

1 International Criminal Court  
2 Trial Chamber VI - Courtroom 1  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06  
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and  
6 Judge Geoffrey Henderson  
7 Status Conference  
8 Tuesday, 17 February 2015  
9 (The status conference starts in open session at 9.59 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. Good morning and welcome to this  
14 status conference.  
15 Court officer, please call the case.  
16 THE COURT OFFICER: Thank you, Mr President.  
17 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor  
18 versus Bosco Ntaganda, ICC-01/04-02/06.  
19 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, your Honours. For the Prosecution  
23 today we have Ms Dianne Luping, trial lawyer; Mr Eric Iverson, trial lawyer;  
24 Mr Rens van der Werf, assistant trial lawyer; Selam Yirgou, case manager; and I am  
25 Nicole Samson, senior trial lawyer.

1 PRESIDING JUDGE FREMR: Thank you.

2 And Defence?

3 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning  
4 to everyone in the courtroom. Representing Mr Bosco Ntaganda this morning, who  
5 is present, Margaux Portier, case manager; Chloé Grandon, assistant legal assistant;  
6 and myself, Stéphane Bourgon. Thank you, your Honour.

7 PRESIDING JUDGE FREMR: Thank you.

8 Legal representative of victims?

9 MR SUPRUN: (Interpretation) Good morning, your Honours. The victims of the  
10 attack on civilian population are represented by myself, Dmytro Suprun, and  
11 Caroline Walter.

12 MS PELLET: Good morning, your Honours. The victims, namely, former child  
13 soldiers are represented by Mohamed Abdou and myself, Sarah Pellet.

14 PRESIDING JUDGE FREMR: Thank you.

15 And Registry?

16 MS DAHURON-JACOBY: (Interpretation) Good morning, your Honours.  
17 Representing the Registry today, Mr Pieter Vanaverbeke, legal coordinator, and  
18 myself, Charlotte Dahuron, who I am responsible for the Court Management Section.

19 PRESIDING JUDGE FREMR: Thank you.

20 This status conference has been convened to ensure that the Chamber is kept  
21 regularly updated on the progress of the preparation for trial. On 22 January 2015,  
22 the Chamber issued an agenda for this status conference.

23 The Chamber had also requested to the parties to notify it by way of email of any  
24 additional matters that they wish to raise. The Defence identified four such matters,  
25 and it is proposed that today we will address three of those under agenda item (e),

1 and those are: Firstly, submission of the Prosecution's pre-trial brief; secondly, the  
2 Prosecution motion regarding witness preparation; and thirdly, the *modus operandi*  
3 and content of communications between the Chamber, the parties and participants  
4 and the Registry. The Chamber does not intend to address the fourth proposed  
5 agenda item since according our view it has been already covered by its decision, by  
6 our decision issued yesterday.

7 As a preliminary matter before turning to the agenda itself, at our previous status  
8 conference Mr Bourgon had raised the need for priority translation of certain  
9 Chamber decisions into French in order to assist the Defence team with their work, in  
10 particular, when discussing decisions with Mr Ntaganda. As the parties are aware, I  
11 met yesterday with representatives of the Registry, including the head of  
12 interpretation and translation section, and Mr Bourgon to discuss how this could be  
13 most efficiently accomplished. I would like to thank each of them for this meeting  
14 and now place on the record the outcome of our discussions.

15 It is noted that the Registry translation unit is working with very limited resources to  
16 meet the translation needs of the judiciary and the Court more generally.

17 Nonetheless, they stated their willingness to assist so far as possible. It was  
18 indicated that in order to do so it would be helpful for planning purposes for the  
19 Registry to receive advance notification of translation requirements.

20 The Defence explained its translation needs, but indicated a willingness to exercise  
21 selectivity in relation to the decisions for which priority translation is sought and  
22 agreed that priority translation should focus on the analysis section of such decisions.

23 The Defence also indicated willingness to attempt to identify those decisions in  
24 advance to the extent possible and the Chamber appreciates this constructive  
25 approach.

1 The Defence noted, however, the relatively short deadline for leave to appeal requests  
2 and foreshadowed that, on occasion, it may be necessary to seek an extension of that  
3 deadline in order to facilitate taking instructions from Mr Ntaganda. The Chamber  
4 notes that such request would be considered on a case-by-case basis, but  
5 acknowledges that in certain exceptional circumstances granting such an extension  
6 may be appropriate.

7 For the time being, the Chamber directs that the Defence should identify, in advance  
8 to the extent possible, any particular decisions for which it seeks priority translation  
9 of the Chamber's reasoning. The translation unit should do their best to  
10 accommodate the requests within their workload and priorities.

11 The Chamber anyway remains available to address this issue should particular  
12 difficulties arise.

13 Now we can turn to the first item on the agenda which is the progress made  
14 regarding the preparation for trial including the status of disclosure.

15 We know that the interim deadline of 31 January for the disclosure of all  
16 incriminatory material in the Prosecution's possession prior to 9 October 2014 has  
17 passed. We understand that the required disclosure took place. The Chamber  
18 noted in particular the Prosecution's disclosure notification dated 4 February 2015  
19 relating to disclosure packages provided on 21 and 30 January 2015.

20 The deadline for all remaining disclosure is 2 March. The Chamber has again noted  
21 the most recent Prosecution disclosure notification on 11 February 2015. And we  
22 have also recently received the Prosecution's application for delayed disclosure of  
23 certain information and for non-standard redactions which the Defence will have the  
24 opportunity to respond to and the Chamber will rule on in due course.

25 However, Prosecution, can you please otherwise update the Chamber on your

1 preparation for your trial and in particular disclosure? We would like to know  
2 whether your preparation is proceeding according to schedule.

3 We note that the matters of agreed facts, joint instruction of expert witnesses and the  
4 pre-trial brief will be discussed separately later on today, so you needn't at this  
5 moment address those three items. Please.

6 MS SAMSON: Thank you, Mr President. The Prosecution's observations on your  
7 question can be quite brief. We are proceeding according to schedule. We have, as  
8 your Honour has correctly reflected, disclosed the incriminating items that were in  
9 our possession prior to 9 October 2014 and we are steadily preparing the disclosure of  
10 the remaining materials for 2 March.

11 There are, as your Honour has noted as well, an application for delayed disclosure,  
12 application for non-standard redactions. We've submitted the updated pre-trial brief  
13 yesterday as well and I understand we will discuss that point more, perhaps, later.  
14 And subject to your Honours' determinations on these questions, we are proceeding  
15 steadily towards the 2 March disclosure deadline. Thank you.

16 PRESIDING JUDGE FREMR: Thank you, Ms Samson. Maybe I would like to put  
17 one or maybe two additional questions. You haven't mentioned current status of the  
18 Article 54(3)(e) information which means documents or information obtained on the  
19 condition of confidentiality. Could you just inform us what is the status for the  
20 disclosure of these materials?

21 MS SAMSON: Yes, your Honour. We have disclosed all but two documents from  
22 the initial request for lifting that were submitted prior to the confirmation hearing of  
23 which we had been informing the Chamber and the parties on a regular basis. So  
24 there are two documents outstanding there. And we have a renewed request to a  
25 different provider for nine additional documents. We don't anticipate any issues in

1 the disclosure of those materials before 2 March. Should there be any difficulty,  
2 we'll certainly alert the Chamber and the Defence and participants by way of a filing.

3 PRESIDING JUDGE FREMR: All right. And one minor additional point: In the  
4 previous status conference it was indicated that certain agreement had been reached  
5 regarding the translation of statements into Kinyarwanda for the benefit of the  
6 accused and that this matter was progressing without difficulty. Does that continue  
7 to be the case?

8 MS SAMSON: Yes, your Honour, in respect of most of the materials. There are, as  
9 we have noted by way of our delayed disclosure filing yesterday, several, two at the  
10 moment, interviews where the transcripts are not finalised, and for those two  
11 interviews the translation can only be completed once the transcripts are final. So  
12 the 2 March deadline indeed will be problematic for the translations of two -- two  
13 individuals.

14 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.  
15 Now Defence. You may please comment on the status of disclosure from your  
16 perspective if you want.

17 MR BOURGON: Thank you, Mr President. Before I begin with my representations  
18 this morning, something was just mentioned on page 6, line 16, by the Prosecution  
19 that they had filed an updated pre-trial brief. Can I get more information please on  
20 this, Mr President, before I take the floor?

21 PRESIDING JUDGE FREMR: Ms Samson?

22 MS SAMSON: Yes, your Honour, I misspoke. It's an updated document containing  
23 the charges. Thank you for clarifying.

24 PRESIDING JUDGE FREMR: It is also my understanding.

25 So, Mr Bourgon, now you have the floor again.

1 MR BOURGON: Thank you, Mr President. Regarding preparations for trial, there  
2 are items I would like to address; namely, four specific items which goes -- which go  
3 as follows: First one, of course, is disclosure being divided between disclosure of  
4 documents and disclosure of material related to witnesses; the second point being  
5 what we can expect from the Prosecution in terms of the upcoming trial because this  
6 is a significant component of our preparations for trial; the third issue being the  
7 mechanics and the modus operandi of the upcoming trial; and finally as an issue  
8 which is being presented as a head's up for the Chamber but also for the Registry, the  
9 issue of Defence resources or Defence investigation resources.

10 Beginning with disclosure, Mr President, the picture we have today is very different  
11 from what it was and what could be expected when I took over this case back in  
12 August. In fact, the picture we have today is quite troubling. Whether this will  
13 have an impact on the beginning of the trial is not known at this time. The Defence  
14 team on behalf of Mr Ntaganda is working flat out to assess the impact of what we  
15 have today in terms of disclosure. We certainly maintain the view and the intent to  
16 begin this trial in accordance with the schedule put in place by the Chamber, in  
17 accordance with the wish of Mr Ntaganda to be tried within a reasonable delay. If  
18 need be we will address the Chamber as soon as possible with any request to delay  
19 this trial.

20 For the time being, Mr President, I simply wish to provide the Chamber with an  
21 overview of the situation and I don't hesitate to use the word "scary" in this regard.

22 Allow me to begin with the situation regarding the disclosure of documents.

23 While the Prosecution focuses on meeting the deadlines set by the Chamber, which of  
24 course is appropriate, we would like to focus on the impact of the recent disclosure on  
25 our ability to be ready for trial and to adequately represent and protect the rights of

1 Mr Ntaganda.

2 I would like to address a few statistics in this regard, Mr President, so that the  
3 Chamber is well aware of the situation.

4 As of 15 January 2015, we had received in terms of disclosure a total of 7,934  
5 documents for a total of 91,650 pages. Maybe for the sake of translation I can give  
6 those numbers again. 7,934 documents and 91,650 pages. This is 15 January,  
7 Mr President.

8 Today we now have 12,416 documents, that is 12,417. This takes into account 4,483  
9 new documents which represents an increase of 56 per cent.

10 If we look only at so-called incriminating documents, as of 15 January, we had 2,636  
11 documents, that is 2,636, totalling 22,638 pages. This is what we had as of 15 January.

12 We now have 7,838 documents for a total of 45,083 pages, that is 45,083 pages.

13 If I look just at the increase in the number of documents since 15 January we are  
14 looking at 5,202 additional new so-called incriminating documents which represents  
15 an increase of 197 per cent.

16 To give you a picture, Mr President, for each one document we had on 15 January we  
17 received two more, for each one of them. So we kind of tripled the work. 197 per  
18 cent increase. In terms of the number of pages, it went up by 22,445. 99 per cent  
19 increase, almost a double.

20 If we look at the number of videos that were disclosed, as of 15 January, we had 127  
21 videos, 127. We now have 184 videos. An increase of 57. 45 per cent more. And  
22 we have no statistics regarding the time represented if only we want to look once at  
23 these videos.

24 I could go on and address Rule 77 documents, but I don't think there's a need at this  
25 point. I think my point is quite clear in terms of the increase that we have -- that we

1 are facing since 15 January of this year.

2 Now, based on our discussions with the Prosecution, we approximately are expecting  
3 1,000 additional more so-called incriminating documents between now and 2 March,  
4 which will bring the expected total to 8,838 documents, amounting to 52,833 pages.  
5 Compared to 15 January, as of 2 March there will have been an increase of 235 per  
6 cent, 235, in terms of documents --

7 PRESIDING JUDGE FREMR: Mr Bourgon, sorry to interrupt you. I think that your  
8 statistics I think is making clear picture to us that you are really under strong pressure.  
9 I would be, however, more interested in giving or taking from you what outcome it  
10 means for you and do you have some solution because I think it's not strictly that we  
11 would like to start comments our trial as planned? So please could you just make  
12 some conclusion because I think we've got enough statistics and so please go this  
13 way.

14 MR BOURGON: This was the last figure I intended to put forward before the  
15 Chamber this morning, Mr President, and I think the picture is quite clear, but  
16 respectively, Mr President, this can only be labelled in our view as trial by ambush.  
17 This must also be assessed, Mr President, in the light of the fact that the Prosecution  
18 has been investigating this case since 2005, some ten years ago. This begs the  
19 question: Has the Prosecution suddenly come across these additional documents, or  
20 has the Prosecution been sitting on these documents in the hope of gaining  
21 a -- gaining a tactical advantage?

22 This is the type of information, Mr President, that is of benefit not only to the  
23 Chamber, but also to everyone outside of this courtroom, outside of the International  
24 Criminal Court, who are looking at this.

25 I'd like to address now the issue of witnesses so that the Chamber gets the picture as

1 to where we are today.

2 As of 15 January we have a list of 60 witnesses, experts not included. 15 of these  
3 witnesses remain unknown to the Defence, a little more than four months before trial.  
4 That's 25 per cent of the witnesses are unknown. For eight of them we had no names  
5 and no material. For seven we had some material, but no identity.

6 On 30 January, the identity of seven of these witnesses was disclosed to the Defence.

7 As a result, today we still have eight witnesses which remain unknown. Four of  
8 them we have some material and for the remaining four we have no material and no  
9 identity.

10 What is more, Mr President, if we look at the decisions which authorised delayed  
11 disclosure for these witnesses, we still don't know exactly when the identity of these  
12 witnesses will be revealed. This is one question I would like the Chamber to put to  
13 the Prosecution.

14 Lastly - and I stand to be corrected on this one - we have been informed that the  
15 Prosecution intends to add ten new witnesses to its list for whom we have no  
16 information and no identity.

17 With this in mind, Mr President, I turn to one of a common theme that I've raised  
18 previously before which is when will the investigation in this case stop? There must  
19 be an end to building the case for the Prosecution, lest the Defence will never know  
20 the case it has to meet.

21 More importantly, we respectfully submit that the Prosecution's ongoing  
22 investigation actually is an incentive for people and more witnesses to come forward  
23 not in the hope of helping justice, but in the hope of gaining an advantage from their  
24 false testimony.

25 On two occasions, Mr President, I suggested a mechanism so that we can get some

1 kind of control. I suggested that the Prosecution should inform the Chamber of any  
2 witnesses it is presently working on so that there is a way to control and to put an end  
3 to its investigation.

4 I'm still hoping to meet so that we have some kind of control and I reiterate this  
5 request today for some kind of control over the investigation by the Prosecution.

6 I have one last issue regarding disclosure which deals with of course the documents  
7 which are covered by Rule 54, but my colleague gave us an overview. This topic  
8 was discussed during the status conference in September, but has not really been  
9 discussed ever since.

10 The last report we received dates back to July. I'm talking about an official report  
11 which was triggered by an order issued by the Single Judge of the Pre-Trial Chamber.  
12 We personally -- maybe I should not admit this, but we have kind of lost track of the  
13 progress made in this regard.

14 We have information today and I would appreciate, Mr President, if the Prosecution  
15 could keep us informed and the Chamber officially regarding any disclosure under 54,  
16 and this concludes my observations regarding disclosure.

17 The next issue I'd like to address is --

18 PRESIDING JUDGE FREMR: Sorry, I think maybe it would be I think better just to  
19 give Ms Samson a chance to respond now and then to listen to all items.

20 Ms Samson?

21 MR BOURGON: Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

23 MS SAMSON: Yes, thank you, Mr President. It's certainly easier for the  
24 Prosecution to respond one subject matter at a time.

25 In relation to the Defence's complaints regarding disclosure, I reiterate simply that

1 this disclosure deadline was one that was ordered by the Chamber. The Defence did  
2 not seek leave to appeal. In fact they agreed with the proposal in the main, and with  
3 the Chamber's order ultimately when it came through, that the Prosecution is obliged  
4 to disclose the identity of its witnesses no later than 2 March 2015 unless there are  
5 legitimate requests for delayed disclosure, which the Chamber assesses and grants.  
6 And the statistics in terms of witnesses that the Defence has put forward perfectly  
7 reflect a very transparent and compliant Prosecution, who has provided the Defence  
8 so far with 60 individuals on its witness list, 52 of whom are known to the Defence.  
9 Four more the substance of their information is also known to the Defence, but their  
10 identity is not yet known, and the remaining four will be known to the Defence in due  
11 course in compliance with the Chamber's decision.  
12 So, your Honour, the Prosecution does not fully comprehend the Defence's complaint  
13 in that regard.  
14 In relation to documentary disclosure, the statistics presented by my friend present a  
15 slightly misleading picture of the situation. The Prosecution has without question  
16 disclosed additional documents since the confirmation hearing, as it is obliged to do,  
17 and we have disclosed, according to our statistics, almost 7,000 documents since  
18 June 2014 of an incriminating nature, but that includes, your Honours, a significant  
19 number of re-disclosures subject to your Honours' decision that the Prosecution  
20 disclose lesser redacted versions of the materials it's relying upon, or documents with  
21 redactions converted to accord with the redaction protocol. So over 1,600 of the  
22 items that have been disclosed since June 2014 are in fact re-disclosures of documents  
23 that the Defence had already in its possession.  
24 In addition to that, over 3,000 of the documents recently disclosed all relate to the  
25 exhumations conducted by the Prosecution. They are photographs and videos of the

1 exhumation process. The expert reports in relation to those photographs and videos  
2 will be disclosed by April, but they are very much underlying material related to one  
3 event which -- which are the exhumations.

4 There are, therefore, only by our information 1,500 documents that are new -- newly  
5 disclosed as incriminating since June 2014.

6 And those are our submissions, your Honours, in relation to disclosure.

7 PRESIDING JUDGE FREMR: Thank you very much.

8 Mr Bourgon, do you want to make some additional comment or do you want to  
9 proceed with other items?

10 MR BOURGON: I will proceed with another item, but just to say, Mr President, our  
11 figures do not match those of the Prosecution. We will meet with them and we'll try  
12 to agree on the proper figures, but the figures I provided earlier are in -- from our  
13 point of view new documents. So we will discuss with the Prosecution, but to us it  
14 is very important for the Chamber to have a picture of the burden that we face at this  
15 time.

16 The second issue I'd like to address is what can be expected in terms of the trial, and  
17 we put the question to the Prosecution during our last meeting with a view to simply  
18 beginning discussions in this regard as soon as possible.

19 We were informed that the Prosecution would likely be ready to call its first witness  
20 immediately after opening statements, but no information was available as to which  
21 witnesses are likely to be called first which is not surprising and not a problem at this  
22 time.

23 However I raise this topic because it is very important, bearing in mind the state of  
24 disclosure and the work that we have to do before trial, for us to know in advance  
25 which witnesses will be called at the beginning.

1 As a suggestion, and to get the ball rolling in this area, we respectfully submit that the  
2 witnesses to be called before the summer recess - that is of course if the trial begins on  
3 2 June as scheduled - should be identified two months in advance and, regarding the  
4 witnesses to be called after the recess, we respectfully submit that they should be  
5 identified one month in advance. Of course this is all things that will be sorted out  
6 later, but we would like to put our bid, if I can use this word, at this time.

7 The next point, Mr President, is also a short one concerning the mechanics of the trial.  
8 I raise this issue not only to suggest the modus operandi of the trial itself, but when  
9 we speak of the admission of documents, the questioning of witnesses, examination  
10 in-chief, cross-examination, re-examination, questions arising from the Judges'  
11 questions and more importantly the working schedule, how many days per week the  
12 Chamber intends to sit, how many hours per day, the prep time for witnesses, what is  
13 expected in terms of recess and the like, I respectfully suggest, Mr President, that  
14 these issues should be raised at least two months before the beginning of trial so that  
15 we are able to plan.

16 The next topic I'd like to raise in terms of trial preparation deals with Defence  
17 investigation resources. I raise this topic, Mr President, because it is very likely that  
18 it will become an issue and we feel it is important to put this on the record.

19 To prepare this case we've been allotted a budget; an investigation budget. This  
20 budget covers both travel expenses for the Defence team, as well as the remuneration  
21 for investigating -- investigators, sorry, slash resource person. As the Chamber can  
22 imagine, this case will require serious investigation work from the Defence not only  
23 before, but also during the trial.

24 Based on our current budget, it is likely that we will run out of resources shortly after  
25 the beginning of trial. This implies that we would no longer be able to remunerate

1 any investigator/resource person in the field, which of course would not be  
2 acceptable.

3 I brought up this issue with the Director of Court Services and I also brought up this  
4 issue with the Chief of the Counsel Support Section, as any responsible manager  
5 would do, so that we can plan in advance. The figures we're talking about are  
6 significant figures.

7 Based on the information obtained from the Prosecution, it appears that this trial will  
8 last or could last, well, four years. As a very preliminary estimate, I can inform the  
9 Chamber that the Defence is very likely to call at least as many witnesses as the  
10 Prosecution, probably more.

11 When I brought this issue up with the Director of Court Services and the Chief of the  
12 Counsel Support Section, I was told not to worry and that any request - any justified  
13 request - would be entertained or addressed.

14 What I would like to avoid, Mr President, is to run out of resources and then having  
15 to face a deadlock situation between the Defence and the Registry. Accordingly, I  
16 respectfully request the Chamber to invite the Registry to address this situation  
17 sooner rather than later.

18 This concludes, Mr President, my observations regarding trial preparations.

19 Thank you.

20 PRESIDING JUDGE FREMR: Before I hand over the floor to Ms Samson, maybe I  
21 briefly will comment issues 2 and 3. As to the 3, as you might know even in the past  
22 I think this Chamber devoted high attention to the issue of resources and we will  
23 continue in that.

24 As concerns your second issue, I really appreciate that you opened those practical  
25 issues, how the trial itself should be conducted now, and I can promise that we will

1 very likely devote some part of our upcoming status conference to this issue as well.

2 And now I would like to ask Ms Samson to comment briefly at the first item from the  
3 last, Mr Bourgon's submission.

4 MS SAMSON: Thank you, Mr President. The first issue in this last submission has  
5 to do with the witnesses, witness order. As I understand the Defence's submission,  
6 they're looking for a witness list and order for prior to the break, what would be  
7 anticipated to be the summer recess break, two months prior to the start of trial, that  
8 in effect would be 2 April. We certainly would endeavour to provide it as soon as  
9 possible. I think 2 April is very soon. We would be able to provide it one month  
10 prior to the start of the trial. If we have it earlier, we would be happy to provide it  
11 earlier, but at this moment I cannot commit to that. One month prior to the trial is  
12 what we would submit.

13 PRESIDING JUDGE FREMR: Thank you.

14 One last additional question on disclosures just to Mr Bourgon, to Defence.

15 Mr Bourgon, the Chamber notes that the Defence also has certain disclosure  
16 obligations arising under Rule 79, I mean those which relate to the Defence of alibi  
17 and to other specific defences. We are not aware at the moment of any such  
18 disclosure having been made in this case. So without prejudice to the provisions of  
19 Rule 79(3), is it correct to understand that the Defence does not intend to raise such  
20 defences?

21 MR BOURGON: Thank you, Mr President. I cannot answer this question in the  
22 affirmative; however, I say that it is very unlikely in that we are working on these  
23 issues. So without prejudice to a final decision at this time this is not our intention.  
24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: Thank you very much.

1 And now I would like to move to a further item on our agenda, which is agreed facts.  
2 At the previous status conference it was noted -- Ms Pellet, you have the floor, please.  
3 MS PELLET: (Interpretation) I'm sorry, Mr President. I didn't intend to interrupt  
4 you, but we also have a few observations to make on the issue that is being discussed.  
5 Thank you.  
6 Now, regarding disclosure, this is also a very important point when it comes to  
7 preparation on behalf of the victims. We simply want to point out to the Chamber  
8 that if your decision on the participation of victims, that is of the 6 February somehow  
9 solved part of the disclosure problems regarding legal representatives, the issue has  
10 not yet been completely solved. The rather frightful situation described by  
11 Mr Bourgon and regardless of the statistics, be it those of the Defence or the  
12 Prosecution, we have a particular problem because as far as I am concerned, namely,  
13 legal representative for former child soldiers, I have only had access to 57 documents  
14 of the 12,416 documents mentioned by the Defence.  
15 I think that, Mr President, and your Honours need to understand that it is crucial for  
16 us to have access to these documents to be able to represent the interests of victims.  
17 The Prosecutor has informed us today that CMS has been requested to grant us access  
18 to all the documents, but that is not yet the case, and we want to just bring this to the  
19 attention of the Bench.  
20 Furthermore, and because you mentioned it, Mr President, you talked about the last  
21 disclosure from the OTP, there was an indication that CMS was going to be instructed  
22 to proceed in a certain manner, but we did not have access to the confidential annex  
23 which is only available to the Prosecutor and to the Defence. And I think that this  
24 does not comply with your decision relating to the participation of victims.  
25 We are unaware of the reason and the legal basis for which the annex was classified

1 as confidential ex parte. So these are the points we want to raise with the Bench for  
2 clarification so that you may also take into account the interests of the legal  
3 representatives of victims. Thank you, Mr President.

4 PRESIDING JUDGE FREMR: Ms Pellet, thank you for bringing those important  
5 issues to our attention. And I can confirm that we will consider it thoroughly.  
6 Thank you.

7 So as I indicated now we are going to move to agreed facts issue. As I already said  
8 at the previous status conference, it was noted that the parties would aim to enter into  
9 discussions relating to agreed facts in January. The Chamber of course noted the  
10 Defence's caveat as to the potential interrelationship between disclosure and agreed  
11 facts. However, the importance of concluding discussions on agreed facts before the  
12 Prosecution has to file the final version of its lists of witnesses and evidence is also  
13 noted.

14 So, Prosecution, could you update us whether progress has been made on this area?

15 MS SAMSON: Yes, your Honour. It certainly will not be possible for the agreed  
16 facts issues to be dealt with prior to the Prosecution's deadline for its list of evidence  
17 and list of witnesses, but then we will make adjustments if necessary after that.

18 The Prosecution and Defence were able to meet and sit down to have what I would  
19 describe as a preliminary discussion and setting of a timetable for agreed facts, and  
20 we have a proposal for the Chamber which would see the Prosecution providing a list  
21 of potential agreed facts to the Defence on 3 April and the Defence responding on 1  
22 May. And in that way it would hopefully provide the Defence with sufficient  
23 opportunity to be able to make meaningful contributions after reviewing the  
24 disclosed material and still allow us to incorporate any changes into the witness list or  
25 the list of evidence in some capacity.

1 PRESIDING JUDGE FREMR: Mr Bourgon, could you react on this proposal made  
2 now by Ms Samson.

3 MR BOURGON: Thank you, Mr President. As mentioned earlier, although the  
4 Defence is interested and willing to take part in the agreed facts exercise, and the fact  
5 that we believe in the benefit of this exercise, and although we've said before that we  
6 would likely be able to begin addressing this issue in January, the present situation is  
7 such that, as mentioned by my colleague, this is currently neither possible nor  
8 feasible.

9 Mr President, it would be irresponsible for the Defence to embark on the review of  
10 agreed facts or possible agreed facts without having first reviewed the evidence,  
11 documentary and testimonial, the Prosecution intends to rely on at trial. We still  
12 believe in the benefit of agreed facts, and we hope that it will be possible to embark  
13 on such an exercise at a later time. For the time being, however, the dates mentioned  
14 by the Prosecution are dates upon which that we agreed upon, which are 3 April to  
15 get a list of potential agreed facts and we would respond by 1 May.

16 Now, agreed facts, Mr President, is only -- not only goes one way, it goes both ways.  
17 So we also intend to propose a list to the Prosecution of agreed facts. But we were  
18 not able to meet this schedule and to propose to the Prosecution a list by 3 April.

19 So we simply say that we hope that the Chamber is not expecting too much, because  
20 I would be misleading the Chamber if I would tell you, Mr President, today that yes,  
21 we will have agreed facts by a certain date. It is a difficult exercise regardless of the  
22 benefit, especially without having seen the evidence. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think we got the point  
24 and I think that we would appreciate, as you indicated it, this process of negotiation  
25 on agreed facts would be mutual. Now, please, Ms Pellet. Sorry for omitting you.

1 MS PELLET: (Interpretation) I'm sorry, Mr President.

2 PRESIDING JUDGE FREMR: Sorry, because you are sitting in a rather  
3 uncomfortable angle to me, so it's --sorry.

4 MS PELLET: (Interpretation) I am also sorry, Mr President.

5 Now, on the issue of agreed facts, we are only aware of these discussions when they  
6 are raised in status conferences as we have already pointed out to you at previous  
7 status conferences because legal representatives are never involved in those  
8 discussions. Once again we want to place this before you and point out that these  
9 are very important discussions for the legal representatives of victims if we are to do  
10 our job properly as well.

11 Mr President, you see, agreed facts are expressly dealt with under Rule 69 of the  
12 Rules, which allows the Chamber to consider such facts as agreed, except where they  
13 deem that the facts are supposed to be more elaborated upon in the interest of justice  
14 and specifically in the interest of the victims. For those reasons we therefore wish to  
15 ask that where agreed facts are established between the parties, that such facts should  
16 also be an opportunity for us to make comments before you come to any decisions,  
17 Mr President. That's my submission. Thank you.

18 PRESIDING JUDGE FREMR: Thank you very much.

19 So there is -- there are no further comments on this issue, so we now can move to the  
20 next one, which is joint instruction of expert witnesses.

21 Similarly, in relation to the potential joint instruction of expert witnesses, we note that  
22 the deadline for disclosure of the Prosecution's final witness list is 2 March 2015, as  
23 has already been mentioned, and is 17 April 2015 for disclosure of any expert witness  
24 reports.

25 So, Prosecution, could you please provide an update on whether progress has been

1 made on this matter?

2 MS SAMSON: Yes, your Honour. The Prosecution and Defence met to discuss the  
3 possibility of jointly instructing experts. We were unable to reach final conclusions,  
4 however, and we've agreed subject to your Honours' approval that we meet again on  
5 16 March with a view to seeing whether or not that would be possible. I note,  
6 however, that given the deadline for the Prosecution to be submitting its expert  
7 reports by 17 April, meeting on 16 March may make it quite unlikely that we would  
8 be able to agree to jointly instruct experts in that deadline. We will nonetheless meet  
9 and see what's possible, but I'm not hopeful that we will have much by way of joint  
10 instruction experts.

11 PRESIDING JUDGE FREMR: Thank you.

12 Mr Bourgon, any comments on that?

13 MR BOURGON: Very briefly, Mr President. The situation is as illustrated by my  
14 colleague. Discussions took place, but due to the state of disclosure and the work to  
15 be done before trial, it is very difficult for us to play a meaningful role in any  
16 discussions on the joint instruction of experts.

17 My colleague mentioned that we would meet again on 16 March. I had a  
18 different -- I thought that they would provide us with a synopsis on 16 March. But  
19 maybe my notes are wrong. So definitely 16 March is a date that I have in my  
20 calendar to continue discussions on the joint instruction of experts.

21 Of course at this point in time the Defence does not know what experts it would call  
22 or what experts it considers would be necessary. So unless we first see what the  
23 Prosecution intends to put forward or how many experts they intend to call and what  
24 these experts would be asked in terms of their expert opinion, it is very difficult for us  
25 to embark on this exercise.

1 During our discussions, my colleague did mention a number of experts that they  
2 would likely call, and there were seven, possibly eight, based on the list that I have  
3 here. I don't think there's a need to go over this list. But it is very important for us  
4 to have an idea of where the Prosecution is going and then if at all, if we can, give  
5 joint instructions, then we will do our best to do so, but this one is even I would  
6 respectfully say even further than the issue of agreed facts based on the current state  
7 of disclosure.

8 Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Thank you very much.

10 Ms Pellet, you have the floor.

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

12 Once again, I'm sorry to be outside of your field of vision, but once again, let me -- let  
13 me say that regarding instructions regarding experts I want again to point out that the  
14 legal representatives of victims were not involved in the process of designating legal  
15 witnesses. We, however, wish at least to be informed of the results of the  
16 consultations between the OTP and the Defence for the same reasons mentioned  
17 above, namely that the relevance of the scope of expertise suggested could be  
18 extremely relevant to the personal interests of victims whom we represent.

19 This may also make it possible if we are aware of this information to be more effective  
20 in our participation and in guaranteeing the legal interests of our victims during the  
21 proceedings.

22 I, therefore, support this request and recall that the legal texts of the Court explicitly  
23 provide to the victims the right to participate in this process and I refer to Regulation  
24 44 of the Regulations of the Court.

25 Furthermore, the jurisprudence of the Court is quite unanimous on this point, namely

1 that legal representatives of victims were authorised to participate in this process in  
2 the Lubanga case, in the Bemba case and in the two Kenya cases.

3 Thank you, Mr President.

4 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet. Obviously we will  
5 thoroughly consider all three items you have mentioned, but maybe - I'm thinking out  
6 loudly - would it be maybe good if you would consider making a written submission,  
7 just, you know, cumulating all aspects you have mentioned and also containing  
8 maybe some more detailed argumentation and jurisprudence. I think it would be  
9 beneficial for the Court and for you as well.

10 MS PELLET: (Interpretation) Thank you, Mr President. We will comply, but if  
11 you were to give us a time frame, Mr President.

12 PRESIDING JUDGE FREMR: I think three weeks I think will be enough.

13 Now, there are no further comments I see. No. So we will move to further item  
14 which is in situ hearings specifically in the context of the opening statements and on  
15 the basis of the report filed by the Registry on 2 February 2015.

16 Now, I have to inform public watching this hearing that as a preventive measure, the  
17 Chamber will now move into private session for discussion of this agenda item,  
18 which means that you will not be able to hear us for some time which I estimate  
19 something between 15, maybe 20 minutes, but then we will return back to the mode  
20 of public session and I will try to summarise outcomes of this part of our status  
21 conference briefly, but, which is important to emphasise, but respecting private  
22 character of this discussion.

23 So please, court officer, now move to private session, please.

24 (Private session at 10.55 a.m.)

25 (Redacted)

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Status Conference

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10 (Open session at 11.21 a.m.)

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

12 PRESIDING JUDGE FREMR: Thank you.

13 So we are back in the public session. I would like to just briefly summarise the  
14 content of the previous private session.

15 So the Chamber has heard the submissions of the parties, the participants and of the  
16 Registry in relation to a proposal for the hearing of opening statements in this case in  
17 situ.

18 The Chamber notes that it is necessary for the parties to receive more specific details  
19 in due course before any firm decision to hold in situ hearings is made. However,  
20 the next step would be the making of a recommendation by this Chamber to the  
21 Presidency to change the place of sitting under Rule 100 of the Rules of Procedure and  
22 Evidence if -- and it's a decisive "if" -- it is thought appropriate to do so taking into  
23 account the views of the parties we have listened to today, participants and the  
24 Registry.

25 And now we turn to the three additional agenda items proposed by the Defence.

1 The first one is the submission of the Prosecution's pre-trial brief. We recall that the  
2 Chamber had directed that the pre-trial brief be filed three months in advance of the  
3 trial commencement date -- that would be a filing deadline of 2 March 2015. The  
4 Prosecution has since filed their request for a seven-day, seven-day extension of the  
5 time limit. It is their filing number 454. On 13 February 2015, the Chamber notified  
6 the parties and participants that it wished to receive oral responses to this motion.  
7 The Chamber will therefore hear any such responses now, before moving to the  
8 matters which the Defence wished to raise in relation to the pre-trial brief.

9 So, Prosecution, do you have anything to add to your written submission?

10 MS SAMSON: No, your Honour.

11 PRESIDING JUDGE FREMR: Okay. Mr Bourgon?

12 MR BOURGON: Thank you, Mr President. The Defence opposes the Prosecution  
13 motion to be granted a seven-day delay for the filing of its pre-trial brief. The main  
14 reasons for this is that the Prosecution has not shown good cause. The Prosecution  
15 has articulated the test in its filing, the test which helps the Chamber determine -- to  
16 determine whether a party has met the good cause threshold, but the Prosecution has  
17 failed to meet this test.

18 Investigations in this case have been ongoing for nine years. Disclosure deadlines  
19 are well known to the Prosecution and have been well known to the Prosecution for a  
20 long time. Although the Chamber only ordered the submission of a pre-trial brief in  
21 its decision, its recent decision on the Document Containing the Charges, both 2 June,  
22 start date of the trial, was known to the Prosecution as well as the three months' delay  
23 for the submission of a pre-trial brief, which has been our -- a common theme raised  
24 by the Defence since the beginning. The work necessary when taking a statement,  
25 what goes along with the taking of a statement by the Prosecution is also something

1 that is not new and well known to the Prosecution.

2 From the information available and in the Prosecution filing there appears five new  
3 witnesses or five statements which are the main reason which the Prosecution is  
4 seeking a delay. All five witnesses, their statements will have been taken -- will be  
5 taken in February. It is, thus, our submission that the Prosecution is in possession of  
6 all necessary information to file a pre-trial brief pursuant to the order of the Chamber.

7 The Prosecution's argument that the delay brings minimal prejudice to the Defence  
8 brings two comments: Firstly, this is unrelated to the issue of good cause, whether  
9 there is prejudice or not. Secondly, we are aware that the Prosecution was well  
10 aware that it was a Defence submission that the pre-trial brief that we wanted three  
11 months before a trial can begin.

12 Now, especially in the circumstances of this case, and that is why I went out of my  
13 way to show the Chamber this present situation regarding disclosure, for us every  
14 day matters, and seven days for us is very important. Every day between the  
15 moment we get the final -- the pre-trial brief and the date the trial begins is important.

16 It appears as though the Prosecution, to use an old saying, they want their cake and  
17 they want to eat it too. They want the delay, but they don't want to delay the trial.

18 They want to put the burden on the Defence to ask for a delay of the trial. They  
19 want seven day, but they say we can still start the trial in time for 2 June . You can't  
20 do both.

21 We'd like to recall, Mr President, that the Defence has on various occasion  
22 emphasised the need for the pre-trial brief three months in advance, but also  
23 emphasised that we are willing and we hope to be able to begin this trial on 2 June.

24 We also recall that this three months' delay is not a surprise, that this fact that the  
25 Prosecution has agreed in its submissions previously in orally before this Chamber to

1 submit a pre-trial brief three months before the start of trial.

2 At one point in the Prosecution filing there is a mention that Defence would have  
3 agreed to a two-months' delay, but that is really misleading, Mr President, because  
4 when we did say that we could have a pre-trial brief with only two months before  
5 trial, at that moment the option that was before the Chamber was a three-document  
6 option, was a Document Containing the Charges, a Document Containing the  
7 Charges with footnotes and then a pre-trial brief. Then of course the delay could  
8 be -- could be shorter. But we cannot say that the pre-trial brief is just an additional  
9 tool. It is an essential tool for the Defence. It is something that is absolutely  
10 necessary so that we know where the Prosecution is going.

11 In conclusion, Mr President, and then -- we believe that the Prosecution -- the motion  
12 should be denied and that the Prosecution should file its pre-trial brief on 2 March.

13 And, of course, in the event that they have additional information that comes in their  
14 possession at a later time, then they can amend their pre-trial brief. As a matter of  
15 fact, the way things are going, if there are continuously new witnesses coming in,  
16 they will have to amend their pre-trial brief.

17 Now, all this put aside, Mr President, had the Prosecution requested a delay of seven  
18 days and have had the courage to say this will delay the trial by seven days, we  
19 would not have opposed that motion. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

21 Before giving the floor to Ms Samson, I would like to ask legal representatives  
22 whether they would like to comment on that?

23 MR SUPRUN: (Interpretation) Mr President, we do not oppose the motion of the  
24 Prosecutor. Thank you.

25 PRESIDING JUDGE FREMR: So, Ms Samson, the floor is yours.

1 MS SAMSON: Thank you, Mr President.

2 We have set out quite comprehensively what our position is in relation to the request

3 as well as the grounds that justify it in our view. And at the end of the day,

4 your Honour, we are looking at an extension of seven days, which would still provide

5 the Defence with a full 12 weeks before the start of trial if the Chamber grants this

6 motion.

7 It would allow the Chamber, the parties, the participants to have a fuller view of what

8 the Prosecution's case is with reference to the most readily and comprehensively

9 available evidence. Continually updating a pre-trial brief is not an ideal scenario.

10 It seems in our view in the interests of everybody on the basis of the good cause that

11 we've shown to permit seven additional days for us to provide a better document.

12 In terms of notice to the Defence, surely the complaint cannot be that they're unaware

13 of what this case is to date given the extensive material that they have in their

14 possession, not only the underlying documents already provided, but they also have

15 an in-depth analysis chart analysing evidence I acknowledge from prior to the

16 confirmation hearing, but nonetheless a voluminous amount of materials up to that

17 point.

18 They have submissions at the confirmation hearing with detailed footnote references

19 to our evidence as well. And what we're asking the Chamber to do is to allow us to

20 provide that same level of detail with documents that have been collected more

21 recently. Thank you.

22 PRESIDING JUDGE FREMR: Thank you very much.

23 Now I have to deliberate with my colleagues.

24 (Trial Chamber confers)

25 PRESIDING JUDGE FREMR: So we have been ready to issue this decision or rather

1 indicate that would be mutual agreement between parties, which is not the case, so  
2 we have to consider thoroughly objections made by Defence and we will rule in due  
3 course. We are aware of the urgency of the issue, so I think we will rule very soon  
4 on that.

5 Now, we have to move to next item -- I'm sorry, Mr Bourgon.

6 MR BOURGON: I apologize, Mr President, but my colleague raised something new  
7 in her submission that I wish it is important for me to reply before the Chamber rules  
8 on the matter.

9 My colleague said that we have already access to their case and with detailed -- with  
10 footnotes as part of the confirmation hearing. Mr President, the confirmation  
11 hearing, if you look at every -- all submissions put together, there are 116 documents  
12 approximately that are used constantly over and over again. The case for the  
13 Prosecution that we now have is 7,000 documents. What are they doing between 116  
14 documents and 7,000 documents is what we'd like to know in a pre-trial brief and is  
15 why we need the three months full in order to be able to address the pre-trial brief  
16 and be ready for trial. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Okay, we will take it into account.

18 Next item is witness preparation.

19 The Prosecution has filed a request for witness preparation which the Chamber will  
20 receive written responses to and will rule on in due course. However, we  
21 understand that the Defence wishes to address this matter briefly today.

22 So, Defence, please proceed.

23 MR BOURGON: Thank you, Mr President. All we wanted to really say today is  
24 that we will respond in writing within the 21 days' deadline, that this is a very  
25 important issue to us. We came very close to an agreement. There are two

1 outstanding issues: The use of videos and the use of proofing notes. And we will  
2 put our arguments in writing, and that's what we wanted to say, and maybe to add  
3 that the fact that one such protocol exists in the Kenya case does not mean that this is  
4 the ultimate and the best scenario. That is what we will make and put forward in  
5 our submissions. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Thank you. And I appreciate optimistic perspective  
7 you gave us.

8 And any comments from -- no, I don't -- okay.

9 Is it not the case we can move to the final issue, since the Defence wished to address  
10 the modus operandi and content of Chamber communications with the parties,  
11 participants and Registry.

12 So, Defence, again please you have the floor.

13 MR BOURGON: Thank you, Mr President. The Chamber issued a decision  
14 yesterday which is ex parte which I'm not able to refer to today, but I want to put on  
15 the record that the Defence is grateful for that decision which answers many of our  
16 concerns. That being said, Mr President, the Chamber has previously stated, and  
17 that was at the status conference on 11 September 2014, that whenever the parties are  
18 going to address the Chamber by way of email and not by way of official filing, that  
19 such email should not contain any substantive matters unless urgent action is  
20 required.

21 We fully agree with that and we concur with what the Trial Chamber stated on 11  
22 September. We also recognize the benefit of being able to address the Trial Chamber  
23 by way of email. This is very helpful. I think it saves a lot of time and it's an  
24 operational way to proceed. We fully recognize that.

25 However, in the sake of transparency and in the interest of justice, we'd like to

1 propose, Mr President, that any correspondence between any party or the Registry  
2 with the Chamber be copied to everybody, and if it cannot be this way, then it should  
3 be an official filing.

4 This would allow us to -- if we have an email, to react to the email, and if we do not  
5 have the email and it is a confidential filing, then at least to ask for reclassification of  
6 that filing on the basis that we see a number appearing with nothing beside it. This  
7 I think would be in the interest of justice and that's the issue we wanted to raise today,  
8 Mr President. Thank you.

9 PRESIDING JUDGE FREMR: Thank you for this proposal.

10 Any comments from the Prosecution on this proposal?

11 MS SAMSON: No, your Honour, subject of course to situations where there's an  
12 urgent ex parte matter that needs to be addressed by way of an email, but subject to  
13 that, no, no oppose -- no opposition.

14 PRESIDING JUDGE FREMR: Legal representatives to this proposal?

15 MS PELLET: (Interpretation) Thank you, your Honour. No, as long as the legal  
16 representatives of victims are not forgotten in the various communications, in  
17 accordance with your decision regarding the participation of victims. Thank you.

18 PRESIDING JUDGE FREMR: Thank you.

19 Does Registry have any comment on this proposal? I see no, no comments. Okay.  
20 So we will again consider this proposal and it seems that there is no objections from  
21 any party. We will think about that.

22 So before I close this status conference, are there any further comments, questions,  
23 submissions? I see this is not the case.

24 So that brings us to the conclusion of the hearing today. The Chamber will schedule  
25 a further status conference in the coming months, I would estimate it may be -- it

1 could be probably in April ideally, to ensure the continuing smooth management of  
2 trial preparations.

3 I would like now to thank both parties and participants for their active approach,  
4 supporting I hope our common effort to start trial as we planned.

5 I also thank the court officer and other staff for their assistance in and around the  
6 courtroom.

7 Thank you and now the Court will rise.

8 THE COURT USHER: All rise.

9 (The hearing ends in open session at 11.39 a.m.)