Chamber is mindful of its
14 obligation to ensure full respect for the rights of the accused, including in particular
15 the right to have adequate time and facilities for preparation of the defence. The
16 Chamber recalls in that regard that the obligation to ensure a fair and expeditious trial
17 is a duty of the Chamber.

18 The Chamber is not satisfied that the Defence submissions justify a postponement of
19 the length requested. In particular, the Chamber considers that a significant number
20 of the issues raised by the Defence were either already known to it at the time it made
21 submissions on the schedule for preparation for trial, or should reasonably have been
22 anticipated by it at that stage. This includes, for example, the status of Defence
23 investigations at that time, the impact of changes in the composition of the Defence
24 team and to some extent the potential volume of disclosure.

25 The Chamber considers that a number of the other difficulties described by the

1 Defence either fall within the range of normal investigative difficulties that might be
2 anticipated in a case of this nature, or relate to matters which in the Chamber's view
3 do not legitimately justify the Defence postponement request.

4 Regarding the Prosecution's request for delayed disclosure and for non-standard
5 redactions, the Chamber considers them to have been appropriately limited in
6 number and scope. As already indicated in the Chamber's decision on delayed
7 disclosure, the Chamber does not find that the authorised delays are such as would
8 justify an alteration of the trial commencement date.

9 The Chamber further considers that the Prosecution's detailed pre-trial brief and the
10 updated Document Containing the Charges should provide the Defence with a clear
11 outline and understanding of the Prosecution's case in supplement to the information
12 which had already been provided in the confirmation decision.

13 The Chamber has, however, noted the Registry's filing of yesterday - number
14 567 - indicating that an additional period of approximately one month shall be
15 required to facilitate the holding of opening statements in the DRC.

16 It's needed to emphasise that the matter currently is before the Presidency, but the
17 Chamber recalls its intention of bringing the judicial work of the Court closer to the
18 most affected communities and its finding that it is in the interest of justice for the
19 opening statements to be held in Bunia in the DRC.

20 Therefore, noting mainly the logistical difficulties presented by the Registry and to a
21 lesser extent the Defence submissions that it would not be in a position to commence
22 trial as scheduled, including on the basis of certain delays in completion of full
23 disclosure by the Prosecution, the Chamber is minded to postpone the trial
24 commencement date for a limited period.

25 The Chamber also notes that the Prosecution is not opposed to a limited

1 postponement and recognizes that such a postponement may assist the Defence in
2 completing its review of the incriminatory material disclosed to date.

3 The Chamber has also -- has also had regard to the submissions made, in particular
4 by the Prosecution and legal representatives, regarding the undesirability of there
5 being a significant gap between the holding of opening statements and the
6 commencement of presentation of evidence.

7 Having carefully considered all relevant factors, the Chamber holds that the opening
8 statements in the trial should be postponed until the second or third week of July 2015,
9 without prejudice to the Presidency's decision on whether they are to be held in the
10 DRC or not.

11 In light of that pending decision of the Presidency the Chamber does not consider it
12 appropriate to identify the specific date within the time frame at this stage, but will
13 do so in due course. The Chamber considers that, until decided otherwise, deadlines
14 to be calculated on the basis of the start of trial shall take 7 July as a commencement
15 date for trial.

16 Further, in view of the scheduled summer judicial recess, the Chamber directs that the
17 hearing of evidence will commence only after the recess, provisionally in the week of
18 17 August 2015.

19 The Chamber notes that this revised schedule will in effect provide the Defence with
20 approximately two and a half months of additional preparation time, which the
21 Chamber considers to be entirely ample in the current circumstances.

22 In respect of the Prosecution's request for disclosure deadlines to be revised in
23 conformity with any changes to the trial commencement date, the Chamber considers
24 that permitting disclosure of substantial further material would compromise the
25 ability of the Defence to adequately prepare. The request is therefore rejected,

1 without prejudice to the potential needs to reconsider or reset discrete deadlines
2 relating, for example, to the order of witnesses to be called - which, it is noted, formed
3 part of the submissions on conduct of proceedings.

4 This concludes the ruling of the Chamber.

5 Now --

6 THE INTERPRETER: Mr President, from the interpreters, would you please kindly
7 slow down for the benefit of the interpreters. Thank you, sir.

8 PRESIDING JUDGE FREMR: Okay. Now, in our order scheduling the status
9 conference, we set the agenda for today, and additional agenda items have been
10 proposed by the parties via email.

11 The Prosecution additionally asked to address the procedure for and timing of
12 challenges to the testimony of expert witnesses. However, last Thursday the
13 Prosecution filed a "proposed procedure for challenges to expert testimony." It is
14 filing 561.

15 So the first question goes to Prosecution. Ms Samson, do we understand correctly
16 that the request for an additional item is superseded by your filing and the matter of
17 expert testimony can be dealt with under agenda item (b) on the conduct of
18 proceedings?

19 MS SAMSON: Certainly, your Honour. We can deal with the issue of challenges to
20 expert testimony under item (b). The Prosecution wanted to alert the Chamber, the
21 Defence and the legal representatives that this was an issue it wished to raise and
22 provided the written submission in order to give an indication as to what the position
23 was. We have no further submission on the point. Thank you.

24 PRESIDING JUDGE FREMR: Okay, well noted. Then in the same email, the
25 Prosecution asked whether the Chamber is contemplating a judicial site visit to Ituri.

1 I can respond on behalf of the Chamber immediately. The Chamber does not intend
2 to undertake a judicial site visit prior to the commencement of trial. It considers that
3 the judicial site visit should be conducted only where it would serve a specific
4 purpose in relation to facts in issue. Thus the parties should, in making any
5 application for a site visit, keep in mind this guidance. The need for a site visit may
6 be reassessed, either proprio motu or upon application, at the end of the presentation
7 of evidence by the Prosecution, and again after the closing of the Defence case. So
8 that is the current position of the Chamber.

9 The Chamber also received a request from the Defence to add an item to the agenda;
10 namely, now I am quoting, "Difficulties encountered in relation to the review of video
11 evidence with the accused at the ICC Detention Unit."

12 At face value this item seems to be something rather to be discussed with the Registry.

13 So if current facilities are insufficient or otherwise cause difficulties, the Defence
14 should first take this up with the Registry directly. And only when the matter can't
15 be resolved with the Registry, the Defence should seize the Chamber of it.

16 So, Defence, could you just update on that?

17 MR BOURGON: Thank you, Mr President. Regarding this issue, the Registry was
18 contacted and was seized of the matter in the course of last week in a detailed request,
19 which was sent to the Registry.

20 In response, we received a decision saying that our request was not possible; namely,
21 to conduct the review of video material with the accused by a person not having
22 status or not having -- not being entitled to privileged visit rights, which is why we
23 raise the issue with the Chamber and we wanted to explain, in order for us to be
24 ready and with the schedule presently set by the Chamber, it is very important for us
25 to review this evidence as quickly as possible in a continuous fashion and for -- in this

1 regard we said we thought it would be important to raise the issue with the Chamber
2 so that someone could at least instruct the Registry to take some action. Thank you,
3 Mr President.

4 PRESIDING JUDGE FREMR: Could Registry make some comment on that.

5 MS DAHURON-JACOBY: (Interpretation) Mr President, at this stage,
6 unfortunately, we don't have any comments to make. There has already been a
7 decision from the Registry pertaining to the status of the member of the Defence team,
8 if I understand properly. And I think this is pursuant to the rules of the detention
9 centre. That being the case, I would like to invite the Defence -- or, rather, I will
10 reiterate the Defence requests with the relevant services and report to the Chamber
11 and to the Defence as soon as possible accordingly. Thank you.

12 PRESIDING JUDGE FREMR: Okay. We will observe the further progress and we
13 will consider whether some involvement of the Chamber will be necessary.

14 Now, I would like to move to the main part, which is our agenda as planned, and
15 item A should be, which is the progress made regarding the preparation for trial
16 including whether disclosure has been completed.

17 Before turning to this item, I would like to make some observations and the Chamber
18 will also render an oral ruling which relate to this item.

19 At the start of today's hearing, the Chamber ruled on the Defence request for
20 postponement. In addition to the guidance provided as to the start of the trial and
21 the presentation of evidence, the Chamber, at this stage, also considers it opportune to
22 inform the parties and participants that it intends to schedule the hearing of evidence
23 in blocks of no longer than five to six weeks at a time. These blocks will then be
24 followed by a break of approximately one or two weeks before resuming.

25 On occasion, the Chamber may need to break for a slightly longer period to take

1 account of hearings in other cases as each of the three Judges also work in other
2 Chambers. The Chamber does not consider it conducive to sit continuously without
3 periodical breaks to deal with pending issues, such as decisions on procedural or
4 evidentiary matters, and is of the view that a schedule of this nature, which should
5 also facilitate the work of the parties, enables the parties to proceed in the most
6 efficient and expeditious manner possible.

7 The Chamber will now render an oral ruling on the Prosecution's request, dated 19
8 March 2015, filing number 524, seeking the Chamber's authorisation to add certain
9 items to the list of evidence that it had filed, pursuant to the Chamber's instructions
10 on 2 March 2015. The Defence did not, until today, file a response to this request.

11 So the ruling is following: The Chamber notes that, unlike at the confirmation
12 hearing, there are no provisions in the statutory texts specifically regulating the List of
13 Evidence at trial, although Rule 77 provides a general disclosure obligation in respect
14 of any material intended to be used as evidence. The List of Evidence in this case
15 represents the Prosecution's intentions of what it may seek to admit into evidence,
16 and serves to provide notice to the Defence. An item's presence on the List of
17 Evidence does not mean that this item is admissible.

18 The Chamber considers it unnecessary to rule specifically on amendments to the List
19 of Evidence. It is nonetheless emphasised that any amendments ought to be kept to
20 a minimum and the Defence may at any time challenge the use of items subsequently
21 added to the list of evidence on the basis that it received unduly late notice of them or
22 had inadequate time to prepare. The Chamber may consider, amongst other factors,
23 how long after the Chamber's deadline the Prosecution took to add a particular item
24 to its List of Evidence, and the reason for that late notice, in its assessment as to
25 whether the item can be used at trial.

1 The Chamber therefore directs the Prosecution to promptly file an updated List of
2 Evidence into the case record whenever amendments to it are made, and will make no
3 further ruling in relation to the filing number 524.

4 It is noted that the Chamber will rule separately in its decision on the conduct of
5 proceedings on how much notice the parties must give in respect of materials
6 intended to be used when examining specific witnesses. And that concludes this
7 ruling.

8 So let's now move to the item of preparation for trial. The Chamber has already
9 addressed the Defence arguments made in the request for a postponement on the trial
10 commencement date.

11 I wish to indicate that at the outset, just at the outset, that in discussing preparation
12 for trial you should please not repeat any submissions made in that context. The
13 deadline for disclosure was set for 2 March 2015. The Chamber notes that certain
14 requests for delayed disclosure and non-standard redactions have been addressed,
15 and a couple of further requests are pending before the Chamber.

16 We also note the Defence motion for reconsideration.

17 So now, Prosecution, can you please update the Chamber on your preparation for
18 trial? And we would like to know also whether your preparation is proceeding
19 according to the schedule proposed by you at the time of the first status conference.
20 Please, Ms Samson.

21 MS SAMSON: Thank you, Mr President.

22 Our preparation is indeed proceeding according to the schedule that the Prosecution
23 proposed and according to the deadlines set by the Chamber. We have now
24 disclosed the identity of all witnesses to the Defence and legal representatives.
25 These were in particular requests for delayed disclosure that have now been dealt

1 with. We have in addition disclosed the identity reports and supporting material for
2 the experts that we intend to call, with the exception of one expert for which we have
3 a request now pending to include the report by 8 May.

4 The Prosecution has provided the Defence with a series of potential facts upon which
5 the parties could agree. By 6 May we will advise the Chamber of the progress in
6 relation to those agreed facts and provide notice to the legal representatives.

7 The Prosecution additionally intends to submit additional facts that could be the
8 subject of agreement in the coming week.

9 In terms of disclosure, your Honours, we have two outstanding issues: One is the
10 partial transcript of an interview for which the Chamber has allowed us until 30 April
11 to disclose the transcription to the Defence and so we will proceed to disclosure by
12 that date; and we have two translations into Kinyarwanda of statements that will be
13 ready by early May and then that should complete the disclosure outstanding such as
14 we know it at the moment.

15 In terms of 54(3)(e) issues there are no further pending requests for materials to which
16 we have a disclosure obligation, but for the one request that the Prosecution made
17 which remains pending in relation to five documents.

18 And additionally we can advise the Chamber that we intend to make several filings in
19 advance - well in advance - of trial in relation to in-court protective measures and a
20 Rule 68 application for admission of material from the Bar table.

21 Subject to any further questions you may have, your Honour, that is the current status
22 of our preparation for the trial.

23 PRESIDING JUDGE FREMR: I don't have any further questions, at least for my part.

24 Now, Defence, could you, if you want to make any comment, or maybe also could
25 add your own preparation? What is the progress in your own preparation for the

1 trial?

2 MR BOURGON: Thank you, Mr President.

3 The Defence takes notice of the Chamber's ruling regarding its request for
4 postponement and I will not address, as the Chamber's instructions, any issues raised
5 therein.

6 We also in -- I take this opportunity to apologise for raising issues in an ex parte filing
7 regarding an anticipation to the Prosecution response. The only reason we acted this
8 way was to try and save some time and these comments are very general in nature.

9 We will abide with the Chamber's order and file a confidential and redacted version
10 of this notice.

11 That being said, Mr President, I will now inform the Chamber of the status of our
12 preparations for trial. It's quite difficult for me to do so, following the ruling of the
13 Chamber, because I see of course that our arguments are not making any grounds,
14 but I will attempt to at least inform you of what is the status.

15 Regarding trial preparations, I've got five topics to raise and of course the first one is
16 disclosure; I'd like to say a few words about agreed facts; third one is experts; the
17 fourth one is investigation, which will be very, very short in light of the ruling; and
18 the fifth issue I wish to raise was our request for a delay which I will not talk about
19 today.

20 Moving on to my first topic of disclosure, whether disclosure by the Prosecution is
21 proceeding smoothly and whether we are able to work with the way disclosure is
22 proceeding, this raises three -- three issues. The first one is has all material been
23 disclosed pursuant to the Prosecution's obligations? And the second issue, of course,
24 is when has this disclosure taken place and when we received the material and how
25 much of the material we received? That's where I have, of course, some difficulty in

1 not addressing the ruling of the Chamber and keeping to the fact of informing where
2 we are today.

3 Now, of course, it's necessary to distinguish in this regard, talking about disclosure,
4 between the material the Prosecution intends to rely upon at trial, the material of
5 course which the Prosecution must disclose pursuant to Rule 77 which is material to
6 the preparation of the Defence and the material which is potentially exculpatory in
7 nature. It is also very important to distinguish between document evidence and
8 with video material, or video evidence.

9 Now addressing these three questions, of course, will give you an idea as to where we
10 are today and what remains to be done.

11 At this stage I will solely focus on incriminatory evidence, documentary evidence, or
12 the evidence which the Prosecution intends to rely upon at trial.

13 It appears as though the Prosecution has completed or almost completed its
14 disclosure obligations. With the few items raised by -- mentioned by my colleague,
15 it appears that they have almost done with their disclosure obligations.

16 On this issue, the Defence will get closer to the Prosecution and meet with the
17 Prosecution in the coming week seeking confirmation that for each witness they
18 intend to call at trial that we have indeed received all the material, and to us that is
19 very important because all this material includes any screening notes, any
20 investigative notes, any statements of course, any interviews, any audio file and any
21 documents obtained or discussed with their witness during the proceedings leading
22 to the selection of the witness.

23 If the Prosecution can tell us that we have received all of this material for every one of
24 its witnesses, then of course we -- we will be glad to say that as far as the material the
25 Prosecution intends to rely on at trial they've completed their obligations.

1 On this issue, there's of course a couple of translation issues. A few documents need
2 to be translated and, in respect of some of the witnesses recently added to the
3 Prosecution's list, we will be making additional requests for translations.

4 Now that's the first question, whether all the material has been disclosed, but the real
5 question is when did we get the material and how much material did we get?

6 These figures are laid out in our request and in the Prosecution response which led to
7 the Chamber's ruling, so there is no point in me repeating those figures. They are
8 available to the Chamber.

9 There are in those two filings, however, some common issues, some points on which
10 both the Prosecution and the Defence seem to agree. One of those issues is the
11 number of witnesses now on the Prosecution's list, because that's our main burden,
12 preparing for the number of witnesses.

13 The Prosecution would like to downplay the fact that there are some new witnesses
14 since 15 January. We would like to stress the fact that this is the main issue here, the
15 number of witnesses.

16 At paragraph 20 of its submission - and I refer to the submission even though there is
17 a Trial Chamber ruling because that's the Prosecution view - the Prosecution takes
18 issue with the Defence assertion that the volume of disclosure, of course evidence it
19 intends to rely upon at trial, has prevented it from gaining an understanding of the
20 Prosecution's case.

21 From the Prosecution's point of view, the Defence should be able to understand the
22 sources of the OTP allegations because it is aware - "it" being the Defence is aware - of
23 the identity of all but one of the Prosecution witnesses.

24 Well in fact, as mentioned by the OTP, it has not been mentioned, but we now know
25 the identity of all witnesses. So that's not an issue here.

1 The real issue is we also know the allegations of the Prosecution and we also know
2 the charges being faced by Mr Ntaganda. Again, that is not the issue.
3 The issue is do we have sufficient knowledge of the sources of the Prosecution's case?
4 And here the answer, Mr President, at this stage today -- the answer is absolutely not
5 and the reason for this is the change in the Prosecution's case.
6 I will be very quick because there's a ruling already, but I need to highlight these facts
7 for the Chamber. On 9 June 2014, a decision was rendered on the confirmation of
8 charges. On 15 August, I was assigned as counsel to represent Mr Ntaganda. At
9 the first status conference I made an undertaking to do everything to be ready for trial
10 at the date set by the Trial Chamber, and at that time I said this of course would
11 require three months after full disclosure and would require three months after a
12 pre-trial brief. That undertaking, Mr President, was based on my understanding of
13 the case at the time and at the time the case was a case of 45 witnesses.
14 On 15 January, whoop, we move from 45 to 60 witnesses. We add 15 new witnesses
15 on 15 January. Now, 15 January we add the number of witnesses and the identity
16 for most of them. Some we still did not know the identity.
17 On 2 March, we jump from 60 witnesses to 75 witnesses. That's another 15 more.
18 Actually, it's 16 new witnesses and one which was withdrawn.
19 So from the time I made this undertaking to be ready for trial three months after full
20 disclosure, we move from a case of 45 witnesses to a case of 75 witnesses. That
21 comes close to being double.
22 Now, of course, I'm not referring here to the number of experts. Number of experts,
23 on 1 April we were informed that there might be seven witnesses, expert witnesses,
24 called by the Prosecution and on 16 April we now move to 13 expert witnesses.
25 Now, that's 16 April. I guess it's just a few days back, Mr President.

1 So the total of this case is now 88 witnesses.

2 The Chamber said that this could be anticipated. Well I don't think so, Mr President,

3 and I respectfully disagree.

4 Was it possible for me to anticipate an increase of 10 to 15 per cent of the initial 45?

5 Of course it is. Of course it was possible for me. 10 to 15 per cent, that's five or six

6 witnesses, or seven exactly.

7 Was it possible for me to anticipate that there would be five to six experts? Yes, it

8 was possible for me to anticipate five or six experts. This would bring the case to 50

9 to 55 witnesses, not to 88 what we have today. Now, that's -- that's the number of

10 witnesses.

11 Now, preparing for a witness is not just reading the material. It has implications for

12 the case for the Defence, it has implications for our investigations and it has

13 implications to be ready for trial.

14 These witnesses were added, 16 since 2 March. That's a month-and-a-half ago. We

15 have 16 new witnesses that we were not aware of before. How are we supposed to

16 prepare for 16 new witnesses, which changes the nature of the case, and 13 experts;

17 although I'm not insisting so much on the expert testimony because it's quite normal?

18 Not only could not -- could this not be anticipated, it's simply not possible. Right

19 now we do not have a sufficient understanding of the Prosecution's case.

20 Now I've said nothing so far on the importance of these witnesses, but if we look at

21 who the new witnesses are there's a couple of witnesses who appear to be, at least

22 from our cursory evaluation, quite important witnesses for the Prosecution, so-called

23 military insiders or persons quite close to Mr Ntaganda.

24 Now, I'm not even talking about the number of documents. I'm simply focusing on

25 getting that number of new witnesses. If I compared that number of new witnesses,

1 that in itself could be a complete new case before this Court.

2 Allow me to conclude, Mr President, in terms of preparations by saying that with
3 regards to Rule 77 material we will be writing
4 to the Prosecution to obtain confirmation once again that they have provided us with
5 all material pursuant to Rule 77.

6 Now, we -- we anticipate that there are material that is missing, but we also
7 understand that it is for us to ask this material. For example, I refer to a lot of
8 material coming from the Lubanga case. There is a lot of material that we take the
9 view is material to the preparation of the Defence. So far we have not requested this
10 material, but we will. I did mention this to the Prosecution on one occasion, but I
11 have not made any specific request. That is one of the requests I will make in due
12 course. But right now it is not something we are able to do.

13 Now, I come now to the video evidence. We raise the issue, the number of hours of
14 video evidence to be reviewed is quite -- quite large and this requires a lot of time.
15 The video evidence, of course, requires the way we review the video evidence, unlike
16 the Prosecution, we have a person that we represent, Bosco Ntaganda, and he needs
17 to view all of this video material and he needs to provide us with detailed comments.
18 And this, of course, can only take place at the detention unit. It is a very
19 time-consuming exercise. We are working on this now and we hope that we can
20 have the sufficient resources. Our resources in terms of who can go to the detention
21 unit is limited.

22 The last thing I will raise in terms of our preparations, and I'm talking now again just
23 on the topic of disclosure, is the Prosecution raised an issue of asking for three
24 months for disclosure. The Chamber has now ruled on this. So the only thing I'd
25 like to say is that it is very important, and I raised this on a number of occasions, it is

1 important to have some type of finality to the case Mr Ntaganda has to meet.
2 That concludes my observations on disclosure. I'll move to agreed facts, unless the
3 Chamber has some questions.
4 Moving on to agreed facts, we received a list on 3 April. The list includes 91 items.
5 The Defence is actually working on the list. Some of these proposed facts
6 include -- referred to geographical matters, people in Ituri, acronyms and even
7 whether there was an armed conflict or not. These facts are quite easy to address
8 and we will, of course, respond to the Prosecution by 1 May, and that does not
9 require a significant understanding of the case to be able to agree with the
10 Prosecution.
11 There are, however, more contentious facts on this list where it will not be possible for
12 the Defence to take a position. Of course we can say we disagree, but we have
13 expressed before that we are believers in agreed facts. So I can easily say, "Of course
14 I disagree and let's move on" and we just disagree, or I can take the time to work on it
15 and get the Prosecution another possibility to agree on some of these facts.
16 We also wish to propose our own series of agreed facts because, for example, the
17 Prosecution in its list of agreed facts proposes to -- is asking us to agree on the
18 existence of certain attacks conducted by certain armed forces. Well, there are many
19 other attacks committed by other armed forces that we also will be asking the
20 Prosecution to agree upon. That requires time so we can discuss these issues. So
21 far the only issue that we're missing here is time.
22 Moving on to experts. The timeline provided by the Prosecution in its 16 April list of
23 experts is generally accurate, that's filing 560, where there is a procedural background.
24 So we generally agree with the description provided by the Prosecution in its filing.
25 The information, however, must be noted that the information provided on 17 March

1 by the Prosecution was very limited. 17 March, that's less than a month ago or a
2 little more than a month ago, we had names of potential experts and we had areas of
3 expertise, but we had no details.

4 The first real information regarding the experts was provided on 1 April. We were
5 told that there were seven experts and six areas of expertise.

6 Now, already on 1 April I contacted my colleague from the Prosecution and we both
7 realised that it would be very difficult to get involved into the joint instruction of
8 expert or the joint selection of expert, because they had a deadline to meet, and we
9 were not ready to discuss. But on 16 April we -- we received a filing from the

10 Prosecution announcing 13 experts in 9 areas of expertise. This material was
11 disclosed to us, most of it, I believe, on 17 April and 21 April. We're talking of a total
12 of 395 documents for 2,789 pages.

13 Of course it is debatable whether this material could -- or, information could have
14 been provided earlier, but we don't believe that this is the issue. We believe that the
15 issue is that the calendar set by the Trial Chamber, Mr President, respectfully, made it
16 very difficult for the parties to undertake the exercise of to jointly instruct experts.

17 I need to address at this stage further to the Chamber's request to the Prosecution at
18 the beginning the proposed procedure by the Prosecution to address the issue of
19 experts in terms of when and how to object to experts should we wish to do so,
20 because at this stage now we have those 13 experts and these areas of expertise.

21 We agree in general with the procedure proposed by the Prosecution, which is of
22 course, the first step is to indicate to the Chamber whether we accept the expert
23 testimony, the expert report; the second answer -- the second question being whether
24 we wish to cross-examine the expert; and the third one, which is the most important
25 one, is whether we take issue or we wish to challenge either the qualifications of the

1 experts or we wish to -- we wish to challenge the substance of their reports as being
2 irrelevant.

3 For us, the Prosecution proposes that we should indicate answers to these questions
4 30 days after reception of the material. So we received the material on 17 April,
5 which means that we received this -- we will now -- we would have to provide
6 answer to these three questions by 17 May. We feel, Mr President, that this is too
7 early for us. If the Chamber wishes us to provide a response, we can always provide
8 a response. It is always easy to say no. It's very easy. It is not the type of defence
9 we want to lead. We would like to lead a constructive defence. We would like to
10 lead a defence that will play ball with the Prosecution so that we have a good trial.
11 I would say that end of May is the earliest by which time we can answer the three
12 questions in the proposed Prosecution procedure.

13 Now, of course, regarding the experts themselves, should we wish to challenge the
14 qualifications of the experts, I think that this is something that needs to be raised in a
15 *voir dire* in court with an expert. That's our submission. It is not something that
16 can be ruled upon without the Chamber hearing the witness and the parties
17 questioning the witness so we can really test whether the expert witness is an expert
18 or not.

19 So that's our submission and request to the Chamber, that if and should we decide to
20 challenge the qualifications of any of the experts, and we have not reached that stage
21 yet, so I don't really know whether we will do so, but I would like us to have an
22 opportunity to do so, not only in writing, but also *viva voce* in the courtroom.

23 Now, with respect to whether a matter is relevant or not in one of the expert report,
24 I think this is something that can be briefed in paper or in writing. So that's our
25 submission in respect of experts.

1 Now, of course, now that the Prosecution is calling its own experts, we have yet to see
2 what position the Chamber will take regarding the joint instruction of experts, we are
3 still able to -- to review and to maybe we can still -- and I stress the word "maybe,"
4 maybe we can still get closer to the Prosecution and see if we can add further
5 instructions to what was already given by the Prosecution and maybe get an
6 amended report. So I stress the word "maybe," but we are willing to undertake this
7 possibility, to explore this possibility with the Prosecution.

8 That concludes my observations on -- our observations with respect to expert.

9 I move on to investigations. I will simply say that we are doing everything we can to
10 accelerate the process, to accelerate our investigations. We have difficulties, but we
11 will do our best. It is our firm intention to protect the rights of Mr Ntaganda to -- to
12 fulfil our obligations and we will do everything to meet the timelines set by the
13 Chamber.

14 We have cooperation issues which we might raise with the Chamber if we are not
15 successful pretty soon in getting cooperation from certain States, but in terms of the
16 topic of the day, which is where are we today, well, today we are at a point where we
17 have not conducted sufficient investigations and we are hoping to conduct more.

18 My last point was the -- our request for delay, so I will not address our request for
19 delay. We now have a decision. We take good note of the decision. We will
20 assess the decision and we will do everything in our ability to -- to follow the
21 Chamber's decision and to be ready for the date set by the Chamber.

22 At least I wanted to take this opportunity, Mr President, to inform the Chamber of
23 where we are and what we are doing. We are working flat out. We have
24 continuously rotation of personnel on the team, but that's no different from any
25 Defence team and we will do our best to be ready when the bell rings. Thank you,

1 Mr President.

2 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I appreciate especially your
3 last words. Normally I would move to next item, but because submission of
4 Mr Bourgon contained some criticism towards Prosecution and even some
5 suggestions, maybe I would like to give floor again to Ms Samson maybe to allow her
6 to react.

7 MS SAMSON: Thank you, Mr President. Very briefly, there are a few areas that
8 the Prosecution wishes to address in relation to the Defence's submissions.

9 On the first point regarding disclosure, we will certainly discuss with the Defence
10 whether or not our disclosure obligations have been met with respect to witness
11 materials. We are fully cognisant of our obligations to disclose prior statements. In
12 relation to some of the material that may be internal work product or may not engage
13 disclosure obligation, we may not agree with the Defence in relation to the scope of
14 disclosure, but we will have those discussions with the Defence.

15 In relation to Rule 77 materials, again, we are ready and available to take any requests
16 that the Defence may have in relation to additional disclosure. From my recollection,
17 one of the preoccupations at the start of this proceeding was to ensure that materials
18 disclosed in the Lubanga case were disclosed in this case, but we will discuss that
19 further with the Defence.

20 In relation to the Defence's comments on sources of information or sources of
21 Prosecution material not being -- that they don't have them, the Prosecution is not
22 clear at all as to what that is a reference to. All of the witnesses on whom we are
23 relying and the material that we are relying has been disclosed without identity
24 redactions to the Defence. There should not be any impediment at this point for the
25 Defence to understand the sources of the material upon which we rely.

1 Lastly, your Honour, in relation to experts. The Prosecution provided the Defence
2 with a list of potential experts on 17 March. Additional details were provided on 1
3 April.

4 In the email of 17 March, where we identified several potential experts, we also
5 indicated that the Prosecution would be separately instructing experts on its own in
6 relation to exhumations and in relation to clinical and medical examinations.

7 Although we did not indicate the number of those individuals at that time, we had a
8 subsequent meeting at which case -- at which time we did indicate that there would
9 be several. So it is not surprising or should not have been a surprise to note that
10 there were several experts additional to those that we had discussed on 17 March.
11 Those, your Honour, are my submissions on those points.

12 PRESIDING JUDGE FREMR: Thank you.

13 And before moving to other item, maybe I will just assure myself that LRVs have no
14 comments maybe on experts. Please, Ms Pellet?

15 MS PELLET: (Interpretation) Thank you very much, your Honour.

16 No, I don't have any comments on experts, but while I have no comments on
17 disclosure to the legal representatives, I would like to assure you that since the last
18 status conference a modus operandi has been found with the Office of the Prosecutor
19 and the problems concerning disclosure have been resolved and I'd like to take this
20 opportunity to thank you for your kind help in this regard.

21 Thank you very much, your Honour.

22 PRESIDING JUDGE FREMR: Thank you. And thank you to Prosecution that we
23 just overcame this obstacle.

24 Now -- Mr Suprun, sorry.

25 MR SUPRUN: (Interpretation) Thank you very much, your Honour.

1 Because the issue of the experts has just been mentioned, I would like to draw the
2 attention of your Chamber to the fact that the legal representative of victims also have
3 an interest in submitting observations with regards to expert reports if the testimony
4 of the expert concerned concerns the interest of victims that we represent, and
5 I would also like to draw the attention of your Chamber to the fact that there's
6 jurisprudence, consistent jurisprudence, that the legal representatives of victims can
7 be authorised to ask questions to experts and it can also be authorised to present
8 observations on the request for -- from the parties for evidence and it can also be
9 authorised to challenge evidence on the part -- from the parties. And, effectively, it's
10 very important that the legal representative of victims can have the possibility to
11 make observations with regard to expert reports and, if necessary, to challenge the
12 admissibility thereof.

13 Now, where it concerns the proceedings or procedure proposed by the Office of the
14 Prosecutor with regard to challenging the expert report, we don't have an objection
15 because this is our joint position. We don't have an objection to this procedure
16 because, whatever the case, this procedure is based completely on the legal text of the
17 International -- of the ICTY and so with this amendment the legal representatives
18 should have the possibility to make observations and have the possibility to present
19 objections to the admissibility of the report.

20 Thank you very much.

21 PRESIDING JUDGE FREMR: Thank you, Mr Suprun. Your submission was well
22 noted by the Chamber.

23 Now we are going to move to the next item; that is the observations on the conduct of
24 proceedings.

25 On 13 March 2015, the Chamber ordered the parties and participants to file their

1 observations on the conduct of proceedings by 7 April. The Chamber has received
2 and reviewed these submissions and will ask a few questions for clarification.

3 It's proposed to address the issues topic by topic in order to enable the parties and
4 participants to respond to the written submissions which have been made and
5 address any questions the Chamber may have.

6 Your oral submissions are to be considered as responses, and I would like to
7 emphasise that unless deemed appropriate by the Chamber no further written
8 responses are to be filed and please reserve any responses related to the modalities of
9 victims' participation for the next item on our agenda.

10 So step by step, first opening statements. It appears that the parties are generally in
11 agreement in relation to modalities for opening statements. However, in relation to
12 the proposed use of closed or private session during opening statements, the
13 Chamber has previously enquired the extent to which that would be necessary.
14 Without prejudice to the Chamber's ruling on the matter, if you submitted that
15 addressing certain matters private or closed session would be necessary, please
16 include in your response whether you have alternative proposals on how the material
17 might otherwise be presented, particularly in the potential context of opening
18 statements being held in the DRC which there is some risk or possibility that the
19 quality of technical equipment wouldn't be the same like here in The Hague.

20 So Prosecution, please.

21 MS SAMSON: Your Honour, should the opening statements be held in Bunia, the
22 Prosecution will endeavour not to use private or -- private session, as I understand
23 closed session is not an option. So we will undertake not to use private session in
24 that case.

25 Should it be necessary, we propose that we provide a written submission on a

1 discrete area to the Chamber, the Defence and the legal representatives of victims on a
2 particular topic.

3 PRESIDING JUDGE FREMR: Thank you very much.

4 Now, Defence on that issue.

5 MR BOURGON: No particular comments, Mr President, other than one just a quick
6 issue. The Prosecution raised a very important matter in terms of the number of
7 persons necessary if the opening statements were to take place in Bunia; that is the
8 need to require the presence of three members of its team. The Prosecution would
9 like -- the Defence would like to make a similar request. In the event the hearings
10 take place in Bunia, we would also require the presence of three team members.
11 Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. We noted that, but I have
13 to emphasise that it's still rather premature because it's really still not sure what will
14 be the ultimate decision, but in case it will be the positive one I can assure you that we
15 will come back to all those practicalities.

16 LRVs on that issue?

17 MS PELLET: (Interpretation) Thank you very much, your Honour.

18 Now, where it concerns the right of victims to make opening statements, it's
19 important for them that the Chamber gives -- guarantees this possibility as a right
20 accorded to victims independent of and separate to the relation between the parties to
21 the proceedings; namely the Prosecutor and the Defence. I would like to recall in
22 this regard, because you indicated it to us, our -- I'd like to remind you of our written
23 submissions. I won't repeat them. Nevertheless in response to the submission of
24 the Defence, which seems to see in the opening statements of victims of -- a principle
25 that goes against equality for the parties, I'd like to indicate that when the victims are

1 admitted to participate in the proceedings they have their own status which
2 distinguishes them from the Prosecutor and the Defence. If the submissions of
3 victims coincide with regards to certain aspects with the position of another party in
4 the proceedings, then that doesn't mean as such necessarily that the second should be
5 unfavoured.

6 And this comes once again, your Honours, from their own status - their individual
7 status - which is accorded to victims under the text of the Court. This status,
8 your Honour, your Honours, is increasingly threatened in the proceedings before the
9 Court and your Chamber will have to give full effect to the rights of victims and in
10 particular rights that are envisaged in the Rule 89(1) of the Rules of Procedure and
11 Evidence.

12 And I would also like to highlight that the opening statements which will be made in
13 the name of former child soldiers will only reflect the views and concerns of these
14 former child soldiers as regularly communicated by my client and in respect of Article
15 68(3) of the Rome Statute.

16 Thank you very much, your Honour.

17 PRESIDING JUDGE FREMR: Thank you.

18 Mr Suprun, do you have any observation on that?

19 MR SUPRUN: (Interpretation) I don't have any other comments, other than the
20 comments which we've already submitted in our filings.

21 Thank you.

22 PRESIDING JUDGE FREMR: Thank you.

23 Then we can move to further item; that is Prosecution case. Now, the Chamber
24 notes the differing timelines presented in relation to providing a list of the order of
25 witnesses; namely the Prosecution proposes to indicate on a monthly basis the next

1 witnesses it intends to call, whilst the Defence wishes to receive a complete list one
2 week before the start of trial.

3 So please now specifically respond in relation to that point when making submissions.
4 Prosecution first.

5 MS SAMSON: Mr President, what the Prosecution of course has suggested is that
6 we provide an updated list of witnesses to come one month in advance of them
7 coming, and the reasoning for that is because it is the most practical and efficient use
8 of planning.

9 The Prosecution is amenable to providing a longer list a week before trial of the
10 possible order of witnesses but, with 75 witnesses and a number of experts and
11 differences in availability, the longer list is subject to change.

12 In principle, we have no objection to providing the longer list. The -- the real issue is
13 how faithful it will ultimately prove to be to the order of appearance that we're going
14 to find happening during trial.

15 PRESIDING JUDGE FREMR: Thank you.

16 Mr Bourgon?

17 MR BOURGON: No particular comment, Mr President.

18 PRESIDING JUDGE FREMR: Okay, thank you.

19 It means we can move to further item, which is scope, order and mode of
20 questioning -- sorry, I just overlooked one important issue and it is in fact a question
21 to Defence concerning in-court protective measures, because the Defence proposes to
22 hold in your submission voir dire.

23 So because at least according to our understanding this term - legal term - is
24 interpreted in different way in different legal systems, we would appreciate if you
25 could give us some specification what you understand under this.

1 MR BOURGON: Thank you, Mr President.

2 To the extent that a witness comes to testify and has not requested previously
3 protective measures and there are a sudden request for protective measures, what we
4 propose is that witness should be -- appear before the Chamber, be questioned by the
5 Chamber - and if leave is granted by the parties also - in order to verify the concerns
6 of the witness to see if there are really grounds to grant such protective measures.
7 This is a procedure that has been used previously in many other cases before other
8 courts and tribunals and it has proven to be a very effective procedure to -- exactly to
9 examine the concerns of a witness.

10 Thank you, Mr President.

11 PRESIDING JUDGE FREMR: And your position to current practice that VWU
12 normally is responsible for this enquiry on witness?

13 MR BOURGON: As mentioned by the Prosecution, the protocol of witnesses
14 envisages that the VWU has a role to play with respect to concerns for victims. We
15 feel it would be more appropriate that this takes place in open court - open court
16 being with the parties present - rather than a procedure limited to VWU, to the
17 Victims and Witnesses Unit, doing this exercise on its own.

18 We believe that whether it is a Defence witness, or whether it is a Prosecution witness,
19 when that concern arises close to the testimony of the witness there are grounds for
20 the Chamber to be interested in asking the witness what the concerns are.

21 PRESIDING JUDGE FREMR: Thank you for clarification of your position.

22 Are there any comments from, first from Prosecution on this?

23 MS SAMSON: Mr President, the Prosecution does not view it as necessary to have
24 an in-court hearing to determine whether or not a witness's request for protective
25 measures in court is necessary.

1 The witness will communicate such request either to the calling party or directly to
2 the Victim and Witnesses Unit and that request should then subsequently be
3 transmitted to the Chamber on notice to the parties and the legal representatives
4 where applicable.

5 The Chamber can thereafter make appropriate inquiries with the calling party or the
6 Victims and Witnesses Unit as appropriate, but in our submission it is not necessary,
7 nor would it be suggested to have a separate hearing exposing a witness further when
8 that individual has expressed serious concerns requiring in-court protective measures.
9 Thank you.

10 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

11 Any comments from the part of legal representatives? I'm not pushing. Okay, it's
12 fine.

13 It means we can move to, as I already indicated, scope, order and mode of
14 questioning.

15 At the outset the Chamber would like to inform you that it intends to actively ensure
16 the efficiency and focus of the testimony of witnesses. In principle the calling party
17 would question their witness first, but in those circumstances where the Chamber
18 considers the examination to be conducted inefficiently, inefficiently, the Chamber
19 may and will intervene including through the asking of questions to the witness. So
20 please, it's something like a warning, be ready for this, I would call it, more proactive
21 approach of the Chamber if Chamber would find need for that. So it's mainly up to
22 you.

23 Please be also informed in this regard that the Chamber, therefore, disagrees with the
24 submissions made, and as part of the observations on the conduct of proceedings, that
25 the Chamber should only ask questions for clarification because finding of truth in

1 our -- is also our role, so in our view, we can't limit ourselves only on questions for
2 clarification.

3 You will now be given the opportunity to briefly address each other's submissions on
4 the topic of scope, order and mode of questioning.

5 So starting with Prosecution, please.

6 MS SAMSON: Thank you, your Honour. We have no particular observations in
7 relation to the observations of the parties, the Defence and the legal representative of
8 victims. We are, in principle, in agreement. Thank you.

9 PRESIDING JUDGE FREMR: The Chamber appreciates that.
10 The Defence, please.

11 MR BOURGON: Thank you, Mr President. We do have a few issues we would like
12 to highlight for the benefit of the Chamber on this issue.

13 The first one, of course, is in terms of the duration, and maybe I missed this, maybe I
14 should have raised this on a previous topic, but in terms of the one-for-one rule which
15 was raised by the Prosecution and raised by the Defence also, we believe timing wise
16 the one-for-one rule which we raised in our observations, this is a very topic -- a very
17 important topic for us. We believe that the one-for-one rule were there -- even
18 though it is generally useful for building an estimate, it cannot be applied to
19 particular witnesses.

20 For some witnesses the Defence might not cross-examine at all, for other witnesses
21 which -- who have serious credibility issues we might need much more time than the
22 Prosecution. I believe that the Chamber should not fix this limit and of course the
23 Chamber should intervene in the event it believes that we are not using efficiently the
24 Court's time. That's my preliminary comment.

25 With respect to the evidence from a previous -- from a previous witness, the

1 Prosecution in its observations raises that this can be used -- that's on page -- on the
2 Prosecution, this is in response to paragraph 64 -- or 65, sorry, the evidence on
3 previous witness. This was on paragraph 27 of the Prosecution's submission. "The
4 evidence obtained from a previous witness may be put to a witness provided that the
5 identity is not given."

6 I'm not sure where this stands in terms of the Prosecution's submission, but this
7 particular item, whether to use the evidence of a previous witness, we don't believe
8 that this should be used as part of examination-in-chief. Examination-in-chief is to
9 elicit evidence from a witness and not to ask comment on a witness from what
10 another witness has mentioned. Of course in cross-examination this is normal
11 procedure, but not for examination-in-chief.

12 In respect of the credibility of a witness, the Prosecution mentions at -- also at
13 paragraph 27 that the credibility of a witness may be impeached by any party,
14 including the calling party.

15 In our respectful submission, Mr President, should the calling party wish to impeach
16 its own witness, it must use the hostile witness procedure. It cannot do so as a -- in
17 regular examination-in-chief. To challenge or to impeach a witness is something that
18 takes place in cross-examination and, of course, there is a procedure called the hostile
19 witness procedure when a witness is turning against the calling party and that
20 procedure should be applied. And in no other cases should the calling party be
21 authorised to challenge or to impeach its own witness.

22 With respect to the false testimony, the -- of course the Prosecution says that the
23 Chamber may repeat the witness's duty to tell the truth and consequences, requests
24 shall be made outside the hearing of the witness, we agree with that, but we feel that
25 this is an important issue. There should be grounds if this takes place as part of

1 examination-in-chief because we agree with what the Prosecution put down with
2 respect to refreshing the memory of a witness and we have no problems with that, but
3 in order to say that -- to ask the Chamber to recall the duty of the witness to tell the
4 truth, this of course should be done not in the presence of the witness and should also
5 be done in very specific circumstances.

6 Do I have more time, Mr President, or -- I have a few more items on this topic.

7 PRESIDING JUDGE FREMR: Please try to be brief because we would like to adjourn
8 at 11 o'clock.

9 MR BOURGON: With respect to the -- at the -- in terms of the cross-examination, we
10 have of course one major area where we are -- disagree with the Prosecution because
11 the Prosecution says that cross-examination should be limited to the subject matter of
12 the -- of the testimony during examination-in-chief.

13 Now, this is an area that we discussed with the Prosecution previously. Whether it's
14 policy for Prosecution or not, it is very important, especially for the Defence, that
15 when we will cross-examine witnesses for the Prosecution, that we are able to go
16 beyond the subject matter of the examination-in-chief. If we are able to establish and
17 to obtain from the witness evidence that is important and probative for the Defence,
18 we must be able to obtain that evidence as part of -- or during our cross-examination.
19 This, if we look at the other tribunals, other -- at the ad hoc tribunals, or even if we
20 look at other international tribunals, this is a very important issue.

21 If the witness can help me with my case, Mr President, I respectfully submit that we
22 must be able to elicit that evidence from the witness, else the witness will come and
23 speak about specific issues and we will not be able to elicit important information that
24 is very important for the Chamber in its truth-seeking duty.

25 I have other issues that have to do with documents, but I guess this is later on.

1 That's it for this issue, Mr President. Thank you.

2 PRESIDING JUDGE FREMR: Thank you. I personally can't comment it because it
3 would be up to the Chamber to decide on that, but I would, at least from my part,
4 would like to emphasise that the Chamber probably will not take any formal
5 approach, but the main concern with the Chamber is to avoid wasting of time, which
6 at least in my case is a rather painful, painful experience from some of my previous
7 cases, wasting of time by some irrelevant, general and repetitive testimony. So it's
8 the main concern.

9 Now, LRV, please, you have the floor.

10 MR SUPRUN: (Interpretation) Thank you, your Honour. Just within the
11 framework of this point on the agenda I would like to draw the attention of the
12 Chamber to the fact that we've asked it or we requested in our written submissions to
13 activate Regulation 56 of the Regulations of the Court which would make it possible
14 to address with the witnesses the issues which concern the reparations. This would
15 make it possible not to delay the proceedings and it would also make it possible not
16 to have certain witnesses come back at a later stage in the proceedings. Thank you
17 very much.

18 PRESIDING JUDGE FREMR: Ms Pellet, please.

19 MS PELLET: (Interpretation) Thank you very much, your Honour. I'll be very
20 brief. I don't have comments which are more detailed other than to say that I'd like
21 to recall our joint written submissions and say that where it concerns the possibility to
22 question witnesses or examine witnesses this is something we would do according
23 with your guidelines concerning the modalities of participation of victims.
24 Thank you, your Honour.

25 PRESIDING JUDGE FREMR: And before we break, just the last point, and please be

1 absolutely brief, it is something rather new. I would like to or the Chamber would
2 like to know whether you also consider to use relatively new Rule 68(3), it means the
3 introduction of a previous recorded testimony, for example, in case of less important
4 witnesses, whether you -- Prosecution first.

5 MS SAMSON: Yes, Mr President, we do intend to engage 68(3) which is from
6 recollection a rule where the witness is present in the courtroom and we can
7 introduce statements -- the earlier statement via the witness in that way if they accept
8 the statement, perhaps asking several additional questions and then allowing the
9 witness to be cross-examined or examined by the legal representatives. So we are
10 undertaking that assessment now.

11 PRESIDING JUDGE FREMR: Thank you.

12 Defence on that point?

13 MR BOURGON: We are very familiar with this procedure from other courts and
14 tribunals and we have no problems with the use of that procedure. However, for us
15 it is very important that if we do use 68(3) that we must agree on a very strict
16 procedure regarding the amount of time that will be given for the calling party to get
17 a summary of evidence from the witness before he is put for cross-examination.
18 There has been instances in other cases before other tribunals where a witness was
19 called pursuant to an equivalent rule, which was called Rule 92 ter, before those
20 tribunals and where the calling party abused its time and in the end it turned out to
21 be not only a regular witness but a regular witness with all the material.
22 We also believe that if we are going to put the evidence of that witness to the
23 Chamber in terms of -- in writing, it should not be everything the Prosecution has
24 with respect to that witness; it should be the statement or the most relevant statement
25 provided by that witness.

1 Should the cross-examining party decide to introduce the rest of the material because
2 it is important for the Chamber, then that is appropriate, but it would be
3 inappropriate simply to take everything we have from a witness because in some
4 cases these witnesses already have five to six binders of material. This is not helpful
5 to the Chamber in its truth-seeking exercise, it's not helpful to the cross-examining
6 party because it makes cross-examination very long, and it's much better to have
7 really what the witness -- what is the evidence that the calling party wishes to elicit
8 from its witness.

9 So don't -- there has to be some kind of control over the material submitted, the prior
10 recorded testimony must be limited and there must be -- it must be also -- the
11 questioning at the beginning must also be controlled.

12 One last issue. We -- the Prosecution suggests in its -- in making reference to 68(3) a
13 ten-day notice. We respectfully submit, Mr President, that in respect of 68(3) the
14 calling party should be able to identify at the beginning of its case which witnesses it
15 intends to adduce the evidence via 68(2) or 68(3) and inform the other party. This
16 will -- because preparations for a witness testifying pursuant to 68(2) or 68(3) - of
17 course 68(2) the witness is not there completely - makes a big difference for the
18 opposing party.

19 Thank you, Mr President.

20 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon, for this detailed and practical
21 comment.

22 LRV, do you have any -- I don't think so.

23 Okay, then we now will break and we will resume at half-past-11.

24 THE COURT USHER: All rise.

25 (Recess taken at 11.04 a.m.)

1 (Upon resuming in open session at 11.32 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 THE COURT OFFICER: Mr President, we are in open session.

5 PRESIDING JUDGE FREMR: So welcome again and we will continue with the
6 second part of our status conference.

7 I would like to start with one preliminary matter and -- because the Chamber would
8 like to return briefly to Defence requests relating to review of video evidence at the
9 detention unit.

10 The Chamber notes that the Defence made an ex parte filing yesterday, filing number
11 566, relating to this matter, and the Chamber considers it most efficient for the
12 Registry to be provided an opportunity to provide observations before the Chamber
13 makes any ruling. Therefore, the Registry is directed to file any observation on
14 Defence filing number 566 by 29 April 2015.

15 Well, then one additional point. Since Mr Bourgon in details elaborated the position
16 of Defence concerning Rule 68(3), maybe we would like to listen to maybe some
17 further reaction from Prosecution especially as concerns proposed deadline, if you
18 have any position at the time, because we would like to decide on that in our decision
19 on conduct of proceedings.

20 Please.

21 MS SAMSON: Thank you, Mr President.

22 The Prosecution reiterates the timeline that it set out in its filing, which is to provide
23 notice at least ten days in advance.

24 The Defence's suggestion that we provide the complete list of potential Rule 68(3)
25 witnesses in advance of trial is a very difficult one for the Prosecution to -- to agree to

1 at this time. We will be making those assessments as much as possible in advance,
2 but not conclusively in advance, and we would maintain our request for a shorter
3 deadline than that to be -- to provide that information at least ten days in advance.

4 Thank you.

5 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

6 And that allows to move to next issue; that is documentary evidence.

7 Again, in the same order, please briefly respond to each other's submission in this
8 regard. And I should add that it's proposed that the calling party by email inform
9 the other party and participants, as well as the Chamber, a number of days in advance
10 which materials it intends to use during the examination-in-chief.

11 And the parties both submit their objections should be made at least two working
12 days prior to the start of testimony, so maybe the following question would be
13 whether a part of any comment on -- on other parties' submission, whether do you
14 consider that such objections can also be made via email or that a formal filing would
15 be necessary? So I would like to start with Prosecution, please.

16 MS SAMSON: Mr President, we believe that such an objection could be made via
17 email. It does not require a formal filing. As the trial pace increases formal filings
18 become very difficult to prepare on short notice and objections could be readily done
19 by email.

20 The Prosecution also suggested that we provide a list of documents we intend to use
21 with witnesses five working days in advance of that witness's testimony as opposed
22 to seven days, which was another suggestion. The Prosecution is of the view that
23 five working days is a sufficient number of days in advance to have prepared as
24 concrete and definite as possible a list of materials to use with witnesses, and three
25 working days in advance of cross-examination the list of witnesses that the party

1 intends to use should be provided, with exceptions of course when material could not
2 be anticipated in advance. Thank you.

3 PRESIDING JUDGE FREMR: Thank you.

4 Now Defence.

5 MR BOURGON: Very briefly, Mr President. With respect to the use of email
6 correspondence, the Defence sees no problem, however, when there is an objection
7 raised by email then of course the -- it will be required for the Chamber to decide how
8 it will rule on that objection and whether there would be arguments in court or
9 whether there would be arguments -- or whether the matter will be briefed. So we
10 have no problems in raising the issue by email.

11 With respect to the delays for the documents, the only issue that we have is with
12 respect to the delay in providing documents before the start of cross-examination. In
13 our submission, we propose 24 hours in advance. The Prosecution proposed three
14 days. We believe that three days is too long of a delay. 24 hours in advance is
15 sufficient and we should be kept to 24 hours.

16 More importantly, what really matters is that of course the -- once the -- the
17 cross-examination begins, we put in our submission that the -- the 24-hour rule
18 depends of course that the testimony must have begun, the examination-in-chief must
19 have begun. If we would go with the three-day rule, in many respect this would not
20 be practical.

21 So examination-in-chief must have begun and documents be provided 24 hours in
22 advance. This is, in our view, the best way to facilitate the proceedings, the best way
23 to ensure also the fairness of the proceedings for the calling party as well as for the
24 cross-examining party, being understood, Mr President, that whatever we say here
25 will apply to us when we will be the calling party. Thank you, Mr President.

1 PRESIDING JUDGE FREMR: Thank you. The Chamber well noted different
2 positions on -- of parties on this issue and we will cover that issue by our prospective
3 decision.

4 LRV, okay, you also have the floor, please.

5 MS PELLET: (Interpretation) Thank you, Mr President. I find myself in a rather
6 difficult position because you asked whether we were only dealing with procedural
7 questions and not matters relating to the participation of victims. Well, on this issue
8 of time frames and deadlines they have an impact on our future discussions relating
9 to our intentions to question witnesses. I'll reserve my comments about the
10 deadlines proposed by the Prosecutor and Defence in relation to the participation of
11 victims, but I just wanted to make this clear on the record now. Thank you.

12 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. I can confirm that you will be
13 given more space when we approach agenda item C.

14 Now, the next item on our agenda is charges under topic E. So if you have any
15 responses again in the same order please respond with respect to this topic,
16 means -- charges means reading out the charges at the commencement of trial and
17 issue of confirmation provided by the accused about understanding of charges.
18 Starting with Prosecution.

19 MS SAMSON: Nothing further, Mr President. We've set out our observations.
20 We were of the view that the accused should certify that he's read in addition the
21 updated document containing the charges, at least. Thank you very much.

22 PRESIDING JUDGE FREMR: Thank you.
23 Defence?

24 MR BOURGON: No observations, Mr President.

25 PRESIDING JUDGE FREMR: Okay. It means we can move to further issue, which

1 is agreements as to evidence, but because of active -- proactive approach of Defence
2 we have already opened this issue, so maybe just one -- one point from part of
3 the -- of the Chamber because we noted the Defence interest in making a
4 counter-proposal in relation to agreed facts, so we consider further consultation on
5 agreed facts between the parties be -- be useful and we suggest that the then extra
6 months in light of the decision on postponement of trial be taken to try and reach an
7 agreement, so our previous deadline of 6 May, if I'm not wrong, now is postponed to
8 6 June.

9 Any further comments on this topic? I don't see any indication from your part,
10 which means we can move to other issues.

11 The other issues were mainly, I think, mentioned by Defence. Maybe I just will
12 make a short summary of those other issues, if -- at least correct me if I would omit
13 something. It's procedure for the introduction of video evidence, judicial notice of
14 adjudicated facts, notice of an alibi defence or grounds for excluding criminal
15 responsibility. I think they were the main issues.

16 So I am starting with the testimony of expert witnesses, but we also partially covered
17 this, so now I am summarily asking Prosecution whether they have any further
18 comments on those additional issues.

19 MS SAMSON: Thank you. As a clarification they were issues raised by the
20 Prosecution and we've set out comprehensively our observations on those additional
21 issues. I have nothing further to add subject to any questions your Honours may
22 have.

23 PRESIDING JUDGE FREMR: Thank you. I don't have any question.

24 My colleagues? Neither do they.

25 So now, Defence, any special comments to those issues?

1 MR BOURGON: No comments, Mr President.

2 PRESIDING JUDGE FREMR: Any comments from part of LRV?

3 If not, we get to agenda item C, which is probably very important to LRVs

4 observation on modalities of victims' participation at trial.

5 Together with the submissions on the conduct of proceedings, the Chamber received

6 your observations on the modalities of participation in the proceedings by victims.

7 Like with the previous observations, we will now give all of you the opportunity to

8 respond to each other's submissions, starting with Prosecution.

9 Please, Ms Samson.

10 MS SAMSON: Thank you, Mr President. The primary area of disagreement

11 between the legal representatives and the Prosecution lies in the ability of the legal

12 representatives to call witnesses other than their own clients and the Prosecution's

13 position is that that should not be the case in principle, that should the legal

14 representatives determine that there are witnesses who could add to the

15 determination of the truth or in any other way assist the Chamber and the evidence is

16 not duplicative of evidence already adduced at trial that an application should be

17 made to the Chamber, and should the Chamber determine that those witnesses

18 should be heard, that the witnesses come as Court witnesses and thereafter, upon

19 application, the legal representatives could question those witnesses. And that is the

20 position that we've maintained.

21 Subject to any other areas of dispute that I'm missing, we have no further submissions

22 at this time.

23 PRESIDING JUDGE FREMR: And maybe when you are on your feet, one additional

24 point from my part, the legal representatives submit that the Chamber should apply

25 Regulation 56 of the Regulations of the Court and allow questions relating to

1 reparations during the trial proceedings. Do you have any position to this issue?

2 MS SAMSON: No objection to that at all, your Honour. We agree that it would
3 enhance the efficiency of the proceedings to be able to deal with reparations issues or
4 sentencing issues during the course of a witness's testimony at trial.

5 PRESIDING JUDGE FREMR: Thank you very much.

6 Now I'm turning to Defence.

7 MR BOURGON: No additional observations, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 And now I am giving, and I am sure that you will enjoy that, to LRVs. Please, you
10 have the floor.

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

12 Mr President, your Honours, as you have indicated, this is a very important question
13 for victims. Now, for legal representatives preparing their case as well it is
14 extremely important. The justice that you render is rendered on behalf of the victims,
15 but when we listen to the submissions of Defence and the Prosecution, on 7 April,
16 none of them appeared unfortunately to deem it necessary to invite the legal
17 representatives to the discussions that they had on 2 April between themselves on this
18 matter.

19 The presence of legal representatives would certainly have made it possible to
20 highlight one of the problems in the submissions of the OTP and the Defence before
21 they were filed with you and recorded accordingly in this case.

22 Let me point out a few of these points. Well, no, no.

23 Now, regarding the modality for examining witnesses, we want to reiterate our
24 written submissions but also make the following comments: First of all, we need to
25 recall that Rule 91 does not stipulate a specific deadline for examining a witness, nor

1 does it require that the request be made in writing.

2 Accordingly, I again reiterate that the respective positions of Defence and the
3 Prosecution regarding the examination of witnesses by legal representatives to our
4 mind is at the very least unreasonable.

5 Defence suggests, for example, that such a request should be made 14 days after the
6 monthly list of Prosecution witnesses has been filed. The Defence also requires legal
7 representatives to provide specific questions that they intend to raise with the
8 witness.

9 Mr President, your Honours, this position is simply untenable and would practically
10 deprive victims of the possibility offered them under Rule 91(3)(a) of the Rules of
11 Procedure and Evidence regarding the examination of witnesses and that will,
12 therefore, deprive them of contributing to the manifestation of the truth.

13 We are, therefore, in a position where it is impossible to know two weeks ahead of
14 time the specific questions that may be raised with a question -- with a witness, rather.
15 More so as the OTP proposes a time frame five days prior to the testimony for
16 relevant documents relating to that witness to be communicated or disclosed.

17 The Defence position seems all the more unreasonable for us to the extent that it
18 requires the legal representatives to put only questions that do not repeat the
19 questions that have been previously raised by the parties during their examination or
20 cross-examination, as the case may be.

21 The specific questions that we may have to put to the witnesses would depend on the
22 specific questions that would have been raised by the OTP as well as the answers that
23 would have been provided by the said witness. It is only when we become aware of
24 these facts that legal representatives might be in a position to identify which
25 questions to put to the witness.

1 Furthermore, it might be possible for the legal representative to raise questions,
2 should they be authorised to do so with the witness, that such questions may lead to
3 follow-up questions which cannot be anticipated ahead of time. That is why it
4 would appear to us that implementing the Defence proposal would put the legal
5 representative in a position where he or she is required to anticipate both the
6 questions from the OTP and the witness's answers and that is a task which is
7 impossible for us to perform.

8 Furthermore, had we been invited to the consultations between the OTP and Defence
9 on 2 April 2015, we would have been able to raise some of these incongruities relating
10 to the deadlines that have been mentioned and to which I have already referred. So
11 if we are to file a request 14 days before the commencement of trial, we need to be in a
12 position to know which documents are going to be used during the testimony, and
13 yet these documents, as the OTP has proposed, should only be disclosed five days
14 before the hearing, and that does not give us time to draw up a specific list of
15 questions.

16 Furthermore, Mr President, and your Honours, on a more personal note, given that I
17 also represented child soldiers in the Lubanga case, I have wondered about the
18 reasons why the OTP, which was party to the case, which was quite similar to this
19 one, would -- would have such a unique interpretation of the -- of the jurisprudence
20 of the Court when it comes to the participation of victims in the trial.

21 The jurisprudence cited by the OTP only refers to the Katanga and Ruto
22 jurisprudence, but let me draw the attention of the Chamber to our written filings
23 which encapsulates the entire jurisprudence in this matter, both in the Lubanga case
24 and across the Court.

25 Now, Mr President, I don't know whether you want me to deal with all the issues,

1 otherwise I could stop here and wait to deal with the other points as they arise.

2 Thank you.

3 PRESIDING JUDGE FREMR: I think it's -- sorry, I think it's not necessary because
4 we have fully read your submissions and I can confirm that the Chamber is very well
5 aware of, I would call it, significant different positions, parties' on the one hand and
6 LRV's on the other hand, so we will consider all those differences thoroughly and we
7 will decide on that.

8 Do you have any other issues to -- please go ahead.

9 MS PELLET: (Interpretation) I will then address all the matters relating to the
10 modality of participation.

11 Now, regarding the presentation of views and concerns of victims in person, the
12 Defence argued that such views and concerns by victims should be limited to a
13 specific phase of the trial; namely, before the final arguments or submissions are
14 made and that this should be done in one sitting.

15 We believe, Mr President, that this suggestion must be dismissed by your Chamber
16 because it is not reasonable to bring all the victims into one hearing for them to
17 provide their views and concerns on all the issues raised within this case. That
18 would lead to a situation where it will only be a matter of symbolism whereby
19 Chambers will not be able to hear specific views and concerns from persons who may
20 be called to present such views and concerns directly to your Court.

21 Furthermore, this procedure appears to be contrary to Article -- Rule 68(3) of the
22 Chamber, which authorizes the Chamber to decide on a case-by-case basis in each
23 particular case whether or not the personal participation of victims is necessary.

24 We believe that the possibility must be given at all times for victims to be able to
25 appear before the Court based on a written submission to the Court which will then

1 be examined by the Court and dealt with accordingly.

2 I thank you, Mr President. My colleague has additional comments.

3 PRESIDING JUDGE FREMR: Thank you, Ms Pellet.

4 And please, Mr Suprun, you can continue.

5 MR SUPRUN: (Interpretation) Thank you, Mr President.

6 Mr President, your Honours, my colleague has just stated what I am going to say;

7 namely, that I was really surprised to learn that on 2 April 2015 the OTP and Defence

8 had inter partes consultations on the modalities for the participation of victims in the

9 trial without inviting neither myself nor any of my colleagues to those consultations.

10 The parties, therefore, had such inter partes consultations on a matter which directly

11 and concretely bears on the interests of the victims whom we represent.

12 I do not question the right of parties to have such consultations at their discretion, but

13 I must say that this attitude does not reflect a spirit of cooperation and does not augur

14 well for the proper interests of the trial.

15 Following those consultations, the parties came to an interpretation, which appears to

16 my mind to be very specific and restrictive when one looks at the legal instruments

17 governing the participation of victims and particularly the relevant jurisprudence of

18 the Court. They conducted a very selective analysis of the jurisprudence whilst

19 setting aside what appears to be the consistent jurisdiction of this Court in the matter

20 at hand.

21 I, therefore, agree with my learned colleague as to what she said a short while ago,

22 but let me simply draw the Chamber's attention to a few examples that point to the

23 selective and restrictive interpretation of those parties of the applicable law.

24 For example, the OTP argues that legal representatives are not authorised to call

25 witnesses other than victims. This cannot be substantiated in the jurisprudence of

1 the Court which states that it is possible for legal representatives to call witnesses
2 other than victims to deal with questions that were not sufficiently covered by
3 witnesses called by the parties.

4 Let me refer to the jurisprudence of the Trial Chamber I and Trial Chamber IV. I
5 refer you to our written filings, particularly paragraph 44 of our filing, which
6 provides all the references necessary to substantiate my argument.

7 Furthermore, the OTP and Defence also argued that legal representatives can be
8 authorised to ask questions to witnesses which concern their direct personal interest.

9 That is true. But let me draw your attention to the fact that the concept of personal
10 interest of victims should be interpreted in a broad enough manner to allow legal
11 representatives to raise questions not only on matters relating to reparations but also
12 on matters necessary for the discovery of the truth, including the guilt and innocence
13 of the accused. Once again, I refer you to our written filings or submissions.

14 Another example I would like to bring to the attention of the Chamber is that
15 according to the jurisprudence of the Court there are two modalities whereby
16 witnesses who are victims can be called to appear in person. We must make this
17 clear, one, when they appear in person to present evidence under oath; and, second,
18 when they appear in person to express the views and concerns speaking without
19 taking the oath at that time.

20 The OTP in its submissions only refers to the first form of calling victims, whereas the
21 Defence only deals with the second form, or the second aspect. That again is
22 something we have raised in our written filings, Mr President.

23 Therefore, Mr President, your Honours, in general terms all I can say is that the
24 interpretation by the two parties of the relevant law in this matter is a step backwards
25 when we look at the applicable law. And this is most unfortunate.

1 I, therefore, urge your Chamber, Mr President, your Honours, to please take into
2 consideration our submissions which are a reflection of the full scope of the law in
3 this matter. Thank you.

4 PRESIDING JUDGE FREMR: Thank you very much, Mr Suprun.

5 Bearing in mind the nature of LRV's submissions, I would like to ask now both parties
6 whether they feel, wish to -- to respond, or whether they are insisting on their
7 positions made in writing submissions.

8 So starting with Prosecution, do you want to have any additional comment?

9 MS SAMSON: The only additional area that the Prosecution wishes to address is its
10 submission that applications to question witnesses should be made 14 days in
11 advance. We take note of the legal representatives' submission that that would be a
12 very difficult thing for them to do and we do not object to the seven days that they are
13 suggesting would be more appropriate. Thank you.

14 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

15 Mr Bourgon, any comment?

16 MR BOURGON: Yes, Mr President. I would like to make some comments. Both
17 representative -- or, legal representatives today made a series of comments
18 challenging the Defence view of the right of victims to participate in the proceedings
19 under various headings.

20 They begin their presentation by talking -- by submitting to the Chamber that the
21 justice that the Chamber is about to render is rendered in the name of victims.

22 Well, we agree, Mr President, that justice is rendered in the name of victims, but not
23 only in the name of victims. Justice is rendered in the name of victims, but also in
24 the public interest. And what is missing from all that we have heard today from the
25 legal representatives is the word fair trial. That simply appears not to exist for the

1 legal representatives. It's an issue that is never put forward.

2 Legal representatives, the right of victims to participate in the proceedings is part of

3 the legal framework of the International Criminal Court. We don't dispute that.

4 What we do dispute is the attitude. They are not a party to the proceedings. We

5 have to avoid having three parties in the same courtroom. Two is more than

6 sufficient.

7 So by making submissions, as we have made in our observation, and in many

8 respects our observations are the same as that of the Prosecution, for example the

9 14-day rule. The legal representative says the Defence, the Defence, the Defence.

10 Prosecution have the same 14-day rule. It's no, no benefit here from such a

11 comment.

12 The comment is that if we are going to have evidence presented by the legal

13 representatives, then of course this will be evidence à charge or incriminatory

14 evidence. There will not be a need evidence presented by any -- by the legal

15 representatives that would be à charge or that would be exculpatory. By the very

16 nature of their work they represent alleged victims, and alleged victims have an aim,

17 many aims, one of which is to seek conviction. And this is also in the writings of my

18 colleagues who are representing the victims.

19 When we say that to bring -- for victims to bring their views during the trial, at any

20 stage of the trial, this would be contrary and would not -- would hurt the

21 truth-seeking function of the Chamber. It would distract the Chamber from its main

22 purpose, which is to seek the truth. By having all, if any, of course, victims appear at

23 the end of the trial, once the Chamber has heard all of the evidence, then it is really

24 proper to listen to their concern.

25 The Defence does not dispute the fact that we are here to a large extent because there

1 are alleged victims out there. We don't dispute that. But we want a fair trial. And
2 having victims appear throughout the proceedings to bring their concerns without
3 being witnesses, this would not assist the Chamber in its truth-seeking function. It
4 would make it more difficult for the Chamber to see the truth.

5 With respect to real witnesses, should the Chamber be inclined to say, yes, we will
6 authorise the legal representatives to call victims other than their own clients as
7 witnesses, of course the Prosecution has taken a stance on this issue, we take a similar
8 stance but for different reasons. Should they wish or should the Chamber say yes,
9 you are authorised to bring witnesses, well, I'd like to have that evidence disclosed
10 now so that I can factor this evidence into trial preparations and not arrive at the end
11 of a case and suddenly have some new witnesses because the Prosecution has failed
12 to meet its burden. That would make trial unfair.

13 A trial is fair when the charges are known, when the evidence that will be elicited is
14 known and when there is a fair trial by the examination and cross-examination of
15 witnesses, not by having either witnesses or victims appearing as non-witnesses
16 during the course of the trial.

17 I will limit my comments at those, Mr President. But there are two issues: Fair trial
18 must guide in our respectful submission any decision you will render on the
19 participation of victims. And fair trial, of course, requires that there be only two
20 parties in the courtroom with the presence of legal representatives allowed to do their
21 work, granted, but not allowed to intervene in the sense of changing the nature of the
22 trial.

23 And I make these submissions very respectfully because I do believe in the
24 importance of victims. Too often the Defence is seen as somebody who is against
25 victims. We're not against victims, not a single bit. We are against an unfair trial.

1 Thank you, Mr President.

2 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. And I am also repeating
3 the Chamber is very well aware of the importance of this issue and will consider all
4 submissions thoroughly indeed.

5 It means that we reach the last agenda item, which is progress on holding the opening
6 statements in the DRC. We know that yesterday the Registry filed an update on the
7 preparations for holding opening statements in the DRC. We trust that you have all
8 read the filing and that is why we will not ask the Registry to provide a further
9 update. However, the parties and participants may have observation to make on the
10 update.

11 So starting with Prosecution, do you have any comment in this regard?

12 MS SAMSON: No, your Honour, nothing further.

13 PRESIDING JUDGE FREMR: One important announcement, if parties or
14 participants would need, there is need for private session, please let us know, we will
15 in such a case change the mode of our proceedings.

16 Please, go ahead.

17 MS SAMSON: Thank you, Mr President. The Prosecution has no additional
18 observations on the Registry's recent filing. Thank you.

19 PRESIDING JUDGE FREMR: Thank you.

20 Now Defence, any further comment?

21 MR BOURGON: We have one comment, Mr President. Of course, this comes,
22 follows the fact that the Chamber has now requested the Presidency to decide
23 whether the hearings will take place in Bunia or not. And the only concern we have
24 in this regard is that in the latest observations that we have received from the Registry,
25 now that the process has -- we have embarked on the process, we have one concern,

1 which is the outreach strategy. It will be important, bearing in mind that the
2 Registry has just mentioned that they need one more month to prepare, it is very
3 important in our submission that the Defence be involved in the outreach strategy.
4 When the Registry filed its earlier comments, we did not file any observation because
5 we did not have any at that time. But in these submissions there are many issues
6 mentioned by the Registry, not necessary to repeat what the issue, what these issues
7 are, but it is important that we be involved in developing the outreach strategy to
8 ensure that what comes out of the process is fair to the Defence. Thank you, Mr
9 President.

10 PRESIDING JUDGE FREMR: I have to say it's a relatively new point, so maybe my
11 question now goes to Registry.

12 At the moment, do you have any reaction on this proposal made by Defence?

13 MS DAHURON-JACOBY: (Interpretation) Thank you, Mr President. We have no
14 observation right now. If there is anything that comes up, we will come back to the
15 Chamber.

16 PRESIDING JUDGE FREMR: But I would anyway like to come back to Mr Bourgon.
17 Mr Bourgon, could you be more specific, what is your idea should be your
18 involvement in those outreach activities?

19 MR BOURGON: Absolutely, Mr President. In the submissions, and maybe we
20 should have filed observations in writing earlier, but there is the question of holding
21 meetings in advance with relevant groups. If meetings are going to be held in
22 advance of the holding of the preliminary presentations, then of course the Defence
23 should be associated.

24 There are issues, there are suggestions of filming hearings and producing and
25 disseminating rough-cut images. There are dissemination of recordings of court

1 sessions. There is access to a media tent. There is summary of proceedings for
2 YouTube as well as regional and local media.
3 We are simply taking the stance that all of this material cannot be produced solely by
4 the outreach section. It must be produced in cooperation with the parties so that
5 what comes out is actually impartial and is fair to the Prosecution and to the Defence,
6 so that the public gets the real picture of what has taken place, because we are going
7 there to be closer to the affected communities, that's one thing. But in the kind of
8 setting that we are going to do this, in a 50 to maybe a bit more persons present
9 morning and the afternoon and having a media tent, then it has to be more than that.
10 Then what comes out of it in terms of the media approach must be fair.

11 Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think in the interest of
13 Defence, you mentioned the possibility to make even written submissions. Please
14 make it in three days in order to have registered a chance to respond to what is
15 feasible or not and we will take it into account when making our ruling. Okay?

16 Thank you.

17 And now is the possibility for LRVs to make their comment or observation on this
18 issue, please.

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

20 In the absence of additional information on the modalities of the in situ hearing, we
21 do not have any additional observations to make about those modalities. We
22 therefore subscribe to the comments of Mr Bourgon and would like to reiterate the
23 requests made in our written submissions.

24 Now in light of the Registrar's observations of yesterday, mentioning amongst other
25 things constant monitoring of the security situation, I have the following observations

1 to make. Last week, I personally and individually met with 85 of the child soldiers
2 that I represent and they wanted me to express the following concerns.

3 The vast majority of them think that the idea of holding a hearing close to the affected
4 communities is a good idea, but they think that the modalities of that hearing are not
5 quite agreeable to them.

6 According to my clients, the partial modalities as indicated in the Registrar's report
7 do not make it possible to give full effect to the objective of the in situ hearing.

8 And, lastly, ever since the location of the hearing was made public, that is when you
9 made the application to the Presidency, my clients are concerned about the

10 machinations of the supporters of Mr Ntaganda and there are still many of them in

11 Ituri. And they are very fearful in relation to the difficulties and security issues that

12 might arise at the time of the hearing because of the presence of a large group of

13 people who are still close and supportive of Mr Ntaganda.

14 Thank you, your Honour.

15 PRESIDING JUDGE FREMR: Thank you, Ms Pellet.

16 Mr Suprun, any comments?

17 MR SUPRUN: (Interpretation) Your Honours, I will say that since the public

18 announcement of the location of the in situ hearing, the victims that I represent have

19 expressed diverse views.

20 Generally speaking the victims are happy that the Court should come closer to them,

21 but on the other hand a large number of victims simply do not want the accused to

22 come back to the region even as a detained person.

23 What is even more important is that the vast majority of the victims that I represent

24 expressed their concerns and fears for their security and welfare. They stated that, if

25 the accused came back to the region even as a detained person, there might be serious

1 tensions between those who support the accused person and those who do not wish
2 to see him return to the region.

3 The strongest concerns were expressed by the victims living in Bunia itself. Some of
4 them even said that they would leave Bunia during the period of the hearing.

5 Yesterday, I even received some information in that regard. I believe that this
6 information is very alarming and should not be overlooked.

7 I did not have access to the security assessment of the Registry but, given the several
8 concerns expressed by the victims living in the concerned region, I would like to draw
9 the attention of the Chamber to the fact that even though the security situation is
10 stable at this time, it may change during the period chosen for the in situ hearing. So
11 a very careful and regular monitoring of the security situation in that region is of
12 crucial importance.

13 Thank you.

14 PRESIDING JUDGE FREMR: Thank you very much.

15 A comment from my part. You know, at the moment the decision is in the hands of
16 the Presidency, but I am sure that all those concerns you have mentioned we -- I think
17 we took in our account when making our recommendation to Presidency.

18 But again, now Presidency together with Government of DRC, because they are in
19 contact and they are making -- continuing this negotiation, they for sure will take into
20 account all those possible risks.

21 And I can assure all present and all persons involved that, even if such a decision
22 would be positive, means that the decision of Presidency would say, "Okay, this
23 recommendation is accepted," we - I mean Chamber - will through Registry regularly
24 monitor current situation and if the situation would getting worse we are still ready
25 to cancel this hearing.

1 So even after positive response from Presidency, if security situation will be getting
2 worse, we are responsible for your safety. We are aware of that. We want -- we
3 didn't want -- we don't want to put you at risk. So we will very carefully consider all
4 possible consequences and we are ready to change our decision if would be such a
5 need.

6 And before closing, I do have some further announcement to make. Before the
7 commencement of the trial, the Chamber will schedule at least one more status
8 conference to discuss the progress made regarding the preparation for trial.

9 As everyone will already have reserved our initial start date of 2 June in his or her
10 agenda, the status conference will be scheduled for that day.

11 Already at this stage the Chamber wishes to inform you that we'll be setting a
12 deadline for any motion and request that you wish to be decided on by the Chamber
13 prior to the start of trial.

14 Save for any unforeseen circumstances which occur after the deadline, such requests
15 will have to be filed at least three weeks prior to the start of trial. Depending on
16 when the requests are received the deadlines for responses will likely be shortened,
17 but you are informed orally now that in principle any responses to the requests will
18 have to be filed one week later; in other words two weeks prior the start of trial.

19 So my last question is whether you have -- because the agenda have been exhausted,
20 but whether you have any further questions, comments?

21 Prosecution?

22 MS SAMSON: No, thank you, your Honour.

23 PRESIDING JUDGE FREMR: Defence?

24 MR BOURGON: I do, Mr President.

25 PRESIDING JUDGE FREMR: Please go ahead.

1 MR BOURGON: I actually have three issues to raise.
2 The first one is a relatively short issue. Further to the Chamber's guidance and order
3 that the Registry will respond to our motion that we filed yesterday by the 29th, I've
4 asked my colleague whether she would be agree -- she would agree to respond
5 sooner. And I think that she will try to do so, which will allow the Chamber to
6 render a decision because for us every day counts in our trial preparations.
7 The second issue, Mr President, is regarding the oral ruling which the Chamber
8 issued at the beginning of this hearing, and I'd like to know if there will be a written
9 decision to follow or if we are -- if the oral ruling will be the only one as we are
10 considering whether to appeal this decision?

11 I can move on to my third issue, or --

12 PRESIDING JUDGE FREMR: Please move on. I will then react.

13 MR BOURGON: The third issue, Mr President, is the one which is most important.
14 In the ruling that you rendered this morning at the beginning, on two occasions the
15 Defence has been labelled as acting inappropriately.

16 Throughout my more than 20 years as a lawyer, this has not happened to me very
17 often. In fact, it has never happened to me before to say that I'm acting
18 inappropriately in a judicial setting.

19 I have the utmost respect for the International Criminal Court, the utmost respect for
20 this Chamber. If I deserve to be charged with contempt I should be, but I don't think
21 that this is the case.

22 With respect to the first time I've been called, or Defence has been labelled, as taking
23 inappropriate action is with respect to the anticipatory arguments that we included in
24 a filing and I've apologised for that one.

25 With respect to the second one, Mr President, we believe that this is a very important

1 issue. I just quote the Chamber's words, "The Chamber takes this opportunity to
2 note that it considers such speculations on the part of the Defence to be inappropriate
3 and without foundation and should not have been presented in that manner."

4 Obviously, I'm off to a very bad start with the Trial Chamber. I'm afraid - and I
5 question myself - whether with such a ruling I can stay in my current position to
6 represent Mr Ntaganda. I will address this matter with Mr Ntaganda immediately
7 following this hearing, because I don't think that I have acted inappropriately. I've
8 raised issues in this filing for which I will not apologise, because I do believe and I
9 will continue to advocate everywhere I can that before the International Criminal
10 Court there is way too many filings that are submitted by the parties and whoever,
11 we don't know, which are ex parte without the Defence being aware of such filings.
12 If I did speculate and used some words that were not appropriate in the Chamber's
13 view, I would like, Mr President, to know which words these were and I would like
14 that so that I can discuss with my client whether I can continue to represent him,
15 because I don't think that if the Chamber has this attitude with the Defence that the
16 trial can be fair. So maybe it is better to find a new lead counsel and it is better to
17 have a new Defence so that Mr Ntaganda can benefit from a fair trial.

18 Thank you, Mr President.

19 PRESIDING JUDGE FREMR: Mr Bourgon, I will limit myself to comment on your
20 second issue because I don't really see proper to elaborate more on your complaint, I
21 will call it. So please as concerns your question whether our oral decision will be
22 followed by a written one, no, and so if you want to think about making appeal please
23 limit yourself on this oral decision.

24 Okay. Any further issues from LRVs? If it's not the case, thank you very much for
25 your proactive approach. I wish you a good rest of the day and we will hopefully

- 1 see you during our next status conference in June.
- 2 The Court is adjourned.
- 3 THE COURT USHER: All rise.
- 4 (The status conference ends in open session at 12.29 p.m.)