

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
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 Judge Geoffrey Henderson
6 Status Conference
7 Tuesday, 2 December 2014
8 (The status conference starts in open session at 9.10 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everyone.
13 Welcome to the third status conference of Trial Chamber VI in this case. Sorry for
14 this short delay caused by some special, special troubles.
15 Now, court officer, please call the case.
16 THE COURT OFFICER: Yes, Mr President. 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: Now appearances, please, starting with Prosecution?
21 MS SAMSON: Good morning, Mr President, your Honours. The Prosecution
22 today is represented by: Ms Dianne Luping, trial lawyer; Mr Eric Iverson, trial
23 lawyer; Mr Rens van der Werf, assistant trial lawyer; and Ms Selam Yirgou, case
24 manager; and myself as well, Nicole Samson, senior trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

1 Defence now?

2 MR BOURGON: (Interpretation) Good morning, Mr President, your Honours.

3 Mr Ntaganda is represented this morning by: Maître Luc Boutin, co-counsel; Ms
4 Margaux Portier, case manager; Ms Mélissa Beaulieu, pro bono legal assistant; and
5 myself, lead counsel, Stéphane Bourgon. Thank you.

6 PRESIDING JUDGE FREMR: And I will add for the record that Mr Ntaganda is
7 present as well.

8 Now, legal representatives for victims please?

9 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. The
10 victims' teams are represented by myself, Dmytro Suprun, counsel in the OPCV.

11 MS PELLET: (Interpretation) Good morning, Mr President, your Honours. The
12 former child soldiers are represented by myself, Sarah Pellet, counsel in the OPCV.
13 Thank you.

14 PRESIDING JUDGE FREMR: Thank you.

15 And the Registry, now?

16 MS DAHURON-JACOBY: (Interpretation) Mr President, your Honours, the
17 Registry is represented by Natacha Schauder of the Victims Unit and myself,
18 Charlotte Dahuron. Thank you.

19 PRESIDING JUDGE FREMR: Thank you.

20 Allow me to remind you that during the first status conference the Chamber indicated
21 that it would schedule further status conferences at regular intervals to be updated on
22 the progress or the preparation for trial.

23 Last week we issued an order setting the agenda for today. According that the first
24 item on the agenda is the progress made regarding the preparation for trial, including
25 the status of disclosure.

1 So I would like to start with Prosecution. Can you please update us on your
2 preparation for trial? We would like to know also whether your preparation is
3 proceeding according to the schedule proposed by you at the time of the first status
4 conference.

5 Please, Ms Samson.

6 MS SAMSON: Thank you, Mr President.

7 Yes, the Prosecution can confirm that its preparation for trial is progressing as it
8 anticipated it would in its filing of the proposed timeline. We have been conducting
9 evidence reviews as indicated in that filing. Those are nearing completion. We
10 have one large pool of approximately 7,000 documents yet to review, but we
11 anticipate that this will be concluded in advance of the Chamber's deadline of 31
12 January 2015 for disclosure.

13 We disclosed since the last status conference 256 items, both incriminatory and under
14 Rule 77, and the Prosecution anticipates another disclosure in early January.

15 Once the Chamber issues its decision on the redaction protocol, the Prosecution will
16 thereafter disclose a number of items that require redaction. Again, we anticipate
17 that will be in early January.

18 We are preparing our list of witnesses and anticipated evidence, due on 15 January,
19 and we have no concerns that that will be achievable.

20 We've engaged in discussions with the Defence in relation to translations and the
21 Defence has taken a very reasonable approach. Based on the disclosures to date, the
22 Defence is requesting two additional statements be translated into Kinyarwanda
23 which the Prosecution is able to provide. As soon as those translations are
24 completed, which should be very soon, the Prosecution will disclose them.

25 In addition, the Prosecution has been translating statements in the event that

1 Mr Ntaganda would like -- would request those in Kinyarwanda. To the extent that
2 any of those are completed, we are also -- we will be providing those to the accused
3 even if they do not represent a specific request on his part.

4 The Prosecution can also anticipate now that with the Defence we'll be discussing a
5 filing on witness preparation. As the Prosecution indicated earlier, it does intend to
6 make a request for authorisation to prepare its witnesses. There is a chance that with
7 the Defence we can submit a joint filing, but the Prosecution and Defence will enter
8 into these discussions before the Christmas break.

9 One other item that is worth noting now is that, once the Chamber issues a decision
10 on the modalities of participation of victims, the Prosecution will be in a better
11 position to effect disclosure of a number of items that would normally go to the
12 victim representatives as well, but have not yet because they are confidential
13 documents.

14 The only two areas for which we have not yet been able to advance in accordance
15 with the schedule proposed by the Prosecution are on discussions with the Defence as
16 to agreed facts and joint instruction of experts but, as the Defence indicated early on
17 at one of the first status conferences, we will be in a position to enter into those
18 discussions starting in January 2015 and we hope that that remains the case and we'll
19 do that as soon as possible.

20 For the moment, your Honours, that is the update and I stand by for any further
21 questions you may have.

22 PRESIDING JUDGE FREMR: Thank you. That was very comprehensive.

23 Maybe, if I haven't -- just one occasional question from my part and could you
24 specifically comment on the status of Article 54(3)(e) information; confidential
25 information?

1 MS SAMSON: Oh, pardon me. Article 54(3)(e)?

2 PRESIDING JUDGE FREMR: Yes.

3 MS SAMSON: Pardon me. That provision is very clearly etched in my mind and I
4 do not need to look to it.

5 We have been making ongoing requests for lifting of material. There has been no
6 change since our last update to the Chamber. Of the 171 documents that were the
7 subject of pending lifting requests during the pre-trial phase we are awaiting a
8 response on 19 documents, and in addition we have submitted additional requests for
9 which we're anticipating lifting -- answers lifting conditions in the near future.

10 PRESIDING JUDGE FREMR: Thank you very much.

11 Now, Defence, do you have any comments on this review made by Ms Samson?

12 MR BOURGON: Indeed, Mr President. I have a number of comments related to
13 trial preparations.

14 First of all, the -- it's my pleasure to inform the Trial Chamber of course that the
15 Defence team is now complete and working full speed ahead in order to prepare for
16 trial.

17 That being said, Mr President, we do have a series of concerns, the first one being of
18 course the -- the timing of disclosure by the Prosecution.

19 We did receive documents, as indicated by my colleague. Since the last status
20 conference a number of documents were disclosed, both exculpatory - Rule 77 - and
21 inculpatory material. So we have been receiving documents. However, there is
22 some material outstanding that we are looking for and that we believe could be given
23 to us - disclosed to us - more quickly.

24 These documents include, for example, in the -- recently, on 10 November, the
25 Prosecution filed a motion in the Lubanga case requesting permission to redact some

1 information, some -- from witness statements. And the Prosecution indicated -- this
2 was a public filing. In this public filing the Prosecution indicated that these three
3 witnesses had been interviewed in the process of their investigation in this case, and
4 I'm referring more specifically to three witnesses, P-0080, P-0845 and P-0190, and the
5 title of the Prosecution filing, which is "Second application for authorisation to redact
6 material intended for disclosure," dated 10 November 2014.

7 We believe, Mr President, that it is very important for the Defence to obtain such
8 material without delay. Of course the Prosecution might be awaiting for some
9 permission to redact certain parts of those statements in the Lubanga case, but there's
10 no reason that these statements cannot be disclosed to this team, especially that some
11 of these witnesses appear to be Rule -- Article 67 exculpatory witnesses. So we
12 would like to be -- to obtain this information more quickly.

13 A second issue that arises is the one I refer the Trial Chamber back to the
14 Prosecution's observations which were filed ahead of 20 August status conference.
15 During this, in its observation, the Prosecution referred to 37 witness statements, or
16 transcripts of audio recorded interview, for a total of 460 pages.

17 I believe, Mr President, I may have made a mistake. I think this information must
18 be -- must be -- I must go into closed session in order to refer to this information.

19 I apologise, Mr President, for this mistake.

20 PRESIDING JUDGE FREMR: No problem.

21 A closed session now, please.

22 (Private session at 9.23 a.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Status Conference

(Private Session)

ICC-01/04-02/06

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16 (Open session at 9.27 a.m.)

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

18 PRESIDING JUDGE FREMR: Thank you.

19 MR BOURGON: The second issue I would like to raise with the Trial Chamber at

20 this point regarding trial preparations is an issue I raised earlier in the last status

21 conference, which is the issues of continuing investigations by the Office of the

22 Prosecutor in this case. This was raised, but nothing was ever made of this issue at

23 this point in time.

24 We know that we have a calendar in place. We know that the Prosecution will

25 disclose its list of witnesses by 15 January.

1 At the last status conference I made a suggestion that, in order for this list to be
2 complete and in order for the rights of the accused to be fully protected, it is required
3 that if the Prosecution is still investigating -- because as they said at the time there are
4 witnesses that they once interviewed when they started this investigation back
5 in 2006, but that they can no longer locate these witnesses or they have difficulty
6 locating these witnesses.

7 So my proposition at the time was for the Trial Chamber to order the Prosecution to
8 give the list of any witnesses on which the Prosecution is working at the time that is
9 not on this 15 January list; any ongoing witnesses that they are looking for that are not
10 on the 15 January list. These witnesses could then be -- if the Trial Chamber has this
11 kind of information, if and when those witnesses are indeed located by the
12 Prosecution then of course they can say, "Well, as you know, Mr President, this was a
13 witness that we were -- we've been looking for for a long time and now we've found
14 the witness. So here is additional witnesses for the Defence." We will agree to that
15 because this is part of investigation.

16 What we want to avoid is continuing investigation that will keep us off balance and
17 without the ability to establish a proper Defence strategy on behalf of Mr Ntaganda.

18 We want to avoid continuing investigation, whereas this investigation has begun back
19 in 2006. There has to be an end date. This is my second point, Mr President.

20 I move to the third issue and the third issue has to do with translations. Regarding
21 translations, as my colleague indicated, we've been very reasonable in terms of the
22 number of requests. We have been working with Mr Ntaganda and he has
23 requested little, or few, translations of witness statements with a view to ensuring that
24 the trial would proceed more quickly. And that's what we want. We want to be
25 ready for 2 June and we have been indeed very reasonable. So that's one part.

1 On the other hand, we have also accepted the Trial Chamber's invitation to make our
2 submissions in English. Now, of course, as you can see I do speak English, but we
3 are nonetheless a team composed entirely of French-speaking drafters, but we are
4 happy to provide the Chamber with English filings to speed up proceedings.
5 What we would like to ask the Trial Chamber today, Mr President, is to ensure,
6 however, that when decisions are issued by the Trial Chamber that they are translated
7 quickly at least into French. This will make our work much easier in terms of
8 discussing and briefing Mr Ntaganda on the result of our work.
9 Right now when we file a motion, of course, there's quite a heavy burden on us to
10 discuss these things with Mr Ntaganda and ensure that he understands the contents
11 of our filings in English. If we had the decisions in French it would be much more
12 easy for us to do our work. That is the translation issue.
13 The next issue I would like to bring in terms of trial preparations has to do with the
14 amended document containing the charges. Both parties have filed their observation.
15 We have -- we succeeded in agreeing on the -- on most components of the amended
16 document containing the charges.
17 However, there is one issue that we believe must be placed on the record publicly
18 today and that is the issue of -- of certain aspects of the document containing the
19 charges to which we don't disagree, but we want to make it clear that this will
20 inevitably have a serious impact on the conduct of proceedings and the duration of
21 trial.
22 You may on -- you may have understood, Mr President, that what I'm referring to is
23 the issue of the contextual attacks. Mr Ntaganda is charged on the basis of two main
24 attacks, and the -- however, in the -- in its decision, the Pre-Trial Chamber address a
25 number of also contextual attacks.

1 Now these attacks, of course, their use -- the purpose of these contextual attacks is
2 twofold: First, Prosecution wishes to use contextual attacks to prove the existence of
3 a widespread and systematic attack on a civilian population, or the existence of an
4 armed conflict during a certain period of time which are, of course, important issues
5 for the Prosecution to prove in respect either of crimes against humanity or against
6 war crimes. However it is noteworthy that the Pre-Trial Chamber did not, when
7 referring to these contextual attacks, refer specifically to any alleged or specific
8 conduct of Mr Ntaganda therein. On the contrary, the Prosecution decided to refer
9 to the conduct of Mr Ntaganda in these contextual attacks.

10 As I mentioned again at the beginning, I think that it is open to the Prosecution to do
11 this. So we are not saying that this is legally unsound. We are saying that
12 allegations about the specific involvement of Mr Ntaganda in any contextual attack of
13 course are allegations that we will have to answer, allegations that we are now on
14 notice and of course that we have to prepare, and I thought that this issue had to be
15 made public at this point in time because it will have an impact on the trial.

16 I come to my next issue, Mr President, which has to do with the pre-trial brief. The
17 issue of the pre-trial brief has been discussed on many occasions, both before the Trial
18 Chamber and between my colleague from the Prosecution and I in various meetings.
19 We -- we agree that there is a need for a pre-trial brief. However there is, unless I
20 stand to be corrected, no specific order on the record for the Prosecution to submit a
21 pre-trial brief three months before the beginning of trial.

22 We feel that this is an imperative necessity that we know that three months before the
23 trial begins we will know what the Prosecution's theory of the case is.

24 Regarding the format of this document is another issue that also needs to be raised. I
25 discussed the matter with my colleague, whether she would go with the format of the

1 updated documents containing the charges with detailed footnotes, or more like an
2 ICTY-type of pre-trial brief.

3 My understanding, and of course she -- I can be -- my colleague can inform the Trial
4 Chamber as to which format she prefers, but our issue is we really need an order from
5 the Trial Chamber binding the Prosecution into producing a detailed pre-trial brief
6 setting out its theory of the case at least three months before the beginning of trial.

7 I have one last issue dealing with agreed facts. My colleague raised that we
8 would -- that we have kind of undertaken to address that issue in January. We will
9 do our best to do so. However, it's very difficult for us to address agreed facts until

10 we have disclosure. So if disclosure keeps coming in then it might be -- and I say

11 "might" because we will do our utmost to enter into consultations with the

12 Prosecution regarding agreed facts, but of course it is very difficult to do so unless we
13 have the full picture.

14 All this to say, Mr President, that we -- trial preparations are ongoing, investigations
15 are ongoing and, if we have the proper -- the disclosure in time, we anticipate that we
16 would be ready to proceed to trial at the date set by the Trial Chamber.

17 I think this is it from me this morning, but I would gladly answer any questions
18 which the Trial Chamber might have for the Defence team of Mr Ntaganda.

19 Thank you, Mr President.

20 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

21 Prosecution, do you think that you would be able to just briefly now react on those
22 issues? According to my list, I just wrote down seven issues. The first one was

23 timing of disclosures; second was issue of redactions which probably should be dealt
24 in private session if you would want to react; number three issue of continuing

25 investigations; and number four I think it's not for you. It's translations. It will just,

1 I think, target to the Chamber. Number five, new DCC and the issue of contextual
2 attacks; number six, the need for pre-trial brief; and number seven the comment of
3 agreed facts.

4 So do you think you would be able briefly to react on at least some of those issues?

5 Ms Samson, you have the floor.

6 MS SAMSON: Yes, certainly, Mr President.

7 I note as a preliminary point that the Chamber did invite the parties to submit any
8 additional agenda items by 1 December and it would have been preferable for the
9 Defence to have included this lengthy list of issues in advance. Nonetheless,
10 I believe I can address the issues that are destined for the Prosecution.

11 Starting with the disclosure issue, it is indeed correct that there are statements that the
12 Prosecution intends to disclose to the Defence. In the interest of efficiency and
13 expediency a redaction protocol in any form will assist in that regard, and the
14 Prosecution thought it best to wait the short amount of time necessary for that
15 protocol to be formally issued by the Chamber and thereafter our disclosure can take
16 place quickly.

17 Should the Chamber order us to file a redaction application, which in my assessment
18 will exceed the time it will require the Chamber to issue the redaction protocol, the
19 Prosecution is happy to do that, but it seems to be an unnecessary amount of extra
20 work.

21 PRESIDING JUDGE FREMR: Ms Samson, sorry to interrupt you. I think we can
22 promise that we will issue this decision in due course.

23 MS SAMSON: Thank you, Mr President.

24 This dovetails into the Defence's second issue, which is in fact an attempt to litigate
25 aspects of the redaction protocol which -- for which the parties have already filed

1 their written submissions.

2 We have indicated in our submissions that there are clear reasons why some
3 information ought to be redacted from the Defence team and the accused for the
4 safety of witnesses, the security of other persons and the integrity of our ongoing
5 investigation.

6 Now, there are real reasons as to why this is redacted specifically as from the accused.
7 These are redaction categories accepted by many Chambers, and it is in the interest of
8 efficiency to have a protocol in place that could govern those redactions and allow
9 disclosure to take place more quickly.

10 In my view, I have not much more to say on that point because we have --

11 PRESIDING JUDGE FREMR: Sorry to interrupt. Just one small really follow-up
12 question. You said that you -- those categories have been already used by other
13 Chambers, but if I am not wrong you came with two more categories, am I right?

14 MS SAMSON: We've used the categories that are contained in the Kenya protocol,
15 but we've added the length of time for the lifting of the redactions is what's new in
16 this particular protocol that we've put forward. So not the categories themselves.

17 On the third issue, your Honours, continuing investigations, the Prosecution can
18 continue its investigations up until its disclosure obligation date has been met, which
19 in this case is 2 March, and the Prosecution sees no need for the Chamber to otherwise
20 determine when and how it can continue its investigations.

21 We know what our cut-off date is, we are guided by that and we're working towards
22 that -- that goal, but for the Chamber to otherwise interfere in that investigative
23 process in our submission this is not necessary. We will provide our provisional
24 witness list on 15 January. We will provide the final witness list on 2 March.

25 The fourth issue, as your Honour has noted, is perhaps for the Chamber but not for

1 the Prosecution.

2 The fifth issue has to do with the updated document containing the charges. The

3 Defence takes issue with the Prosecution's proposed process of adducing evidence of

4 the prior or -- attacks prior and subsequent to the two main charged incidents for

5 anything that goes beyond the contextual elements, and in our submission the

6 Defence in fact doesn't dispute this. We are perfectly entitled to adduce such

7 evidence.

8 Prior conduct of the accused goes quite squarely to his intent and knowledge, it goes

9 quite squarely to his knowledge in relation to an Article 28 offence and we

10 are -- should be permitted to adduce such evidence.

11 If the Defence wishes to challenge that, it is in its right to do so. If it has a slight

12 impact on the length of trial because we're litigating one particular issue such is the

13 life of a trial, but there should not be any limits placed on proper and relevant

14 evidence that gets admitted during the course of proceedings.

15 On the sixth issue, which is the issue of the pre-trial brief, as the Defence has

16 indicated the Prosecution is working towards filing a pre-trial brief three months

17 prior to the start of trial. It is intended to be a footnoted document, not the updated

18 DCC with footnotes, but rather a slightly different format perhaps more in line with

19 ICTY pre-trial briefs, but also in line with ICC pre-trial briefs filed previously in other

20 cases including in the Lubanga proceeding where the Prosecution sets out its position

21 in relation to various legal issues, to the evidence and to the parameters of its case,

22 and as I indicated there will be footnoting as well to relevant evidence.

23 And the last issue, your Honours, perhaps is not one for the Prosecution to comment,

24 the agreed facts issue. We are available to discuss agreed facts when the Defence is

25 in a position to do so. Disclosure will take place on 31 January and in increments

1 prior to that. A significant amount of disclosure has already taken place. There are
2 over 40 witness statements that have been disclosed to the Defence. There will be
3 further witness statements following the redaction protocol decision issued by the
4 Chamber, but the Defence will by January be in a position in our assessment to be
5 able to address some aspects of this case, given the voluminous amount of disclosure
6 that has already taken place.

7 Subject to any questions you may have, your Honour, those are my submissions.

8 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson, for this immediate
9 reaction.

10 I think we now have covered those two protocols on redaction and on the handling of
11 confidential information, but I would like now to make some enquiry on -- on other
12 protocols.

13 During the first status conference, and in the written observations in preparation
14 thereof, various possible protocols were mentioned, so now we would like to hear
15 from you, from parties and participants, which other protocols if any at this stage you
16 consider are necessary to allow the preparations and proceedings to take place in an
17 efficient manner?

18 I can just remind you that that following protocols have been mentioned: First a
19 protocol on the practices used to prepare and familiarise witnesses for giving
20 testimony at trial; then a protocol on the vulnerability assessment and support
21 procedure used to facilitate testimony of vulnerable witnesses; and third a protocol on
22 the mechanism for exchange of information on individuals enjoying dual status.

23 So could you make brief comment on the necessity or need to have those protocols?

24 Prosecution first.

25 MS SAMSON: Yes, Mr President.

1 Certainly all three protocols appear at first glance to be relevant protocols. The
2 Prosecution and Defence have discussed a proposed timetable with which we can
3 formally further our discussions on these three protocols. The -- our suggestion and
4 proposal for the Chamber is that we sit down and discuss the three protocols together,
5 and the dual status protocol we would include representatives from the Office of the
6 Public Counsel for Victims and prior to the Christmas break we will have these
7 discussions.

8 By 23 January the parties and legal representatives could make submissions on the
9 protocol on dual status, and by 6 February we propose to provide submissions on the
10 protocol for vulnerable witnesses and the protocol for familiarisation.

11 The familiarisation protocol is one that is also important and, as I said earlier, the
12 Prosecution and possibly with the Defence we will be filing a request to be able to
13 prepare witnesses and the result of that request will mean that we go in one direction
14 or the other in regards to the familiarisation protocol.

15 The familiarisation protocol in the Bemba case where the Victims and Witnesses Unit
16 is responsible for familiarisation is one type of protocol, and a second model is the
17 one, as your Honours know well from the Kenya case, where the parties are able to
18 prepare witnesses and so the familiarisation protocol has been amended slightly in
19 that regard. So we will be suggesting one of the two models depending on
20 your Honours' decision in relation to witness preparation.

21 Thank you.

22 PRESIDING JUDGE FREMR: Thank you.

23 Now, Defence, your position on those issues?

24 MR BOURGON: Thank you, Mr President.

25 Very briefly, because I acknowledge everything that my colleague has just mentioned

1 concerning our consultations regarding the protocols and the fact that we would meet
2 before Christmas.

3 I can also add that, regarding the familiarisation protocol, we will also try to get the
4 Victims and Witnesses Unit involved so that we can -- the Trial Chamber can benefit
5 from the input of all parties.

6 For us, regarding these protocols, there is one important issue that we -- that we wish
7 to raise. The Prosecution mentioned also this morning their intention to file a
8 motion, maybe it could be a joint motion or -- or not, regarding the preparation of
9 witnesses. There are a number of ways this can be done and we are looking into this
10 matter very seriously.

11 For us, whether we should take the Kenya approach with preparation - some form of
12 preparation - or we take the Bemba approach with no preparation, or very limited
13 preparation, might have some significant impact on our work and we are looking at
14 this quickly and we will enter with the Prosecution into consultations with the
15 Prosecution on this issue, and we will try to get all parties involved in order that
16 we -- that we arrive with these protocols as soon as possible.

17 And I agree with my colleague that the protocol that is probably the most urgent,
18 although there is no significant urgency, is probably the dual status witness protocol
19 which is -- because it is related of course to investigation and to disclosure
20 obligations.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Thank you.

23 Just a minor comment from my part that I think we can confirm that a joint motion on
24 preparation protocol would be welcomed.

25 I think this topic also should be commented by legal representatives and Registry, so

1 legal representatives first?

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

3 My colleague of the Prosecution has indicated that we will be invited to be part of the
4 discussions on the protocols, or protocols relating to dual status witnesses.

5 With all due respect, I think that we could also be called to participate in discussions
6 around the other two protocols which directly impact the interests of some of our
7 clients who may be called to testify during this trial.

8 For this reason, let me address one of the points raised by the Prosecution a short
9 while ago relating to disclosures. Mr President, preparation for trial also means
10 preparing victims to be able to effectively participate in the hearings, or in the trial,
11 and pending a decision on the participation of victims and on the modalities thereof it
12 is true that we are not in a position to effectively participate in the proceedings. You
13 see, a few documents have been disclosed to us and these relate to a few Prosecution
14 witnesses.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Thank you very much.

17 Mr Suprun?

18 MR SUPRUN: (Interpretation) Mr President, I agree entirely with my colleague
19 and I thank you.

20 PRESIDING JUDGE FREMR: Thank you very much.

21 Registry, now. Do you want to make any comment on that?

22 MS SCHAUDER: (Interpretation) Thank you, Mr President, your Honours.
23 Natacha Schauder of the VWU.

24 These protocols, may I say, will have an impact on the work of our unit and we
25 therefore would like to be involved in the discussions that will take place around

1 these protocols.

2 Furthermore, let me say by way of preliminary remark that for our unit it is necessary
3 for uniformity to obtain regardless of what approach will be adopted.

4 It is true that the experience of the other Chambers is useful, but let me say that the
5 protocol on vulnerability has been adopted by all the Chambers of this Court. The
6 same text has been adopted across the Court.

7 Madam Samson also talked about familiarisation protocols, which I may say have
8 already been consolidated in the Bemba and the Kenya cases, and I think those
9 experiences can be relevant in the future for our work. This also applies to the dual
10 status mechanism which was adopted in the Lubanga case. Any variation thereof
11 would have an impact on our work and that is why we would like to be part of the
12 future discussions around these issues.

13 Thank you very much.

14 PRESIDING JUDGE FREMR: Thank you very much, Ms Schauder.

15 Now, I would like to move to the last item of our agenda which is possibility of
16 having in situ trial. So we like now to get some news of the parties and participants
17 on the possibility of holding part -- part of the trial in situ.

18 We received a security report on this issue from the Registry on 21 November and
19 then written submissions from the Prosecution, Defence and legal representatives on
20 28 November.

21 The Chamber notes that these filings were made confidentially, but that public
22 redacted version have been filed of some of them. So when you are responding our
23 questions, or making some comments, please indicate whether you wish to go into
24 private session to discuss this matter.

25 This time I would like to start with Defence with some follow-up questions.

1 Mr Bourgon, from your submission it appears you support in situ hearings in Bunia,
2 but not anywhere else. Can you explain to us why Bunia would be, according to you,
3 the only possibility in the view of Defence?

4 MR BOURGON: Thank you, Mr President.

5 I don't think I need to go into closed session to respond to the Trial Chamber's
6 question. We figure, Mr President, that if we are going to draw any benefit from
7 bringing justice close to the people who were allegedly involved into these -- in these
8 events that took place, the events for which Mr Ntaganda is being charged, we figure
9 that the best place for doing so is Bunia; Bunia being kind of the centre place from
10 which the alleged crimes were at least launched or all have a relationship with the
11 community in Bunia. Therefore by going to Bunia, which has some kind of
12 infrastructure, but that is not for the Defence to determine, it would be a good area to
13 bring justice close to those people.

14 On the contrary, if we go to any other place in Africa, whether it be Arusha, whether
15 it be Kinshasa, whether it be Kisangani or another location, I think we -- the benefit is
16 significantly reduced; the benefit of bringing justice close to the people who were
17 involved. And when decision will be taken, then it should be taken into account that
18 what is the burden imposed on the Defence, what is the burden imposed on the
19 tribunal and on the obligations of Mr Ntaganda to defend himself against these
20 charges.

21 Now, when we look at -- when we weigh on one hand the benefit and on the other
22 hand the burden, then we say that if we go elsewhere than Bunia the benefit is so
23 reduced that it is overcome by the burden imposed both on Mr Ntaganda, but also on
24 the Court itself.

25 And if I recall, I think that our submission in this regard is very similar to that of the

1 legal representatives for the victims who believe that Bunia would be the proper
2 location to hold such a trial. If the objective is to bring justice close to what we say in
3 French, "les justiciables," but what is important for the Defence, Mr President, we
4 made that clear in a very short filing and this filing is of course simply to say in
5 principle we agree, but the conditions must be put in place.

6 At this point in time, I'd like to make just one quick observation and then request
7 leave to make further submissions later. That quick observation is simply that for us
8 it's non-negotiable that the accused must be present if the trial moves away from The
9 Hague and that the -- the possibility of having the accused appear by way of video
10 link to us is not acceptable and is contrary to the rights of the accused. That we want
11 to make clear.

12 Other than that, if all conditions are there in order for us to do our work and to
13 protect the rights of Mr Ntaganda, then we would absolutely not object to the trial
14 taking place elsewhere.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Thank you.

17 And the second last follow-up question from my part concerning the issue of absence
18 or presence of Mr Ntaganda, because you -- you I think in your submission
19 highlighted that according to you even if it will be just for opening statements you
20 need -- you prefer have his -- to have him there, but then I am asking you do you
21 really think that there would be some need for consultation, or taking some
22 instructions from him, if we would just have opening statement there?

23 MR BOURGON: I do, Mr President. I think that at all phases the Defence team of
24 Mr Ntaganda must be able to confer with him at every single moment during the trial,
25 and that includes even opening submissions, opening -- because there might be issues

1 that arise and there has to be immediate consultation and there has to be proximity
2 between the Defence team of Mr Ntaganda and Mr Ntaganda himself even for oral
3 submissions at the beginning.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

6 Now, I would like to turn to Prosecution. The Prosecution suggests that in situ
7 hearings may be -- may not be feasible, but recommends a judicial site visit would be
8 beneficial to the Chamber to provide a greater appreciation of the evidence.

9 So my question would be to what extent would the challenges and problems of in situ
10 hearings identified by the Prosecution not similarly impact on a judicial site visit?

11 What specific benefits would the Chamber, in your view, gain from conducting such a
12 site visit at a stage prior to hearing the evidence?

13 Please, Ms Samson.

14 MS SAMSON: Mr President, the difference between a judicial site visit and holding
15 part of the trial in situ, even if both require some temporary lodging in Bunia, is quite
16 significant. So the differences are quite significant.

17 For one, the accused does not need to be present during a judicial site visit. The
18 number of persons who attend the site visit can be much more restricted, because the
19 Registry in the same numbers is also not required to be present. The goal of the site
20 visit is to permit the Judges to be able to see physically the area and the landscape, the
21 geography, the places in which the alleged crimes were to have occurred, and it will
22 give the Chamber a much greater understanding of the context within which the
23 evidence that you will hear during the course of the trial will be presented to you.
24 The goals of the two processes are quite different and the security risks are minimised.
25 There may still be security risks inherent in a judicial visit to Bunia, but they are

1 different from the types of risks associated with starting a judicial process and trial in
2 Bunia where the accused is present.

3 The Registry has so far indicated that it is -- that Bunia is not feasible should the
4 accused be present. Accommodation for the number of persons that would be
5 required to attend a trial would be very challenging in the Bunia context. The field
6 office is not large enough to accommodate everybody in that way and the facility is
7 also not optimal for a trial proceeding, but could be a workable solution for a
8 short-term site visit with a restricted number of persons. Witnesses are not engaged
9 in any way in relation to a judicial site visit and they may be in some instances for a
10 trial.

11 These are just several of the main differences, but I think the goals of the two and the
12 logistic requirements of the two and the security implications make them very
13 different options, one less feasible and the other more viable in our perspective.

14 PRESIDING JUDGE FREMR: Thank you.

15 Now, I have questions for the Registry. Please, why would a special chartered flight,
16 which according your report should be very, very expensive, have to be arranged for
17 the accused? Does the Registry view of any other way to be feasible for transport of
18 the accused?

19 MS BECERRA-SUAREZ: Mr President, your Honours, I'll be making the submission
20 on behalf of the Registry. My name is Bibiana Becerra-Suarez from the Division of
21 Court Services and I joined this hearing at 9.24.

22 In relation to your question, the report we provided was just a very preliminary
23 assessment. In relation to the flight, we have to keep in mind potential security
24 requirements. The Registry could explore more concrete alternatives and come back
25 to the Chamber, but for the time being because of the security --

1 PRESIDING JUDGE FREMR: Sorry to interrupt. Maybe it would be better to deal
2 with this issue in private session, okay?
3 One moment. Private session, please.
4 (Private session at 10.06 a.m.)
5 (Redacted)
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1 (Open session at 10.08 a.m.)

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

3 PRESIDING JUDGE FREMR: Thank you.

4 Now, I am a little bit -- sorry for that. It may be better to come back to closed session

5 because I now see that there are maybe some issues which could go there. So sorry

6 for that. It's my error. So please come back to private session. Sorry.

7 (Private session at 10.09 a.m.)

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1 (Redacted)

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3 (Open session at 10.19 a.m.)

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

5 PRESIDING JUDGE FREMR: Thank you.

6 MR BOURGON: I will, Mr President, have to refer to the filings that were submitted
7 by the Office of the Prosecutor and the filing that was submitted by the Registry, but
8 before I do so we can remain in open session because we have serious concerns which
9 must be made publicly.

10 The Trial Chamber has requested on two occasions some -- the Registry to file reports
11 regarding the security, first of all the security for the participants and secondly with
12 respect to the conduct of the trial, and has required the parties to also file
13 submissions.

14 I refer the Trial Chamber to the exact instructions which were given to the parties at
15 the time. Now these instructions read as follows, and I refer to 17 October 2010 on
16 page 18, and this is how the Trial Chamber raised the issue and I quote from line 7:
17 "Okay, now I'd like to move on to a different topic. The Chamber is mindful that the
18 security situation in the area of concern to the charges may have an impact on the
19 preparation of the work of the parties, as well as participants. Therefore, the
20 Chamber would further like to request the Registry to prepare a report on the security
21 situation." End of quote.

22 On the same day, Mr President, during that -- that status conference, the Trial
23 Chamber went on to say, and this is on page 19 and I quote starting on line 4 where
24 the Trial Chamber said:

25 "... in addition we would like to discuss ... the possibility also of holding maybe part

1 of the trial, for example, the opening statements in situ, it means in the DRC itself or
2 some nearby location. The Chamber will first ask the Registry to prepare a report on
3 this option and even though -- or maybe the other options and related security
4 implications, which are very, very important, and just to inquire the possibility to
5 hold ... the trial in the DRC or nearby ... So the Chamber instructs the Registry to
6 prepare such a report by 21 November ..."

7 Mr President, following the Trial Chamber's order to the Registry and to the parties
8 on both issues, security situation in the area and the possibility to hold part of the trial
9 in the Democratic Republic of Congo, I took the floor and I mentioned to the Trial
10 Chamber, and I quote from line 25, on page 19, "Allow me to begin ..." Mr President "...
11 by saying that we welcome the Chamber's order to the Registry for the production of
12 a document regarding the security situation in the area as we are about to undertake
13 investigations."

14 I raise this issue, Mr President, because if we are talking about the security and the
15 ability of the parties to conduct their work in the region, that is one issue and that is
16 indeed one very important issue. However, we have serious concerns with what
17 was mentioned by the parties in their filings and here I need to go into closed session,
18 Mr President.

19 PRESIDING JUDGE FREMR: Okay, closed session now please.

20 (Private session at 10.23 a.m.)

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20 (Open session at 10.30 a.m.)

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

22 PRESIDING JUDGE FREMR: Thank you.

23 So, please, it would probably be appropriate to repeat that the Chamber intends to

24 schedule the next status conference for the end of January or early February 2015, so

25 you will be also informed about Chamber decisions on two proposed protocols and

- 1 other pending issues. I hope that we will be able to decide on that in due course.
- 2 Otherwise I would like to thank you for your active input and, since it's most likely
- 3 our last contact in person this year, allow me to wish all of you a Merry Christmas
- 4 and Happy New Year.
- 5 Thank you.
- 6 THE COURT USHER: All rise.
- 7 (The status conference ends in open session at 10.31 a.m.)