

1 International Criminal Court
2 Trial Chamber VI
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 Chang-ho Chung
6 Status Conference - Courtroom 2
7 Tuesday, 5 December 2017
8 (The status conference starts in open session at 3.23 p.m.)
9 THE COURT USHER: [15:23:36] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [15:23:56] Welcome back. I see there are some
13 changes in the composition of the teams. So I will start with update on appearances.
14 Prosecution first.
15 MS SAMSON: [15:24:24] Good afternoon, Mr President. This afternoon for the
16 Prosecution are Mr James Pace, Ms Selam Yirgou and myself, Nicole Samson.
17 PRESIDING JUDGE FREMR: [15:24:31] Thank you, Ms Samson.
18 Defence, please.
19 MR BOURGON: [15:24:36] (Interpretation) Good afternoon, Mr President.
20 Representing Mr Bosco Ntaganda for this Status Conference, Chloé Grandon,
21 Marlène Yahya Haage, Marie Mescam, Isabelle Martineau, Sandrine De Sena and
22 myself, Stéphane Bourgon. Thank you.
23 PRESIDING JUDGE FREMR: [15:25:01] Thank you, Mr Bourgon.
24 And Legal Representatives of Victims.
25 MS PELLET: [15:25:07] (Interpretation) Thank you. The former child soldiers

1 are represented by Vony Rambolamanana and myself, Sarah Pellet, for the OPCV.

2 MR SUPRUN: [15:25:26] (Interpretation) For the victims of the attack, there is no
3 change since this morning. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: [15:25:33] Thank you, Ms Pellet. Thank you,
5 Mr Suprun.

6 As you are aware, during the status conference convened by the scheduling order
7 with filing number 2131, we will address issues relating to the timeline for the
8 conclusion of the presentation of evidence.

9 And as the status conference was initially convened for Friday, then for Wednesday,
10 the Chamber is grateful indeed to everyone for the flexibility as to this earlier
11 scheduling. So thank you very much for your indulgence.

12 With respect to the agenda, I recall that there are three main items: First, the
13 timeline for the completion of the Defence presentation of evidence; second, potential
14 presentation of further evidence following this conclusion; and third, indications as to
15 the expected time needed for the submission of closing briefs and the presentation of
16 the oral closing statements and their respective expected length.

17 Finally, I recall that in the scheduling order, the parties, participants and the Registry
18 were invited to inform the Chamber via email by 1 December 2017 whether they
19 wished to raise any other particular issues. I note that the Chamber has not received
20 any submissions of this kind from the parties and participants, but it will still
21 consider addressing any further issues that may be raised towards the end of this
22 hearing. However, I note that we only have approximately -- no, we have a little bit
23 more -- no, approximately one hour for the present status conference and thus
24 encourage everyone to be as concise as possible.

25 Now I would like to start with the first item, which is the timeline for the completion

1 of the Defence presentation of evidence. For that purpose, I will first give the floor
2 to the Defence in order to update us on the current status of the Defence presentation
3 of evidence and any remaining evidence to be presented before the conclusion of its
4 case.

5 Mr Bourgon, you have the floor.

6 MR BOURGON: [15:28:19] Thank you, Mr President. I will be brief. We have
7 one more witness that we will be calling this week, namely witness D-0251.

8 Following which we are in the hands of the Chamber regarding a potential ruling for
9 Witness D-0080, who could appear in the sixth block, depending on the situation as it
10 evolves in another location.

11 This -- should this witness be called to testify, then the Defence will also be relying on
12 Witness D-0207. However, should that witness not be called to testify - I'm talking
13 about 0080 - then in such a case, we would have no further witnesses to be heard in
14 this case, which, depending on the result of the request for documents to be admitted
15 via the Bar table, and this would be the end of the case for the Defence, Mr President.
16 Unless you have more questions, this is the status as we speak today. So 251 for sure
17 and then we are in your hands regarding witness 0080. We maintain, of course, our
18 request. We want this witness, but 0207 depends on what happens with 0080.

19 Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [15:30:05] Thank you. I appreciate your concise and
21 clear submission.

22 You know, just one short comment from my part. You also have been, I guess,
23 updated that there is still strong effort from the Registry part to incite cooperation
24 which would facilitate testimony of D-80, but still there is no feedback from the
25 requested, the requested State. I think you understood that.

1 MR BOURGON: [15:30:42] Absolutely, Mr President. This is why I mentioned
2 that we do insist on the evidence that can be provided by this witness one way or
3 another.

4 Thank you very much.

5 PRESIDING JUDGE FREMR: [15:30:55] Understandable.

6 Now I will ask first Prosecution and the Legal Representatives of Victims whether
7 they have any observation in relation to the Defence submission on that point.

8 Ms Samson?

9 MS SAMSON: [15:31:13] No, your Honour. Not at this time. We await the final
10 result and final position of the Registry on its efforts to contact the State. And there's
11 not much more for us to submit at this point on the topic.

12 PRESIDING JUDGE FREMR: [15:31:29] Thank you.

13 Ms Pellet?

14 MS PELLET: [15:31:31] (Interpretation) I have no observations on that particular
15 point, your Honour.

16 PRESIDING JUDGE FREMR: [15:31:41] Thank you.

17 Mr Suprun.

18 MR SUPRUN: [15:31:44] No submissions from me either at this stage, your
19 Honour.

20 PRESIDING JUDGE FREMR: [15:31:49] Thank you. It means that we -- maybe
21 one additional question concerning Bar table motion.

22 Mr Bourgon, the Defence already filed a Bar table motion, if my notes are correct, on
23 23 November 2017. And this stage, do you envisage that there will be any further
24 requests for admission of documents from the Bar table and, if so, when would the
25 Defence be in a position to file such a final request?

1 MR BOURGON: [15:32:24] Thank you, Mr President. At this point in time we do
2 not intend to file any further request. All -- I must say, however, that we are still
3 reviewing one source which has proved to be difficult. But our -- right now, our
4 analysis says that there will be no further requests. This source has to do -- and we
5 mentioned this in our request, and this has to do with Radio Candip, Mr President.
6 Thank you.

7 PRESIDING JUDGE FREMR: [15:32:57] Thank you, Mr Bourgon.
8 Now we can move to the second agenda point, which concerns potential further
9 evidence following the conclusion of the Defence presentation of evidence, including
10 rebuttal evidence, if any, and/or witnesses called by the Chamber.
11 In relation to the latter point, I recall that in its order with filing number 2134, the
12 Chamber indicated that it is considering calling Witness P-290. In the same order the
13 Chamber invited the parties and the participants to submit any observations,
14 including on the modalities of the witness testimony such as the order, scope, mode
15 and length of questioning, by 6 December 2017. The Chamber will issue a decision
16 on these matters in due course after having considered the relevant submissions.
17 Concerning potential rebuttal evidence, the Chamber would first like to hear from the
18 Prosecution on a quite preliminary basis whether at this stage and on the basis of the
19 evidence presented by the Defence so far, it considers seeking leave to present any
20 evidence in rebuttal.

21 Ms Samson.

22 MS SAMSON: [15:34:33] Yes, Mr President. The Prosecution is considering
23 rebuttal evidence. We are considering seeking to call potentially one or two short
24 witnesses and also submit several documents through a motion from the Bar table.

25 PRESIDING JUDGE FREMR: [15:34:53] And to be absolutely clear, Ms Samson, if

1 you are saying short witnesses, so your understanding of the term "short" is what?

2 MS SAMSON: [15:35:03] Approximately two hours in examination-in-chief.

3 PRESIDING JUDGE FREMR: [15:35:07] Thank you very much, Ms Samson.

4 Now, Prosecution, do you want to make any comment at this stage on this issue -- not
5 Prosecution, Defence, sorry.

6 MR BOURGON: [15:35:20] Indeed, Mr President, we would like to make a few
7 observation, mostly on timing, because everything else in the calendar is in -- at least
8 in waiting until we know what the Prosecution expects or would like to lead in its
9 rebuttal case.

10 Mr President, the Defence -- or the presentation of the case for the Defence has been
11 very short, has been very focused. There's been no surprise. And as far as we're
12 concerned at this stage, we cannot see any need for rebuttal. But that's too early for
13 us to say this.

14 However, if there was any rebuttal case, there are two issues: The first issue is the
15 calendar, and we respectfully submit that the Prosecution should be invited to
16 provide its request for rebuttal no later than 15 December. This is our suggestion,
17 which is 10 days from now, which would allow the Defence to respond one week
18 after the return from the winter recess. So the winter recess ends on 8 January and
19 we would be able to respond by 15 January, which then at least would give us an idea
20 as to -- as soon as the Chamber rules on the matter, then we know what's going on
21 with this case.

22 So we believe that there should be a strict calendar proposed or put forward by the
23 Chamber with respect to the request for rebuttal case, the response for rebuttal case,
24 as well as a decision so that we know what are the applicable timelines. This is the
25 first issue.

1 The second issue, Mr President, is the necessary time to prepare. Depending on
2 what is or is not approved as part of the Prosecution's rebuttal case, then necessarily
3 the Defence will need some time to prepare and investigate. Again, too early to say
4 what will be required. We don't know if it will be accepted, but as soon as we know
5 what is being proposed, then we can immediately start the work for preparation
6 without waiting for the Chamber's decision so that no time is wasted and we know
7 where to stand and where we are going with this case calendar-wise.

8 These are the observations that I wanted to make at this stage. I understand,
9 Mr President, that the Prosecution normally would say, "Well, we have to wait until
10 the case for the Defence is complete." We would like to avoid this simply for
11 timing-wise. But I will also recall that when the Prosecution's case was still ongoing,
12 with months to go, we were asked to put forward our Defence case. I think the same
13 can be applied to the Prosecution. So the sooner we know what they would like to
14 lead as rebuttal case and the sooner the Chamber decides, then we will know where
15 we stand.

16 Thank you, Mr President.

17 PRESIDING JUDGE FREMR: [15:38:45] Yes, we are aware of that. Ms Samson,
18 could you just make any comment on the-- in fact, Mr Bourgon made proposal about
19 the possible timing of your request for rebuttal, I think he mentioned 15 December,
20 how do you see that?

21 MS SAMSON: [15:39:03] Well, Mr President, Defence actually answered its own
22 submission in that the Prosecution can't be expected to put forward its rebuttal case
23 before the Defence's case is over. We have the right, we submit, to have the totality
24 of that evidence presented prior to our submissions being put forward.

25 Not only, the Prosecution has endeavoured to meet with one individual for whom it

1 will not be able to meet by 15 December to assess the potential information that
2 person may provide. And there is a pending decision that the Prosecution has filed
3 with the Chamber ex parte for which we require a response, respectfully, before we
4 can conclude whether that is a rebuttal point for us or not. So 15 December, in our
5 submission, is not an appropriate deadline. And also, if it were the deadline, then
6 the Defence would need to respond 10 days later, according to the response rules,
7 which is not 15 January. So I don't know that that would any event work very well
8 with them either.

9 But we request to hear the full presentation of the Defence case before submitting our
10 request and, for other reasons, the 15th is not feasible.

11 PRESIDING JUDGE FREMR: [15:40:26] Thank you.

12 And do Legal Representatives of Victims also to express their view on that issue? I
13 don't see such a request. Fine.

14 So I can just say at the moment that we will consider submissions of both parties and
15 we also try to assist and support this proceeding remain expeditious.

16 But at the same time we will, we will make our best to respect procedural rights of
17 both parties.

18 Now the third -- Mr Bourgon.

19 MR BOURGON: [15:41:03] Well, Mr President, we just heard that the Prosecution
20 has submitted an ex parte motion. To us this is a, very much a source of concern.
21 To seize the Chamber at this point in time for a request regarding what evidence they
22 can or cannot lead as a rebuttal point, we believe that this should be an issue that
23 should be dealt with inter partes and certainly not ex parte.

24 Mr President, this is -- we'd like to know what this issue is about so that we can play a
25 meaningful role in deciding whether this is something that can be put forward at this

1 point in time.

2 And regarding my colleague's submission that they want to wait until the end of the,
3 the full end of the case for the Defence, again, Mr President, waiting for this is simply
4 not in line with the manner in which the Chamber has been managing this case so far.
5 The Prosecution can be asked to put forward its request for rebuttal, following which
6 if something arises later on, then they can add to it at a later time. But there's no
7 reason to wait until the end of the presentation for the case for the Defence because
8 this would be waiting until the end of January, because the next block is scheduled for
9 21 January, so it means that the request for the Prosecution would not be filed until
10 February, which means that then we have our 10 days to respond. And then all the
11 calendar, it depends on those dates. So we believe this would be counter-protective
12 and certainly not in line with the right of the accused to an expeditious trial. Thank
13 you, Mr President.

14 PRESIDING JUDGE FREMR: [15:43:07] Ms Samson, do you want to reply to the
15 last submission of Mr Bourgon?

16 MS SAMSON: [15:43:12] I don't feel at this time that there's much additional
17 information that the Prosecution can put forward. We do believe that efficiency
18 dictates that we be allowed to assess the totality of the Defence's evidence prior to
19 making meaningful decisions as to what evidence we would seek so bring in rebuttal,
20 and do a bit now and a bit later does not strike us as maximising efficiency.
21 Thank you.

22 PRESIDING JUDGE FREMR: [15:43:42] Thank you.

23 As I said, we will thoroughly consider submissions of both parties and hopefully we
24 will be able to provide you in due course with clarity on, also on that item.

25 Now we can move to the third agenda item, which concerns the timeline for the

1 submissions of closing briefs. It's a very preliminary issue. And the presentation of
2 the oral closing statements and their respective expected length.

3 Before hearing the parties and participants on this issue, I would like to clarify
4 already at this stage that the Chamber considers it appropriate for the Prosecution
5 and Legal Representatives' closing briefs to be filed first and that the Defence closing
6 brief should be filed at a later stage allowing the Defence to address submissions
7 made in the other briefs, because we can see different approaches in general in
8 jurisprudence.

9 This said, the Chamber would now like to hear submissions from the parties and
10 participants on this matter. We are also interested in what form the parties prefer to
11 reply by way of reply brief, or orally, during the closing submissions.

12 So now I would like to get your submissions on this point, starting with Prosecution
13 again.

14 MS SAMSON: [15:45:20] Thank you, Mr President.

15 Prior to preparing, or while preparing for the status conference, the Prosecution did
16 review the jurisprudence of both the Court here, the ICC, as well as the jurisprudence
17 of the ICTR, the ICTY, the Special Court for Sierra Leone on the very issue that your
18 Honours have raised, which is whether or not the filing of the closing brief should be
19 staggered, Prosecution and Legal Representatives first, or whether the filing should
20 be simultaneous.

21 As the Chamber knows, only one Trial Chamber at this institution has followed the
22 simultaneous approach, which is the Bemba article 70 case, whereas that's -- whereas
23 at the ICTY, the ICTR and the Special Court for Sierra Leone it was standard practice
24 for the parties to filing simultaneously. And in discussing what the Prosecution's
25 position would be today we will put forward that a simultaneous filing would be the

1 most efficient, following on the rationale that was put forward by the Judges in the
2 Bemba Article 70 case, and before that in cases at the ICTR such as the Nizeyimana
3 case. And the rationale that the Judges have accepted in those cases for
4 simultaneous filings is that, one, the parties are not in effect responding to each other
5 in the initial closing brief but, rather, they are putting forward their version of the
6 case based on the evidence that was presented.

7 And in this way both sides, as well as the victims, will be able to put their
8 submissions forward at the same time, which we would propose would be 90 days
9 following the close of the evidentiary phase of the case, and thereafter the parties
10 could be provided with a short supplementary written reply. What we suggest is
11 500 pages in the main brief for the Prosecution and the Defence, and 100 pages in
12 reply; reply 30 days after the initial closing briefs have been filed.

13 And closing argument, although your Honours haven't specifically asked us to
14 address this point yet, closing argument 30 days after submission of the replies.

15 During which time the parties can raise points that are of most importance and
16 salience for the Chamber without rehashing their own arguments afresh. And we
17 submit that four hours for the Prosecution should be sufficient, if we're provided a
18 chance to reply in writing. If we are not provided an opportunity to provide in
19 writing, then we would submit that we wish for six hours for the oral closing
20 argument so that we may address issues in response to the Defence closing brief.

21 As your Honours are very familiar from the Chambers that you've been in previously
22 and the jurisprudence, the right of the Defence to speak last in Rule 141 has not found
23 to be compromised if filings are done at the same time for the closing brief because
24 the Defence will have an opportunity to make closing submissions orally last.

25 Thank you.

1 PRESIDING JUDGE FREMR: [15:49:01] I thank you very much, Ms Samson, for
2 your very detailed statement.

3 Now I'm giving floor to Defence. Mr Bourgon, please.

4 MR BOURGON: [15:49:12] Thank you, Mr President. The most important issue
5 to the Defence in this area is the sequential approach, and that was the -- this is what
6 I would like to briefly expose to the Chamber.

7 Now, I heard the Chamber's preference at this stage for the Prosecution and Legal
8 Representatives to file first, with the Defence second. Should that remain as it is, we
9 are satisfied and I could not -- and I could leave it at that.
10 But given the submissions presented by my colleague from the Prosecution, I have to
11 say that I respectfully disagree with what --

12 PRESIDING JUDGE FREMR: [15:49:57] Mr Bourgon, sorry to interrupt you, please
13 elaborate on that because, as we indicated, it's our current, you know, idea. We also
14 anyway will consider submission made by the Prosecution, so feel free to elaborate on
15 that.

16 MR BOURGON: [15:50:14] Thank you, Mr President.

17 My colleague mentioned on the basis of two decisions that, in respect of final briefs,
18 the parties are not responding to each other. I wholly disagree with that. One
19 party in this room has a burden of proof; one party is responding to the burden of
20 proof. The burden of proof, we need to know the case that the accused has to meet.
21 And this is why before the ICC a different approach was adopted as opposed to the
22 approach at the ICTY, and the ICTY had a mixed approach.

23 The idea, Mr President, is knowing the case the accused has to meet. What is the
24 OTP case? Well, when we look at the case for the Prosecution at pretrial and we
25 compare with what happened between the pretrial and the final decision that was

1 rendered by the Pretrial Chamber, the case already was very different. That decision
2 was further changed when the trial began because there was an updated Documents
3 Containing the Charges that was submitted at the request of the Chamber.

4 The updated Documents Containing the Charges is a departure from the, from the
5 case that was presented at pretrial.

6 More importantly, the Prosecution, in our respectful submission, completely changed
7 its case during the presentation of evidence. What do we have left from the

8 beginning? Well, we have two major attacks; child soldiers and rape. Those four
9 things have not changed. But what is in support of these four things has changed

10 dramatically. If we look at the number of witnesses that were added by the

11 Prosecution after the submission, after the Confirmation of Charges, and if we look at

12 the witnesses which appear, who appear in the Prosecution's Pre-Trial Brief, now, that

13 should be what we need to answer, but I invite the Trial Chamber to look at the

14 Pre-Trial Brief that was submitted in this case, it was I believe sometime in

15 April of 2015.

16 And when we look at the Prosecution's Pre-Trial Brief and we look at the evidence

17 that was led by the Prosecution and the manner in which the evidence was led, we

18 come up with a conclusion today that we no longer know where we stand.

19 Mr Ntaganda does not know exactly what evidence the Prosecution still intends to

20 rely on. Some witnesses in the Pre-Trial Brief were not called. Witnesses who were

21 I believe not in the pre-trial brief were called, and documents in the Pre-Trial Brief,

22 plenty of documents in the Pre-Trial Brief were not submitted in evidence. So today

23 Mr Ntaganda is in a position where he is, well, what's the case that we have to meet

24 according to the Prosecution? Because they have the burden of proof and we must

25 respond to that.

1 In addition to that, Mr President, we respectfully submit that the modes of liability
2 before the ICC are still very much in flux and the modes of liability require the
3 Prosecution to put forward how they intend to argue that they have met their burden
4 of proof beyond a reasonable doubt based on the modes of liability. Once we have
5 the Prosecution's submission, then of course we will be in a position to respond.
6 The evidence we have, but the Prosecution's case we don't. And that is why we
7 respectfully submit that this is an entirely new case as opposed to what was at the
8 beginning when we first met the honourable Judges of this Chamber. In order for us
9 to know, then the Prosecution must submit first and we should be given the
10 opportunity to respond thereafter.

11 The practice before this Chamber in the three trial judgments that we have, as a trial
12 judgment, not that the Bemba Rule 70 is not a judgment, but it's a judgment for
13 Rule 70, it is not a judgment on the merits further to charges laid by the Prosecution
14 based on a situation.

15 So, Mr President, if we -- we say that we should follow the approach that was
16 followed before this Court up until now and that there's certainly no reason to depart
17 from this standard.

18 I move to the second issue regarding the issue of timing. For us, we've done our
19 homework, as the Prosecution has done, to look at how much time should be given to
20 the parties.

21 We, in our respectful submission, Mr President, the Prosecution should be given eight
22 to 10 weeks to file its brief and the Defence should follow with its brief eight to
23 10 weeks later.

24 We propose and say, submit, that it is in the interests of justice to have written
25 responses or reply, regardless of the name we call this document, but there should be

1 a manner of response with the Prosecution going first two to three weeks later and
2 the Defence going next two to three weeks later.

3 With respect to oral arguments, we respectfully submit, Mr President, that it is
4 important to have at least some time between the last written filing, the last written
5 submission, and the oral arguments. If only for the Chamber and the parties and the
6 participants to fully take stock of what's in there so that we can have a meaningful
7 oral argument as opposed to simply presenting a document.

8 We believe and we say that these oral arguments are very important in order to
9 present to the Judges and to explain, and this goes also for the Prosecution in
10 allowing the Prosecution to explain how they see that those modes of liability make it
11 that they have met their burden of proof, because we will argue how and why the
12 modes of liability should apply. Part of this can be done in writing, yes, but most of
13 it, it's very important for us to explain to the Chamber how we say that the modes of
14 liability do or do not apply.

15 With respect to oral arguments, we believe, Mr President, that eight hours for the
16 Prosecution, eight hours for the Defence, I do not have a suggestion for the
17 participants, but eight hours for Prosecution, eight hours for Defence. There's one
18 accused only. The situation is the same for both. The only thing that is different is
19 the burden of proof.

20 Now, where we do also stand apart from the Prosecution is the length of the brief.
21 In our submission, briefs should be no more than 250 pages on both sides and not 500
22 pages. This is way too long. If we get the proper time and if we do the sequential
23 approach, there's no reason that we cannot argue this case in 250 pages, making your
24 duty, Mr President, much easier with a shorter brief, and of course making our job
25 more complicated but more focussed and in the interests of justice. Responses or

1 reply, as I've mentioned, depending on how we call the document should be no
2 longer than 75 pages, which means that by the end the Chamber will be with 650
3 pages on behalf of Prosecution and Defence, and some pages by of course the
4 participants, we don't know how many pages they need, but altogether would be
5 somewhere around 800 or 900 pages as opposed to 1500 pages. We believe that that
6 can make a huge difference when the time comes for the Trial Chamber to deliberate
7 on these issues. And any extension of pages of course should be justified.
8 I think I've answered everything.

9 But all of this, I come back to my earlier point, the starting day is very important. If
10 a starting day is on 1 March we'll be here next Christmas and we'll still be arguing this
11 case. I think there has to be a way to take a sequential approach to respect the rights
12 of the accused but, at the same time, to take a focussed approach and get a ruling.
13 The right on expeditious trial is not only with respect to pushing the trial to go
14 quickly, it is also to get clear submission, focussed submission, timely submission,
15 and a timely judgment.

16 Thank you, Mr President.

17 PRESIDING JUDGE FREMR: [16:00:31] Thank you, Mr Bourgon.

18 Now I move to participants, so for the first floor will be given to the Legal
19 Representative of Former Child Soldiers, Ms Pellet, or you would --

20 MS PELLET: [16:00:46] (Interpretation) I'm sorry, your Honour, but for once
21 could my colleague speak before me?

22 PRESIDING JUDGE FREMR: [16:00:53] No problem. So I'm giving floor to
23 Mr Suprun, representative of the victims of the attacks.

24 Mr Suprun, you have the floor.

25 MR SUPRUN: [16:01:02] (Interpretation) Thank you, your Honour. So I'm

1 going to start and my colleague is going to continue. Where it concerns the
2 presentation of the final briefs, the closing briefs, where it concerns the victims of the
3 attacks that I represent, I utterly support the position of the Office of the Prosecutor,
4 according to which the closing briefs will be done in two parts with two teams of
5 Legal Representatives and that they must be filed in a simultaneous manner, at the
6 same time, what is in the interests of justice. I'm not going to repeat the
7 jurisprudence that my colleague from the OTP has already outlined, other than to say
8 that the closing submissions must be filed in a simultaneous way. But I would also
9 like to stress a specificity in this case which we have and which calls for this means of
10 presentation of closing submissions. In particular, my Defence colleague indicated
11 that the Office of the Prosecutor had completely changed its case since the
12 Confirmation of Charges. While this was a surprise for the Defence, I would like to
13 say that I would rather stress that the presentation of the case by the Defence was,
14 rather, the surprise, not only for victims but also, I would imagine, for the Office of
15 the Prosecutor. And this goes -- well, because the Defence chose the strategy
16 presenting evidence which, according to the victims that I represent, there were many
17 elements which are not relevant for the charges contained in the Document
18 Containing the Charges, but indeed it was a surprise for the participants and for the
19 Office of the Prosecutor.

20 Now, because it's about this specificity of the case I respectfully submit that the
21 closing briefs of both parties and the Legal Representatives of Victims should be done
22 simultaneously.

23 I also support the proposal of the Office of the Prosecutor that both parties must have
24 500 pages in order to make their written submissions.

25 Where it concerns the Legal Representatives, I would also like to point out that this is

1 a very complex case, it's the largest case that we've had till today. We have 18
2 charges, so among the cases that have been finished, it is the largest case and this,
3 necessarily, involves more time than in other cases where it comes to the preparation
4 of closing submissions. And it also requires more possibilities and capacity for the
5 parties and participants and more pages in order to be able to express arguments on
6 each fundamental aspect of this case.

7 Of course there is jurisprudence in the Court from other cases which is more precise
8 when it comes to the number of pages that are accorded to the Legal Representatives,
9 and I will just mention some examples: In the Lubanga case, for example, when it
10 concerns the charges the Legal Representatives were accorded 50 pages, each team.
11 For the written submissions in the Katanga case the Legal Representatives were
12 allocated 100 pages for closing submissions. And Bemba, there were just five
13 charges, they were allotted 150 pages.

14 In our case there were 18 charges and, because the victims of the attacks that I
15 represent, they are directly concerned and personally concerned by 16 charges, I
16 respectfully request, given the complexity of this case, that where it concerns the
17 victims of the attacks who are concerned we would ask to have 250 pages for the
18 written submissions.

19 For your information, your Honour, your Honours, we consulted our colleague and
20 we agreed that the two teams should have the same number of pages and why? My
21 colleague from the Legal Representative would have to present arguments on one
22 charge, on the recruitment of child soldiers, whereas the victims of the attacks that I
23 represent, as I've just said, it's at least 16 charges concerning the personal interests of
24 the victims of my clients. And that's why the page number will be different.

25 My colleague will speak about the length of -- the number of pages she wishes, but I

1 respectfully submit that I would ask for 250 pages for the closing submissions.

2 Now where it concerns the timing and schedule, I support the Office of the Prosecutor
3 to say that the parties and participants must have three months at least for the
4 preparation of the closing submissions. And for the parties and Legal
5 Representatives of Victims, they should also have the possibility to present a response
6 after the presentation of all closing submission, to all closing submissions, and in
7 order to have such rebuttal where it concerns my client, I would also ask to have 50
8 pages for that.

9 And finally, where it concerns the presentation of oral submissions, firstly, we've
10 already got jurisprudence from this Court in other cases. And I understand very
11 well that this jurisprudence is not obligatory for your Chamber, but it can serve as a
12 useful cater. In the Lubanga case, for example, Legal Representatives had the
13 possibility to make oral submissions for each team, and in the Katanga case Legal
14 Representatives asked and were accorded an hour and a half for their oral
15 submissions. In Bemba they had one hour and 20 minutes. I won't ask for so much
16 time, but I would respectfully ask where it concerns the victims of the attacks to have
17 one hour for the oral submissions.

18 Thank you, your Honour.

19 PRESIDING JUDGE FREMR: [16:08:11] Thank you, Mr Suprun.

20 And now I am giving floor to Ms Pellet, representative of the former child soldiers.

21 Ms Pellet, you have the floor.

22 MS PELLET: [16:08:24] (Interpretation) Thank you, your Honour. To go as
23 quickly through as possible, I won't repeat the arguments already presented by my
24 colleague from the Legal Representatives of victims of the attacks, and I will not
25 repeat the jurisprudence that was cited.

1 Contrary to what my colleague from the Defence said, I support the position of the
2 Office of the Prosecutor where it concerns the simultaneous filing of closing briefs.
3 And contrary to what was put forward, I'm of the opinion that simultaneous filing
4 will make the task of the Chamber less complicated, to have a true final presentation
5 of the arguments of both parties.

6 And I'm simply astonished that some of the arguments that were presented, because
7 two years after the start of the trial, it would seem to me that we are in the final phase
8 of the presentation of evidence, and I hope that the Defence has a detailed knowledge
9 of the position of the Prosecution where it concerns the charges against their client,
10 which they should have. And that should go in favour of a simultaneous
11 presentation of closing briefs and also responses thereto, which make it possible for
12 the Prosecution and the Defence and the Legal Representatives to respond thereto.

13 Once again, we believe that calls for a facility which will make the task easier in
14 this case.

15 Contrary to what was put forward by my colleague, the charge incumbent upon me is
16 not just one charge, in fact, but five. And that's the reason why I respectfully would
17 ask you to allow me to present the views and concerns of my clients in a detailed way,
18 which cannot be done with less than 125 pages. And as regards the charge
19 concerning the interests of my clients, they are not less important than other charges.

20 And I would also like to state that following the decision of the Appeals Chamber,
21 rape and sexual violence committed against child soldier girls in the FPLC are
22 extremely important, and my clients have -- they wish to -- they are very much
23 affected by these charges, and the Prosecution previously didn't concern these
24 charges.

25 So 125 pages for the closing briefs, I think that if the procedure should be completely

1 written - that is to say, the responses to the observations of the Office of the
2 Prosecutor and the Defence - then it would be enough for me to have an hour for the
3 final oral submissions, and I would also support the deadline of three months.

4 Thank you, your Honour.

5 PRESIDING JUDGE FREMR: [16:12:30] Thank you very much, Ms Pellet.

6 Now I will give all of you a chance to reply, starting with Prosecution.

7 Ms Samson, please.

8 MS SAMSON: [16:12:38] Thank you, Mr President. I would like to respond to
9 two of the main issues where the Prosecution and the Defence appear to be on
10 opposite sides. The first is on the timing of the filing of the closing brief and the
11 second is on the page limit for the closing brief.

12 Now, in relation to the timing of the filing, I would like to respond to three points the
13 Defence made. Firstly, decisions at this Court and other tribunals to order
14 simultaneous filings has been done irrespective of the nature of the charges or the
15 crimes. So that is clear enough, I think. At this institution it was done in a case that
16 was indeed an Article 70 case, and in the other courts, it was genocide charges, crimes
17 against humanity and war crimes.

18 And if I may, I will just respond as well to the Defence's suggestion that the closing
19 brief is meant to allow the Defence an opportunity to respond to the Prosecution's
20 case by citing the Semanza Appeals Chamber decision of May, 20 May 2005, where
21 the Court said -- the Appeals Chamber said at paragraph 36:

22 "There is nothing in the Rules to suggest that different dates must be set for each
23 party to file its closing brief. The Appellant misconstrues the purpose of a closing
24 brief, which is not to respond to the other party's closing brief, but to express its own
25 position regarding the charges set out in" -- the -- "indictment and the evidence led in

1 the case. The practice generally followed at the ICTR and the ICTY is for both
2 parties to file their closing brief at the same time." End quote.

3 Now, another argument the Defence raised in relation to staggered closing briefs is
4 that the Prosecution's case has materially changed. I'm left wondering if we were
5 participating in the same trial at all. The Prosecution's case has remained consistent
6 from its inception through to today. The charges have remained the same and the
7 modes of liability, we will argue, have not been altered.

8 Thirdly, expediency, which is an issue the Defence raised in terms of the schedule for
9 rebuttal evidence, will not be served if the filings are staggered. So the Prosecution's
10 suggestion, supported by the victims, is a 90-day period in which the Chamber will
11 have the full complement of closing briefs. The Defence suggestion is a maximum of
12 160 days later. So efficiency arguments must be consistent, and efficiency is gained
13 by having filings submitted at the same time.

14 The second point I wish to reply to is in relation to page limits. We too have looked
15 at the page limits at other cases in this -- in this and other courts and tribunals.

16 Where we have such a complex set of charges over a one-year period, 500 pages, in
17 our submission, is not an exaggeration or exorbitant. In the Bemba main case, with
18 five counts, the closing briefs were 400 pages. In the Taylor case, with 11 counts, the
19 closing brief was 600 pages. So the Prosecution's suggestion of 500 pages will allow
20 a full evaluation of the evidence from the parties and the victims' side, which will be
21 of ultimate assistance, we hope, to the Chamber. Thank you.

22 PRESIDING JUDGE FREMR: [16:16:44] Thank you very much, Ms Samson.
23 Defence, do you want to respond?

24 MR BOURGON: [16:16:49] Indeed, Mr President. First of all, in response to the
25 submission by my colleague from the Prosecution and my colleague from the Legal

1 Representatives for the child soldiers, we do know what the Prosecution's case is.
2 There is an updated Document Containing the Charges. What we do not know is
3 how they intend, based on the evidence that was submitted, they have met their
4 burden, because we are convinced that they have not met their burden. So we need
5 to know what -- how they say that those modes of liability are such that they have
6 met their burden of proof beyond a reasonable doubt.
7 My colleague from the Prosecution argued that Rule 141(2) did not apply. Well, we
8 all know that Rule 141(2) reads as follows: "The Presiding Judge shall invite the
9 Prosecutor and the defence to make their closing statements. The defence shall
10 always have the opportunity to speak last."
11 Let me just quote, Mr President, from an order on the timetable for closing
12 submission, and that was in the Lubanga case. And that is in paragraph 2 of this
13 order. The number is 2722 of 12 April 2011. And here it states at paragraph 2
14 in part:
15 "... the Chamber is of the view that it is necessary for the Prosecutor to file his written
16 closing statement first. The accused is entitled to know, once the evidence has closed,
17 the legal" -- and I stress "legal" -- "and factual basis on which the Prosecutor maintains
18 he is guilty. In this particular case, the lack of clearly identified bases could,
19 potentially, result in the defence responding to evidence that is no longer relied on."
20 We'd like to know what evidence the Prosecution intends to rely upon after the case
21 and after the case has closed.
22 In the circumstances, the logic underlying Rule 141(2) of the Rules that establishes the
23 right of the Defence to examine witnesses last also applies to these final written
24 submissions. The Defence is therefore entitled to file its closing submissions once
25 the arguments of the Prosecution and the Legal Representatives have been submitted.

1 This is what was applied in the three substantive cases before the International
2 Criminal Court, and the Prosecution has not advanced any argument that points in
3 another direction or that deserves or warrants a departure from this way.
4 My colleague from -- representing the victims of the attacks, he mentioned in support
5 of briefs being filed at the same time that the Defence had surprised the victims by the
6 way in which they led the case for the Defence. Well, I dare to say, Mr President,
7 that whether my colleague was surprised or not, there is absolutely no legal
8 foundation in this argument that because the Legal Representative for Victim was
9 surprised by the manner in which we led our Defence, that this would justify briefs
10 being submitted at the same time.
11 What is not a surprise, of course, is the manner in which my colleague put all of his
12 arguments. And I'm not going to summarise them, but what's not a surprise is that
13 he still believes -- no, sorry, I'm not allowed to say "he". I apologise, Mr President.
14 My colleague believes -- and this has been the case since the beginning of this trial, we
15 have one Prosecution, and I dare to say respectfully that we have two Prosecutors, and
16 their submissions today clearly highlight that we have three Prosecutors in this
17 room and not just one. And this is no reason to support the arguments put forward.
18 The last thing I want to say in terms of timing is simply that in all cases before the
19 International Criminal Court, any pages, time or opportunity given to the Legal
20 Representatives has been awarded on a pro rata or at least on a proportional basis on
21 what was permitted for the parties in the case. And I think that regardless of
22 what -- the position the Chamber takes, I did not even submit anything in this regard
23 and yet I'm being challenged by the Legal Representative. I did not submit anything,
24 but whatever the Chamber awards in this case should be -- should follow the
25 approach of being somewhat proportional or a proportion of what the parties in the

1 case are awarded or are allowed to put in terms of pages, time and submission.

2 Thank you, Mr President.

3 PRESIDING JUDGE FREMR: [16:22:54] Thank you, Mr Bourgon.

4 Legal Representatives, I will keep the order we started with. So Mr Suprun first.

5 MR SUPRUN: [16:23:03] (Interpretation) Thank you, your Honour. There are
6 two aspects: The first aspect which was mentioned concerns the surprise that we
7 had. When it came to the presentation of the case by the Defence, when I spoke
8 about the surprise, it's not just my own impression. It's an impression that was
9 formulated and the view that was formulated by all of the victims, almost all of the
10 victims I represent who followed the case and the presentation of evidence on the
11 radio and other means. Most of the evidence that was presented by the Defence
12 during the presentation of the case had nothing to do with the charges as contained in
13 the Document Containing the Charges. And when I spoke about surprise, I was
14 speaking indeed about that.

15 Now, the second aspect that I wanted to mention for the record, and I don't consider
16 that the charges for the recruitment of child soldiers are less important than other
17 charges for which the accused is before this Court today. Thank you very much.

18 PRESIDING JUDGE FREMR: [16:24:11] Thank you, Mr Suprun.

19 And at the end, Ms Pellet, please.

20 MS PELLET: [16:24:16] (Interpretation) Thank you, your Honour. Just a point
21 where it concerns the last submissions of my colleague from the Defence. If indeed
22 throughout the trial the right or the possibility for the Legal Representatives of
23 Victims have been granted on a pro rata basis, on the basis of what's been allocated to
24 the Defence and the Prosecution, for example, where it concerns the questioning of
25 witnesses in certain cases, the Defence and the Prosecution had more than six hours

1 and the Legal Representatives had 15 minutes. That was done.

2 Now, where it concerns the final written submissions, I insist that this is a very
3 important moment which makes it possible for the victims to be able to express their
4 views and concerns in a complete way, at a fundamental stage for them, because they
5 know the entire case, the presentation of evidence by the Defence and Prosecution,
6 and it's our duty to do so.

7 And furthermore, I would ask you to take this aspect into consideration. The
8 pro rata that was applied throughout the trial was the one that was applied, but
9 where it concerns this moment of the presentation of concluding submissions,
10 I would ask you to take our arguments into consideration. Thank you, your Honour.

11 PRESIDING JUDGE FREMR: [16:26:09] Thank you, Ms Pellet. And thank all of
12 you that you are really in detail and perfectly covered items listed by the Chamber.
13 Ms Samson, do you really need anything to add?

14 MS SAMSON: [16:26:21] It was just one clarification or correction.

15 PRESIDING JUDGE FREMR: [16:26:24] Please go ahead, but please briefly.

16 MS SAMSON: [16:26:26] Yes. When the Defence cited decision 2722 in Lubanga,
17 paragraph 2, it started the quote in the middle of the sentence. And the first part of
18 that sentence is very important for your Honours to understand, which is that the
19 Lubanga context was very different, and the Chamber is stating in that paragraph that
20 the abuse of process which happened in the course of the trial made it different and
21 specific, and that was why in that case the Prosecution was meant to provide its view
22 of the evidence as it had unfolded in a case where there was an abuse of process.
23 Thank you.

24 PRESIDING JUDGE FREMR: [16:27:02] Thank you, Ms Samson, for drawing our
25 attention to that fact and we will, I guess, with the Chamber and the team, anyway

1 return back to that part of the decision.

2 Before we conclude, one minor point maybe I omitted, and even if you haven't raised
3 it, and this -- I would like to ask parties, but absolutely briefly, whether there is any
4 request relating to language or translation issues. Prosecution.

5 MS SAMSON: [16:27:35] Yes, your Honour. The Prosecution requests that the
6 Chamber not order that the parties or the victims file simultaneous translations of the
7 closing brief, but that that be undertaken by the Registry further to the Regulations of
8 the Registry, following submission of the closing briefs. We do not know today
9 whether -- in which languages the translations would be required. We would
10 certainly be filing in English. And our current estimates, when we checked how
11 long it would take for us to translate or for the Registry to translate, is that it is -- it
12 would be a considerable amount of time. That would mean shortening the amount
13 of time the parties and participants have to file. Thank you.

14 PRESIDING JUDGE FREMR: [16:28:22] Thank you.

15 Defence on that point, any submissions? Not necessary if you don't have any idea at
16 the moment.

17 MR BOURGON: [16:28:31] We do not have submissions other than one thing, is
18 that there is a need, despite all the care that has been taken by the Chamber, to get all
19 of the transcripts corrected. This will be difficult. Language has been a very, very
20 challenging issue in this case between French and between English orally and in
21 writing. And this might create difficulties and there might be submissions that need
22 to be made, further corrections if we find them as we go along and as we really
23 address the evidence. That's our main concern at this point in time.

24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: [16:29:16] Understood.

1 The Legal Representatives, any submission on that final point?

2 MS PELLET: [16:29:20] (Interpretation) Thank you, your Honour. We have
3 made the effort, even if we speak in French during the hearings, to submit our
4 submissions in English, despite the fact that English is not the language spoken by
5 our client, even if he has to speak one working language of the Court. And we will,
6 of course, make the effort to submit the final closing brief in English, which I hope one
7 day will be translated into French. And I insist on that because at -- today just one
8 decision was translated into French, and that's a decision of the Appeals Chamber.
9 Thank you, your Honour.

10 PRESIDING JUDGE FREMR: [16:30:06] Thank you, Ms Pellet.

11 And Mr Suprun.

12 MR SUPRUN: [16:30:08] (Interpretation) Thank you, your Honour. Indeed, in
13 the same way, I can confirm that 80 per cent of our team is going to submit
14 submissions in English. But unfortunately we don't have the capacity to do it in a
15 simultaneous -- or to put a simultaneous French version as well. So I think the -- it
16 will be up to the Registry to carry out the translation subsequently. Thank you.

17 PRESIDING JUDGE FREMR: [16:30:35] Thank you. I can confirm that the
18 Chamber is aware of the fact that situation in that regard is not ideal.

19 So now we complete all items we listed. If there are no further requests for the floor,
20 I would like to thank all of you. And I wish you, especially those who will spend
21 this evening with their children, a nice Sinterklaas or Saint Nicholas evening. And
22 see you tomorrow 9.30 when we will continue with cross-examination of our witness.
23 Now Court is adjourned.

24 THE COURT USHER: [16:31:21] All rise.

25 (The hearing ends in open session at 4.31 p.m.)